

STATEMENT OF SCOPE

Department of Revenue

Rule No.: Chapter Tax 3

Relating to: Income, franchise, and corporate income tax exemption for income derived from commercial loans

Rule Type: Emergency and Permanent

1. Finding/nature of emergency (Emergency Rule only):

Taxpayers may begin claiming this exemption on their 2023 tax returns filed in 2024. To ensure clarity regarding what loans and what income from those loans is eligible for exemption, the department requires promulgation of an emergency rule. There is insufficient time to promulgate a permanent rule prior to the 2024 tax filing season.

2. 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 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 ..."

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

The new statutory language (2023 Wisconsin Act 19) states that financial institutions as defined in s. 69.30 (1) (b) may claim the income tax exemption for income derived from qualifying loans that meet the following criteria:

- The loan is a commercial loan.
- The loan is for five million dollars or less.
- The loan is provided to a person residing or located in Wisconsin.
- The loan is used primarily for a business or agricultural purpose.

The qualifications for what entities may claim the exemption and what loans create qualifying income that can be exempted requires clarification for consistent administration and fairness across the affected industry.

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

There are no current policies exempting income derived from commercial loans from income taxation. This exemption was adopted as a part of 2023 Wisconsin Act 19, first effective for the 2023 taxable year. The department anticipates creating new policies that clarify what businesses qualify to claim the exemption on their taxes and what loans create qualifying income. The department will consider industry best practices, federal and Wisconsin banking law and regulations, and research from other states with similar exemptions in the process of drafting the rule.

5. 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 250 hours to develop the rule.

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

Financial institutions, commercial loan borrowers

7. 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 this new Wisconsin income tax exemption.

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

The department does not expect an economic impact to the affected industries as a result of implementing the rule. However, any standards adopted in the rule may affect the types of loans and income eligible for the tax exemption.

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

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