

**ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, RENUMBERING, RENUMBERING AND AMENDING,
AMENDING, REPEALING AND RECREATING AND CREATING RULES**

The Wisconsin Department of Revenue adopts an order to: **repeal** Tax 2.03(1)(j); **renumber** Tax 2.03(1)(k) to (n), (q) to (s) and (u) to (x); **renumber and amend** Tax 2.03(1)(o), (p) and (t), Tax 2.12(5)(b) and Tax 3.91; **amend** Tax 2.03(4) and Tax 2.12(title), (1), (3)(a), (b), (c) and (e), (4)(b)1., 2., 4. and 5. and (6)(b), (c) and (d); **repeal and recreate** Tax 2.12(2), (4)(b)3. and (5)(a); and **create** Tax 2.03(1)(x) and Tax 2.12(5)(b) and (d); **relating to** corporation returns, claims for refund and other amended returns and petitions for redetermination.

Analysis by the Department of Revenue

Statutory authority: ss. 71.80(1)(c) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 66.0615(1m)(f)2., 71.24(1), (1m) and (3), 71.30(4), 71.365(4) and (5), 71.44(1)(a) and (c) and (1m), 71.738(2), 71.74, 71.75, 71.76, 71.77, 71.80(18), 71.88(1), 71.90(1), 77.59(6), 77.61(14), 77.76(2), 77.96(4), 77.982(2), 77.991(2), 77.9941(4), 77.9951(2), 77.9964(2), 78.67, 78.69, 139.094, 139.11(2m), 139.355, 139.38(2m), 139.83, 139.835, 139.93(1) and 168.12(9), Stats.

SECTIONS 1 AND 2. Tax 2.03(1)(j) is repealed, to reflect the discontinuance of the use of form 4X. Consequently, pars. (k) to (x) are renumbered (j) to (w).

As renumbered, Tax 2.03(1)(n), (o) and (s) are revised, to correct the names of forms 5S and 5S-1, and schedule DC.

SECTION 3. Tax 2.03(1)(x) is created, to list schedule Z-1.

SECTION 4. Tax 2.03(4) is revised, to provide updated filing procedures per the amendment to s. 71.80(18), Stats., by 1997 Wis. Act 27.

The 2 notes at the end of Tax 2.03 are revised, to provide correct department office location and mailing address, and to add a statutory reference.

SECTIONS 5 AND 7. Tax 2.12(title) is revised, to clarify that claims for refund are amended returns.

Tax 2.12(1) and (3)(a), (b), (c) and (e) are revised, to remove the word “temporary” and a note is added at the end of the rule, to reflect the replacement of the “temporary recycling surcharge” with a “recycling surcharge” pursuant to the amendment of subch. VII of ch. 77, Stats., by 1999 Wis. Act 9.

Tax 2.12(3)(b) is further revised, to remove a statutory reference that is no longer applicable and to add a reference to subs. (5) and (6), for clarity.

Tax 2.12(4)(b)1. and 2. are revised, to incorporate the term “claim for refund” as defined in sub. (2)(a).

Tax 2.12(4)(b)2. is further revised, to explain the provisions of s. 71.88(1)(a), Stats., and to add examples.

SECTION 6. Tax 2.12(2) is repealed and recreated, to change the title to “Definitions,” to provide a definition of “claim for refund” in par. (a) and to revise the definition of “timely filed” in par. (b), to reflect the amendment of s. 71.80(18), Stats., by 1997 Wis. Act 27.

SECTION 8. Tax 2.12(4)(b)3. is repealed and recreated, to update provisions relating to filing a refund claim after paying an uncontested office audit or field audit assessment or refund, to reflect the amendment of s. 71.75(5), Stats., by 1997 Wis. Act 27. Several examples are also added.

SECTIONS 9 AND 13. Tax 2.12(4)(b)4. and 5. and (6)(c) are revised, to incorporate the term “claim for refund” as defined in sub. (2)(a).

Tax 2.12(6)(b) is revised, to reflect the discontinuance of the use of form 4X.

Tax 2.12(6)(d) and the note following are revised, to reflect that mailing addresses are listed on amended forms or in their instructions.

SECTIONS 10, 11 AND 12. Tax 2.12(5)(a) is repealed and recreated, Tax 2.12(5)(b) is renumbered Tax 2.12(5)(c) and revised and new Tax 2.12(5)(b) is created, to reflect the use of “tefile” and “netfile,” and the discontinuance of the use of form 4X. The table in sub. (5)(a) is no longer needed.

