

STATEMENT OF SCOPE

Department of Revenue

Rule No.: Chapter Tax 1, 2, 3, 11, 13, and 14

Relating to: Income, franchise, sales, and use tax, investment and local impact fund, homestead credit

Rule Type: Permanent

This scope statement was approved by the Governor on September 7, 2023.

1. Detailed description of the objective of the proposed rule:

The department identified the following provisions in need up updates relating to income, franchise, excise, sales, and use taxes for purposes of the JCRAR report submitted on March 30, 2023:

a. Chapter Tax 1 - General

— Section Tax 1.12: Listed taxes, fees, and other amounts described to be paid or deposited using the electronic funds transfer (EFT) payment method are outdated. For example, stadium sales and use taxes are obsolete and other tax payments, such as partnership tax payments are now required.

b. Chapter Tax 2 - Income Taxation, Returns, Records, and Gross Income

— Section Tax 2.105: Increase the 90-day Wisconsin reporting requirement to 180 days after federal or other state tax return adjustments, consistent with the reporting requirements in secs. 71.76 and 71.77(7), Wis. Stats. Update the dates in the examples to match new reporting requirement.

— Section Tax 2.11: The rule is obsolete and may be repealed. The credit for sales and use tax paid on fuel and electricity may no longer be claimed for taxable years that begin after December 31, 2005, pursuant to sec. 71.28(3)(c)7., Wis. Stats.

— Section Tax 2.12: Eliminate the example that references Form 1X-R, as it no longer exists.

— Tax 2.41: Repeal sub. (1)(a) as the deductibility of federal income taxes no longer applies after 1975.

— Tax 2.502: Repeal sub. (4), and remove references to sub. (4), as it only applied for taxable years beginning before January 1, 2009.

— Tax 2.89: Notes and examples need to be updated to reflect changes made by section 4 of 2017 Wisconsin Act 2.

— Tax 2.94: A note that references law changes made in 1965 is outdated and may be removed.

— Tax 2.957: Repeal the rule as secs. 71.05(6)(b), 71.28(9s) and 71.47(9s), Wis. Stats., were repealed by 2021 Wisconsin Act 127. Further, the relocated business credit cannot be claimed by businesses that relocated to Wisconsin after taxable years beginning after Dec 31, 2013.

c. Chapter Tax 3 – Income Taxation, Deductions from Gross Income, Exclusions, and Exemptions

— Section Tax 3.05: The rule is obsolete and may be repealed. The job creation deduction may no longer be claimed for taxable years beginning after Dec 31, 2014.

d. Chapter Tax 11 – Sales and Use Tax

— Section Tax 11.01: Remove reference to stadium taxes as baseball stadium taxes ended as provided in 2019 Wisconsin Act 28.

— Section Tax 11.04: Update rule to reflect 2021 Wisconsin Act 1, including new statutory language for entities described under sec. Tax 11.04(1m)(a)8.

— Section Tax 11.11: Update note to correct phone number and email address.

— Section Tax 11.14: Remove reference to stadium taxes as baseball stadium taxes ended as provided in 2019 Wisconsin Act 28.

— Section Tax 11.32: Remove reference to stadium taxes as baseball stadium taxes ended as provided in 2019 Wisconsin Act 28.

— Section Tax 11.33: Update rule to reflect changes made by 2017 Wisconsin Act 59 which changed sec. 77.51(9)(a)2., Wis. Stats., to presume one is not in business if they make less than \$2,000 taxable sales during a calendar year.

— Section Tax 11.35: Update entertainment definition and examples for the occasional sales exemption for nonprofit organizations as a result of changes made by 2021 Wisconsin Act 167 which increased the threshold from \$10,000 to \$50,000.

— Section Tax 11.53: Replace the term "receipts" with "sales" to match the tax returns.

— Section Tax 11.535: Update rule to reflect that an alternative reporting method is available for which a request and department approval is not necessary.

— Section Tax 11.68: Update rule to add University of Wisconsin Hospitals and Clinics Authority created under 2021 Wisconsin Act 1. Update note to add contracts with University of Wisconsin Hospitals and Clinics Authority effective February 20, 2021.

— Section Tax 11.83: Update sec. Tax 11.83(8)(b) of the rule and notes to remove outdated dollar amounts for use tax on license plates held by motor vehicle dealerships and refer to a department web page that shows amounts for each year.

— Section Tax 11.945: Update rule to reflect changes made by CR 22-044 which removed internet access from sec. Tax 11.66(3)(intro) and (c) and (d).

— Section Tax 11.96: Update rule or repeal provisions relating to adoption and repeal of baseball and football stadium taxes as they no longer apply.

e. Chapter Tax 13 – Investment and Local Impact Fund

— Section Tax 13.03: Update rule to remove references to sec. 293.43(3), Wis. Stats., which no longer exists, and update references to sec. NR 132.06, Wis. Adm. Code., which was moved to sec. NR 132.07, Wis. Adm. Code.

Further, the department intends to update the following provisions as a result of 2023 Wisconsin Acts 12 and 19:

f. Chapter Tax 1 – General Administration

— Section Tax 1.11: Update sec. Tax 1.11(4)(e) as 2023 Wisconsin Act 19 expanded the authority for WEDC to examine tax returns relating to all tax benefit programs administered by WEDC.

g. Chapter Tax 14 – Homestead Credit

— Sections Tax 14.04 and 14.05: Remove references to personal property tax as 2023 Wisconsin Act 12 repealed the personal property tax from Wisconsin law.

2. Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing policies are as set forth in the rules. Updated forms, email and mailing addresses are found on the department's website. This rule is being promulgated primarily to update for non-substantive changes and to reflect the statutory changes described above. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy and procedures.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 71.80 (1) (c), Stats., provides that the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes.

Section 77.65 (3), Stats., provides that the department may promulgate rules to administer compliance with the streamlined sales and use tax agreement.

Section 227.11 (2), Stats., provides statutory rule-making authority as follows:

(a) "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..."

(b) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates it will take approximately 100 hours to develop the rule.

5. List with description of all entities that may be affected by the proposed rule:

All taxpayers and tax professionals who rely on clear, current, and concise rules to determine and report their tax liabilities.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

No economic impact is anticipated.

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