



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-001

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 the analysis of the proposed rule, the department cites engaging in business in more than one state as its reason the proposed rule does not have an effect on small business. A business’s activities in more than one state is not a component of the definition of small business in s. 227.114, Stats.

b. Throughout the rule, the department should avoid use, and inconsistent use, of quotations around words outside of the definition of those words. For example, the department sometimes uses quotations around “nexus,” and other words outside of the sections of the rule defining those terms.

c. The note to s. Tax 2.39 (6) (e) should refer to “2009 Wis. Act 28.” The entire rule should be reviewed for use of the correct cross-reference.

d. Section Tax 2.39 (6) (g) Note should refer to the most recent previous version of the statutes that contains the appropriate information. For statutes repealed by 2009 Act 28, this reference would be to 2007-08 Stats. If necessary to include the reference to 2005 Act 25, refer to “2007-08 Stats., as affected by 2005 Wis. Act 25.”

e. Throughout the proposed rule, the department states “For purposes of this section, ‘engaged in business in and outside of this state’ has the same meaning as in s. Tax 2.39 (2) (d).” Section Tax 2.39 (2) (d) defines nexus, while sub. (2) (b) defines “engaged in business in and

outside of this state.” Did the department intend to refer to the definition of nexus in s. Tax 2.39 (2) (d) when defining “engaged in business in and outside of the state” elsewhere in the rule?

f. In s. Tax 2.46, the introduction does not grammatically lead into the following subunits. Therefore, the introductory material should be renumbered as sub. (1) and the remaining subsections renumbered accordingly. [See also the introduction in s. Tax 2.47. This material should be renumbered as sub. (1); the current sub. (1) should be repealed; and a definition section can be created as sub. (1m). The same comment applies to the introduction in s. Tax 2.475 and the following definitions.] In sub. (1), the phrase “For purposes of this section” should be replaced by the phrase “In this section.”

g. In s. Tax 2.49 (4), the word “paragraphs” should be replaced by the notation “par.”.

h. The final sentence of s. Tax 2.495 (4) (intro.) should be rewritten to read: “The receipts factor shall include all of the following items:”.

i. In s. Tax 2.502 (5) (a), the phrase “paragraphs (b) though (f)” should be replaced by the phrase “par. (b) to (f).” [See also sub. (5) (g).]

j. In s. Tax 2.502 (5) (f) 1., the department should refer to “place of primary use” to conform with the phrase previously defined.

k. In s. Tax 2.505 (intro.), the first amendment should read “~~both inside~~ inside.” Also, this material should be renumbered as sub. (1); subs. (1) to (3) can be renumbered subs. (3) to (5); and the material in SECTION 57 can be numbered as sub. (2).

l. In s. Tax 2.82 (1) (a), the use of parenthetical notations should be avoided. These notations can be replaced by commas. [See also sub. (4) (a) 8.]

m. In s. Tax 2.82 (2) (intro.), the word “rule” should be replaced by the word “section.”

n. In s. Tax 5.05 (3) (b) 1. and 3., it is not necessary to italicize the words “limited” and “only.”

o. Section Tax 2.82 (3) (b) 3. (intro.) should be rewritten to read: “If the following activities are the only activities in Wisconsin of a foreign corporation selling tangible personal property, the corporation is not subject to Wisconsin franchise or income taxes under P.L. 86-272:”. The rule should be reviewed to replace any other occurrences of the phrase “franchise/income taxes” with the phrase “franchise or income taxes.”

p. In s. Tax 2.82 (4), the introduction should be rewritten to read: “If a foreign corporation undertakes one or more of the following activities, it is considered to have nexus and shall be subject to Wisconsin franchise or income taxes:”.

q. In s. Tax 2.82 (4) (d), the first sentence should be rewritten to read: “Paragraph (a) and the statutory definitions summarized in par. (b) as to what activities constitute nexus are not all-inclusive.”

r. In s. Tax 2.82 (6), the phrase “the rules prescribed in” is unnecessary and should be deleted.

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

a. In s. Tax 2.502 (2) (d), the department should clarify its use of “not including” and “excluding” to use consistent terminology in the definition of telecommunications company.

b. In s. Tax 2.82 (3) (b) 3. b. and (4) (a) 4., “employee” is misspelled.