Tax 2.12(5)(d) is created, to set forth in a separate paragraph the format requirements for filing an amended return not requesting a refund.

Three obsolete notes at the end of Tax 2.12 are deleted and the last note is revised, to add an additional statutory reference.

SECTION 14. Tax 3.91 is moved to ch. Tax 1 and renumbered Tax 1.14, because the subject matter pertains to all taxes, credits and fees administered by the department’s income, sales and excise tax division.

As renumbered, Tax 1.14 is revised, to:

- List additional taxes, credits and fees to which the section pertains – sub. (1).
- Remove outdated requirements relating to the format of a petition for redetermination – sub. (2).
- Update filing deadline provisions, pursuant to amendments to ss. 71.80(18) and 77.61(4), Stats., by 1997 Wis. Act 27 – sub. (3).
- Update provisions relating to deposits paid at the time of filing a petition for redetermination, pursuant to the amendment of s. 71.90(1), Stats., by 1997 Wis. Act 27 – sub. (4).
- Clarify language and update style and format, per Legislative Council Rules Clearinghouse standards – all subsections, notes.

SECTION 1. Tax 2.03(1)(j) is repealed.

SECTION 2. Tax 2.03(1)(k) to (x) are renumbered Tax 2.03(1)(j) to (w) and as renumbered Tax 2.03(1)(n), (o) and (s) are amended to read:

Tax 2.03(1)(n) Form 5S ~~Tax-option~~ Tax-option (S) corporation franchise or income tax return.

(o) Form 5S-1. Tax-option (S) corporation ~~supplemental~~ schedules.

(s) Schedule DC. Development ~~zone-credits~~ zones credit.

SECTION 3. Tax 2.03(1)(x) is created to read:

Tax 2.03(1)(x) Schedule Z-1. Manufacturer's sales tax credits passed through from other entities.

SECTION 4. Tax 2.03(4) is amended to read:

Tax 2.03(4) FILING RETURNS. All forms and information required to be filed or furnished by corporations shall be ~~delivered to the department or~~ mailed to the address specified by the department ~~on the form or in the instructions~~ or the department of administration, or delivered to the department or to the destination that the department or the department of administration prescribes.

Note to Revisor: Replace the 2 notes at the end of Tax 2.03 with the following:

Note: Forms may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to the address specified on the form or in the instructions. Blank forms may be obtained at the same location, or by mail request to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, PO Box 8951, Madison WI 53708-8951.

Note: Section Tax 2.03 interprets ss. 71.24(1), (1m) and (3), 71.365(4) and (5), 71.44(1)(a) and (c) and (1m) and 71.80(18), Stats.

SECTION 5. Tax 2.12(title) and (1) are amended to read:

Tax 2.12(title) ~~Amended~~ **Claims for refund and other amended returns.**

(1) SCOPE. This section applies to amended Wisconsin franchise or income tax returns, amended partnership returns, amended ~~temporary~~ recycling surcharge returns and amended farmland preservation credit and homestead credit claims.

SECTION 6. Tax 2.12(2) is repealed and recreated to read:

Tax 2.12(2) DEFINITIONS. In this section:

(a) "Claim for refund" means an amended Wisconsin return or credit claim as described in sub. (1), on which a refund is requested.

(b) "Timely filed," in the case of an amended return or credit claim, means either of the following:

1. If the amended return or credit claim is mailed, it is mailed in a properly addressed envelope with postage prepaid and is received by the department, or is received at the destination that the department or the department of administration prescribes, within 5 business days after the last day of the statutory limitation period or extended limitation period.

2. If the amended return or credit claim is not mailed, it is in the possession of the department, or is received at the destination that the department or the department of administration prescribes, prior to the expiration of the statutory limitation period or extended limitation period.

SECTION 7. Tax 2.12(3)(a), (b), (c) and (e) and (4)(b)1. and 2. are amended to read:

Tax 2.12(3)(a) The department shall accept amended returns and credit claims to correct previously filed original, other amended or adjusted Wisconsin franchise or income tax returns, partnership returns, ~~temporary~~ recycling surcharge returns or farmland preservation credit or homestead credit claims.

