

EmR1323

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

Filed with LRB: December 19, 2013

Publication Date: January 1, 2014

Effective Dates: January 1, 2014 through May 30, 2014

Hearing Date: January 27, 2014

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.58 (1) (a) and (5), Stats., relating to sales tax filing frequency.

The scope statement for this rule, SS 100-13, was approved by the Governor on August 2, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Revenue on September 10, 2013.

This emergency rule was approved by the Governor on November 15, 2013.

Analysis by the Department of Revenue

Statutes interpreted: s. 77.58 (1) (a) and (5), Stats.

Statutory authority: ss. 77.58 (5), 77.65 (3), and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 77.58 (5), Stats., provides "The department, if it deems it necessary to ensure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payments of the amount of taxes for other than quarterly periods. The department may, if satisfied that the revenues will be adequately safeguarded, permit returns and payments of the amount of taxes for other than quarterly periods..."

Section 77.65 (3), Stats., provides "[t]he department may promulgate rules to administer this section..."

Section 227.11 (2) (a), Stats., provides "[e]ach 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..."

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis: This proposed rule amends the reference in s. Tax 11.93 to increase the annual filing standard to \$600 (currently \$300) to allow more retailers to file sales tax returns annually. This is consistent with changes made to s. 77.58 (1) (a), Stats., by 2013 Wis. Act 20, to allow more retailers to file sales tax returns less frequently (quarterly rather than monthly).

Summary of, and comparison with, existing or proposed federal regulation:

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

Comparison with rules in adjacent states: Illinois (86 ILL. Adm. Code 130.502), Iowa (Rule 701 12.1(422)), and Minnesota (Rule 8130.7300) also address

sales tax filing frequency in their rules. As with Wisconsin, each of these state's rules are based on unique underlying statutes and policy. Because of this, a meaningful comparison cannot be made.

Summary of factual data and analytical methodologies: 2013 Wis. Act 20 doubled the threshold upon which a monthly sales tax return is required to be filed (\$600 to \$1200). The department has created this proposed rule order to be consistent with this statutory change by doubling the threshold upon which an annual sales tax return may be filed (\$300 to \$600). No other data was used in the preparation of this rule order or this analysis.

Analysis and supporting documents used to determine effect on small business: This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector: This rule does not have a fiscal effect on the private sector.

Effect on small business: This rule does not affect small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

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FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 77.58 (1), Stats., provides that retailers must file sales tax returns quarterly, except as provided in s. 77.58 (1) (a) and (b), Stats., which allows for sales tax returns to be filed monthly.

Section 77.58 (5), Stats., provides that the department may require returns and payments on the amount of taxes for other than a quarterly period if it deems it

necessary to ensure payment to or facilitate the collection by the state of the amount of taxes. The department has provided for annual sales tax returns by rule in s. Tax 11.93 (1) for retailers that have an annual tax liability of \$300 or less.

Section 77.58 (1) (a), Stats., as amended by 2013 Wis. Act 20, requires retailers to file sales tax returns monthly if their tax liability exceeds \$1,200 in any quarter. This change goes into effect on January 1, 2014. Under prior law, retailers were required to file monthly sales tax returns if their tax liability exceeded \$600 in any quarter.

Because 2013 Wis. Act 20 doubles the threshold upon which a monthly sales tax return is required to be filed (\$600 to \$1200), s. Tax 11.93 (1) should also be changed to reflect a similar increase in the threshold upon which an annual sales tax return can be filed.

As the statutory change to the monthly filing standard goes into effect on January 1, 2014, the corresponding change to the annual filing standard in s. Tax 11.93 (1) should also go into effect on January 1, 2014. There is insufficient time for the permanent rule to be effective on January 1, 2014.

SECTION 1. Tax 11.93 (1) and (Note 2) are amended to read:

Tax 11.93 (1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding ~~\$300~~ \$600 will be notified by the department that it must only file one sales and use tax return for the following year. If the retailer wants to continue to file returns on a quarterly basis, it must contact the department.

(Note 2) The interpretations in s. Tax 11.93 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) ~~The~~ A \$300 standard applies applied to taxable years beginning on and after January 1, 1979. Prior to that date, a \$100 standard applied; and (b) The "annual information return" was eliminated for 1981 and subsequent years, pursuant to Chapter 221, Laws of 1979- ; and (c) The \$600 standard applies on and after January 1, 2014.

SECTION 2. Effective date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Richard G. Chandler
Secretary of Revenue

E:Rules/1193 Proposed Order (emergency)