



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-087

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In s. Tax 2.85 (1) (intro.) and (4) (intro.), the phrase “any of” should be inserted before the phrase “the following.” In sub. (3) (intro.), the phrase “all of” should be inserted before the phrase “the following.” The same comments apply to the similar provisions in s. Tax 11.90.

b. In the section of the rule analysis relating to small business, the department should delete the word “emergency.” The proposed rule does not appear to be an emergency rule. [s. 1.02 (5), Manual.]

c. In ss. Tax 2.85 (2) (a) and (b) and 11.90 (2) (a) and (b), the department should define each term separately. In ss. Tax 2.85 (2) (b) and 11.90 (2) (b), the department should delete “but are not limited to.” [s. 1.01 (7) (c), Manual.]

d. In ss. Tax 2.85 (3) and 11.90 (3), example 1 appears to show the similar treatment for a response period of exactly the minimum period specified by pars. (a) and (b) and example 2 appears to show a response period that provides more than the minimum time specified by pars. (a) and (b). Are there other distinctions drawn by examples 1 and 2? If not, is the distinction described above sufficient to merit separate examples?

e. Generally, ss. Tax 2.85 (1) (b) and 11.90 (1) (b) permit the department to assess a penalty at its discretion, however, ss. Tax 2.85 (4) (b) and 11.90 (4) (b) and the examples in the

rule appear to describe a more stringent standard for waiving that penalty once it has been imposed. Will this combination of standards result in inequitable treatment of taxpayers depending on the department's exercise of judgment in the initial imposition of the penalty?

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

In ss. Tax 2.85 (4) (b) and 11.90 (4) (b), the department should say "may not" instead of "would not."