(b) ~~Under s. 71.75(6), Stats., and as provided in this section, a~~ A refund of taxes or credits under ch. 71, Stats., or ~~temporary~~ recycling surcharge under s. 77.96(4), Stats., may be claimed only by filing an amended return or credit claim, on a form and in the manner described in subs. (5) and (6).

(c) An amended Wisconsin return shall be filed with the department if either an amended federal return is filed or an amended return is filed with another state for which a credit for taxes has been allowed against Wisconsin taxes, and the changes to the amended federal or other state return affect the amount of Wisconsin net franchise or income tax or ~~temporary~~ recycling

surcharge payable, a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward.

(e) An amended return or credit claim does not begin or extend the statute of limitation periods for assessing additional tax or ~~temporary~~ recycling surcharge or claiming a refund.

(4)(b)1. Except as provided in subds. 3. and 4., ~~an amended Wisconsin return or credit claim requesting a claim for~~ refund may not be filed for any year covered by a field audit ~~which~~ that resulted in a refund or no change in the tax owed, or in an assessment that has become final under s. 71.88(1)(a) or (2)(a), 71.89(2), 73.01 or 73.015, Stats., provided the department advises the taxpayer that the field audit is final unless the taxpayer appeals the result.

2. Except as provided in subds. 3. and 4., ~~an amended Wisconsin return or credit claim requesting a claim for~~ refund may not be filed for any item of income or deduction assessed as a result of an office audit, provided the assessment has become final under s. 71.88(1)(a) or (2)(a), 71.89 (2), 73.01 or 73.015, Stats. Section 71.88(1)(a), Stats., provides that a taxpayer may file a petition for redetermination within 60 days of receipt of a notice of additional assessment, refund or denial of refund. If a taxpayer does not file a petition for redetermination of a notice of assessment, refund or refund denial, the adjustments made in the notice are final and conclusive. The taxpayer is not entitled to a refund on any subsequent claim for refund based on the same adjustments as those in the notice of assessment, refund or denial of refund.

Note to Revisor: Insert the following examples at the end of Tax 2.12(4)(b)2.:

Examples: 1) Taxpayer A files an amended 2000 return to claim additional business expenses. The department allows only a portion of the claimed additional expenses, based on a difference in interpretation of the law. A notice of refund is issued March 1, 2003. The taxpayer does not file a petition for redetermination. In December 2003, the taxpayer files another amended return claiming the same additional business deductions as those disallowed in the prior notice of refund. The taxpayer is not entitled to a refund on the claim for refund. The March 1, 2003, notice of refund is final.

2) Taxpayer B files an amended 2000 return to claim additional business expenses. The department disallows a portion of the claimed additional expenses, due to lack of substantiation of the expenses as requested in a letter to the taxpayer. A notice of refund is issued March 1, 2003. The taxpayer does not file a petition for redetermination. In December 2003, the taxpayer

submits adequate substantiation to support the full deduction. The deduction is not allowed and no additional refund will be issued. Since no petition for redetermination was filed for the March 1, 2003, notice of refund, that notice is final.

3) Taxpayer C files a timely 1998 return claiming a refund of earned income credit and excess income tax withheld. During the processing of the return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. The taxpayer does not respond to the request for additional information. A notice of refund is issued in July 1999, to refund the excess income tax withheld only. The taxpayer does not file a petition for redetermination. The taxpayer files a timely 1999 return claiming a refund of earned income credit and excess income tax withheld. During the processing of this return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. This letter requests the same information that was requested for the processing of the 1998 return. The taxpayer submits the additional information needed for both the 1998 and 1999 returns. Since the taxpayer did not submit a petition for redetermination for the 1998 notice of refund, that notice is final. A notice of refund for the earned income credit is issued for 1999 only.

SECTION 8. Tax 2.12(4)(b)3. is repealed and recreated to read:

Tax 2.12(4)(b)3.a. For taxable years beginning on or after January 1, 2000, a claim for refund for each year for which an amount due is calculated as a result of items adjusted in an office audit or field audit assessment or refund may be filed within 4 years of the date of the adjustment notice, provided no petition for redetermination was filed and, if the adjustment notice was an assessment, the amount due was paid. No refund claim may be filed under this subd. 3.a. for any year that resulted in a refund or no change in the amount owed.

