

## ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue adopts an order to: **create** Tax 1.15; **relating to** the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

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### *Analysis by the Department of Revenue*

**Statute interpreted:** s. 895.59, Stats.

**Statutory authority:** s. 895.59 (2), Stats.

**Explanation of agency authority:** Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business.

**Related statute or rule:** s. 895.59, Stats.

**Plain language analysis:** This rule order discloses that the enforcement of rules or guidelines as they apply to a small business shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors may include, but are not limited to:

- History of compliance with the rule or guideline.
- The extent to which the rule or guideline allows for discretion in its enforcement.
- Voluntary disclosure.

**Summary of, and comparison with, existing or proposed federal regulation:** The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Comparison with rules in adjacent states:** The department is not aware of a similar rule in an adjacent state.

**Summary of factual data and analytical methodologies:** 2003 Wisconsin Act 145 created s. 895.59 (2), Stats., which sets forth a requirement that each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business. In response to this statutory requirement, the department has created this rule order.

**Analysis and supporting documents used to determine effect on small business:** This rule order describes existing department policy. It makes no policy or other changes having a significant effect on small business.

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

**Effect on small business:** This rule order does not have a significant effect on small business.

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), if you have any questions regarding this rule order.

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SECTION 1. Tax 1.15 is created to read:

**Tax 1.15 Enforcement of rules and guidelines as they apply to a small business.**

**(1) PURPOSE.** This section discloses the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

**(2) DEFINITION OF SMALL BUSINESS.** In this section, “small business” has the meaning given in s. 227.114 (1), Stats., but does not include an entity defined in s. 48.685 (1) (b) or 50.065 (1) (c), Stats.

**(3) DISCRETION THE DEPARTMENT WILL FOLLOW.** The enforcement of rules or guidelines as they apply to a small business, including the reduction or waiver of penalties for a voluntary disclosure of actual or potential violations of rules or guidelines, shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors may include, but are not limited to:

- (a) History of compliance with the rule or guideline.
- (b) The extent to which the rule or guideline allows for discretion in its enforcement.
- (c) Voluntary disclosure.

**(4) SCOPE OF DISCRETION ALLOWED.** The department shall allow the discretion described in sub. (3) to be considered in all situations.

**(5) VOLUNTARY DISCLOSURE.** The department encourages a small business that is not in compliance with Wisconsin tax law to voluntarily come forward. On a case-by-case basis, considering all relevant factors, the department may exercise discretion to:

- (a) Enter into a written agreement with the small business that restricts the statute of limitations.
- (b) Waive penalties.
- (c) Reduce the number of periods for which returns shall be filed.

**Note:** Section Tax 1.15 interprets s. 895.59, Stats.

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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: \_\_\_\_\_

Michael L. Morgan  
Secretary of Revenue

E:Rules/115 Final Order