



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-031

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

a. The analysis to Clearinghouse Rule 04-031 should contain sufficient detail to enable the reader to understand both the content of the rule and the changes made, if any, in existing rules. [See s. 1.02 (2) (b), Manual.]

b. In s. Tax 2.49 (3), the introductory material does not grammatically lead into the following subunits. Consequently, this material should be renumbered as par. (a) and the remaining paragraphs and internal cross-references should be renumbered accordingly. [See also ss. Tax 2.49 (4) (where the new par. (a) will also require a title) and 2.495 (3) and 4.]

c. In s. Tax 2.49 (2) (o), the last two sentences should be placed in a note to the rule.

d. In s. Tax 2.49 (4) (d) 1., the phrase “under the rules set forth in” should be replaced by the phrase “as described in.” [See also ss. Tax 2.49 (4) (f) 2. and (k) 2. and (4) (z) and 2.495 (4) (g).]

e. In s. Tax 2.49 (4) (v), the introductory material should grammatically lead into the following subunits by concluding with a phrase such as “under any of the following circumstances:”. [See also s. Tax 2.495 (4) (e).]

f. In s. Tax 2.49 (4) (x), the phrase “other services” is used. This phrase should be replaced by a citation to the appropriate paragraphs in sub. (4). [See also s. Tax 2.495 (4) (e) and (g).]

g. Section Tax 2.49 (4) (aa) should be renumbered s. Tax 2.49 (4) (zm).

4. Adequacy of References to Related Statutes, Rules and Forms

In s. Tax 2.49 (2) (g) 5., the final citation should read: “Section 214.01 (1) (t), Stats.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. It is suggested that the phrase “borrower located in this state” be placed after the comma in s. Tax 2.49 (2) (b) 1.

b. Section Tax 2.49 (2) (c) 2. creates a presumption that “commercial domicile” is the state of the United States or the District of Columbia in which the greatest number of the taxpayer’s employees work or “are regularly connected.” The meaning of the term “are regularly connected” is unclear and needs additional explanation. [See also s. Tax 2.495 (2) (e) 2.]

c. Sections Tax 2.49 and 2.495 assume that the product of the final apportionment percentage and the total net income of a business will result in the net income of a business subject to Wisconsin’s income tax. The purpose of the apportionment formula computations should be expressly stated, perhaps in the renumbered ss. Tax 2.49 (3) (a) and 2.495 (3) (a).

d. The phrase “net business income shall be apportioned using” should be placed after the third comma in s. Tax 2.49 (3) (a). This comment is also applicable to pars. (b), (c) and (d). [See also s. Tax 2.495 (3).]

e. Section Tax 2.49 (4) (intro.) refers to the taxpayer’s gross receipts in Wisconsin during the taxable year as compared to the taxpayer’s total gross receipts during the taxable year. However, pars. (f) and (h) refer to various net gains from the sale of loans and the sale of credit card receivables. These concepts need to be reconciled.

f. It is suggested that the phrase “proportion of” be placed prior to the word “use” in s. Tax 2.49 (4) (b) 2. (intro.), a., b. and c.

g. The term “broker-dealer” is defined, in part, in s. Tax 2.495 (2) (d) to exclude “any other person the Wisconsin department of financial institutions division of securities designates.” The meaning of this statement and how the Department of Financial Institutions would designate a person who is not a broker-dealer for purposes of s. Tax 2.495 is unclear.