Examples: **1)** Taxpayer D files a timely 2000 return. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

2) Taxpayer E files timely 2000 and 2001 returns. The department completes an audit of the returns and issues a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit for each year but also disallows a portion of the claimed business expenses for each year, with the net result being a refund for each year. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

3) Taxpayer F files a timely 2000 return on April 15, 2001. The department completes an office audit of this return by issuing a notice of additional tax due dated March 30, 2005. The notice of additional tax due allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses.

4) Taxpayer G files timely 2000 and 2001 returns. The department completes an office audit of these returns by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit resulting in a refund for 2000 and disallows a portion of the claimed business expenses for an assessment for 2001, with the net result being a refund for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses for the year 2001.

5) Taxpayer H files timely 2000 and 2001 returns. The department completes an office audit of these returns by issuing a notice of additional tax due dated March 30, 2005. The notice of additional tax due allows an additional itemized deduction credit resulting in a refund for 2000 and disallows a portion of the claimed business expenses resulting in an assessment for 2001, with the net result being an assessment for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses for the year 2001.

b. For taxable years beginning prior to January 1, 2000, a claim for refund for each year for which an amount due is calculated as a result of items adjusted in an office audit or field audit net assessment may be filed within 2 years of the date of the assessment notice, provided no petition for redetermination was filed and the amount due was paid. No refund claim may be filed under this subd. 3.b. for any year that resulted in a refund or no change in the amount owed or, in the case of a multiple year audit resulting in a net refund, for any year for which an amount due is calculated.

Examples: 1) Taxpayer I files a timely 1999 return on April 15, 2000. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2004. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

2) Taxpayer J files timely 1998 and 1999 returns. The department completes an office audit of these returns by issuing a notice of refund dated March 30, 2003. The notice of refund allows an additional itemized deduction credit resulting in a refund for 1998 and disallows a portion of the claimed business expenses for an assessment for 1999, with the net result being a refund for the two years combined. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for 1998 or 1999.

SECTION 9. Tax 2.12(4)(b)4. and 5. are amended to read:

Tax 2.12(4)(b)4. ~~An amended Wisconsin return requesting a~~ A claim for refund of an overpayment attributable to a capital loss carryback may be filed by a corporation within 4 years

after the due date, or extended due date, for filing the return for the taxable year of the capital loss that is carried back.

5. If the limitation period for making an assessment or refund has been extended by written agreement between a taxpayer and the department, ~~an amended Wisconsin return or credit claim requesting a~~ claim for refund relating to the year or years covered by the extension agreement may be filed during the extension period.

SECTION 10. Tax 2.12(5)(a) is repealed and recreated to read:

Tax 2.12(5)(a) Except as provided in par. (b) or (c), a claim for refund shall be filed on the same form as the original form, in the manner prescribed in sub. (6).

SECTION 11. Tax 2.12(5)(b) is renumbered Tax 2.12(5)(c) and amended to read:

Tax 2.12(5)(c) The department may prescribe a special form for taxpayers to use in claiming a refund, to address a specific tax issue. In this situation, the special form may be used in lieu of the amended form prescribed in par. (a) or (b).

SECTION 12. Tax 2.12(5)(b) and (d) are created to read:

Tax 2.12(5)(b) Except as provided in par. (c), a claim for refund shall be filed on a form 1X, in the manner prescribed in sub. (6), if any of the following apply:

1. The original return was filed on a form 1, 1A or WI-Z.
2. The original return was filed using “telefile” or “netfile.”
3. The original credit claim was filed with a form 1 or 1A.

(d) An amended Wisconsin return or credit claim filed for a purpose other than to request a refund is not required to be filed on a specific form.

SECTION 13. Tax 2.12(6)(b), (c) and (d) are amended to read:

Tax 2.12(6)(b) An amended return or credit claim other than form 1X ~~or 4X~~ shall be identified as an amended form by checking the “amended return” box if one is provided on the form or by marking “AMENDED” across the top of the first page of the amended form.

(c) ~~An amended return or credit claim requesting a~~ A claim for refund may not be made a part of or attached to any original Wisconsin return or credit claim.

(d) An amended return or credit claim shall be mailed to the department at the address specified on the form or in its instructions ~~or at the address provided for mailing amended Wisconsin returns or credit claims.~~

Note to Revisor: 1) Remove the first 4 notes at the end of Tax 2.12.

2) Insert the following note before the last remaining note at the end of Tax 2.12:

Note: Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9, to create a recycling surcharge effective for taxable years beginning on or after January 1, 2000. For taxable years ending before April 1, 1999, subch. VII of ch. 77, Stats., provided for a temporary recycling surcharge; the term “recycling surcharge” as used in this section refers to the “temporary recycling surcharge” for those years.

3) Replace the last note at the end of Tax 2.12 with the following:

Note: Section Tax 2.12 interprets ss. 71.30(4), 71.738(2), 71.74, 71.75, 71.76, 71.77, 71.80(18) and 77.96(4), Stats.

SECTION 14. Tax 3.91 is renumbered Tax 1.14 and amended to read:

Tax 1.14 **Petition for redetermination.** (1) SCOPE. A person feeling aggrieved by a notice of additional assessment of income, franchise, ~~sales, use, withholding or gift tax, state, county or stadium sales or use, premier resort area, local exposition, motor vehicle fuel, alternate fuels, general aviation fuel, fermented malt beverages, liquor, cigarette, tobacco products or controlled substances tax or petroleum inspection, state rental vehicle or dry cleaning fee,~~ by a notice of reduced homestead, farmland preservation or other credits, or by a notice of refund or denial of refund may petition the department ~~of revenue~~ for redetermination. This section describes the administrative provisions related to the petition for department redetermination.

(2) FORMAT OF THE PETITION. The petition for redetermination ~~specified in ss. 71.88(1) and 77.59(6), Stats., shall be written, preferably typed, on only one side of plain white paper not more than 8 ½ inches wide by 11 inches long and shall be filed in duplicate. It shall be in writing and~~ shall set forth clearly and concisely the specific grievances to the assessment,

reduced credit, refund or denial of refund, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by the taxpayer or by a duly authorized representative.

(3) FILING DEADLINE. A (a) To be considered “timely filed” a petition for redetermination shall be filed within 60 days after receipt of a notice of additional assessment, reduced credit, refund or denial of refund. A Except as provided in par. (b), a petition for redetermination is not “filed” within the proper statutory 60-day time period unless only if it is actually received by the department, or at the destination that the department prescribes, within the 60-day period, or unless it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight of the sixtieth 60th day and the petition is actually received by the department, or at the destination that the department prescribes, within 5 business days of the prescribed sixtieth 60th day date.

(b) In lieu of being received by the department or at a destination prescribed by the department, a petition for redetermination may be received at a destination prescribed by the department of administration if the petition for redetermination relates to a notice of additional assessment, reduced credit, refund or refund denial of income, franchise, withholding, motor vehicle fuel, alternate fuels, general aviation fuel, fermented malt beverages, liquor, cigarette, tobacco products or controlled substances tax, homestead, farmland preservation or other credit or state rental vehicle fee.

Note to Revisor: Remove the note at the end of sub. (3).

(4) DEPOSIT OR PAYMENT. (a) *Deposit.* Any person who files a petition for redetermination may elect to deposit the amount of additional assessment, including interest and penalty, with the department ~~of revenue~~, or with a person that the department prescribes, at any time before the department makes its redetermination. Any deposited amount ~~which~~ that is later refunded ~~will~~ shall bear interest at the statutory rate.

(b) *Payment.* A person may also pay any portion of the assessment admitted to be correct together with interest ~~to~~ computed to the date of payment. However, the payment shall be considered an admission that the paid portion of the assessment is correct. The admitted portion that is paid may not be recovered in an appeal or in any other action or proceeding.

(5) INFORMAL CONFERENCE. A taxpayer may request in a petition for redetermination or at any time before the department ~~of revenue~~ has acted on the petition, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. The conference shall be held at a time and place determined by the department.

(6) CLOSING STIPULATIONS. If the informal conference specified in sub. (5) results in an agreement as to facts and issues and the applicable law, the taxpayer and the department ~~of revenue~~ may enter into a closing stipulation.

Note to Revisor: 1) Remove the statutory references following the title of Tax 3.91 before renumbering.

2) Insert the following note at the end of Tax 1.14:

Note: Section Tax 1.14 interprets ss. 66.0615(1m)(f)2., 71.80(18), 71.88(1), 71.90(1), 77.59(6), 77.61(14), 77.76(2), 77.982(2), 77.991(2), 77.9941(4), 77.9951(2), 77.9964(2), 78.67, 78.69, 139.094, 139.11(2m), 139.355, 139.38(2m), 139.83, 139.835, 139.93(1) and 168.12(9), Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____ By: _____
Richard G. Chandler
Secretary of Revenue