



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-074

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 December 2014.]

1. Statutory Authority

Section Trans 178.11 (2) grants the Department of Revenue (DOR) the authority to collect any delinquent registration fees as it collects motor vehicle fuel and alternative fuel general aviation taxes under s. 78.70, Stats. However, s. 78.70, Stats., does not grant DOR the authority to collect Unified Carrier Registration fees, and s. 194.407, Stats., does not grant the department the authority to grant a separate agency the authority to collect those delinquent fees. The statutes do allow DOR to setoff certain debts that are owed to a state agency from income tax refunds. Is it the department’s intent to use the income tax setoff procedure that is available under s. 71.93 (2), Stats., when a state agency may certify a debt to the agency to DOR? The proposed rule should specify in what circumstances it will certify debt to DOR under that procedure or should identify any other specific authority and circumstances in which it will refer a debt to DOR.

2. Form, Style and Placement in Administrative Code

a. The introductory clause for the proposed rule should be revised to enumerate each rule provision treated by the proposed rule, grouping the provisions by the type of treatment. [s. 1.02 (1), Manual.]

b. In the rule summary, a heading and entry should be inserted for the analysis and supporting documents used to determine the effect on small business. [s. 1.02 (2) (a) 9., Manual.]

c. In s. Trans 178.02, definitions should be arranged alphabetically. [s. 1.01 (7), Manual.]

d. A definition for the acronym “UCR” should be created in s. Trans 178.02, as that term is used in different contexts throughout the proposed rule. [s. 1.01 (7), Manual.]

e. In SECTIONS 6 and 12 of the proposed rule, the subchapters should be renumbered as subchs. II and III, respectively, and a SECTION should be inserted to create a subchapter title to appear before s. Trans 178.01. Each subchapter title should be formatted in solid capital letters. Also, the treatment clause for each SECTION should identify in a bracket the first rule section before which the subchapter title should be placed. For example, “Subchapter I (title) of Trans 178 [precedes Trans 178.01] is created to read:”. [s. 1.05 (2) (a), Manual.]

f. In ss. Trans 178.06 to 178.11, review and revise the section and subsection titles to use the proper formatting style. Section titles should be written in bold print with an initial capital letter, and subsection titles should be written in small capital letters with an initial capital letter. [s. 1.05 (2) (b) and (c), Manual.]

g. The proposed rule should contain an initial applicability clause to apply the revised rule to events occurring on or after the proposed rule’s effective date. [s. 1.02 (3m), Manual.]

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

a. In s. Trans 178.02 (15), it would be clearer to identify the types of violations that may constitute an “offense” by specifying each rule provision.

b. In s. Trans 178.06 (2), it is not clear what is intended by using the phrase “in Wisconsin”.

c. In s. Trans 178.06 (2), it is not clear for what purposes “actual and necessary expenses” may be incurred. The rule should specify whether these are expenses incurred for the purpose of conducting an audit or some other purpose.

d. In s. Trans 178.06 (3), it is unnecessary to state that a determination by the department is presumed to be correct. This presumption is implied by creating a burden on a petitioner who appeals a determination made by the department.

e. The proposed rule does not make clear what a “notice of action” is or what is its significance. It would be helpful to define this phrase.

f. In s. Trans 178.07 (1), the phrase “a person feeling aggrieved by the notice of action” is unnecessary. Consider rewording this sentence. This sentence could read as follows: “A person may petition the department’s motor carrier section for a redetermination.”.

g. Section Trans 178.07 (3) should be reworded for clarity.

h. In s. Trans 178.07 (6), it is unclear whether a “closing stipulation” is different from the dictionary definition of the word “stipulation”. If not, consider rewording this provision. This sentence could read as follows: “The department and the petitioner may enter into an agreement that stipulates to the facts, issues, and applicable law.”.

i. Section Trans 178.08 should specify that the department has the responsibility to send a notice of delinquency and revocation or an appealable notice of revocation in certain situations.

j. Section Trans 178.10 specifies that the department "...shall assess the licensee an appealable penalty, as outlined in section [Trans] 178.07...". Section Trans 178.07 specifies the appeals process and not a penalty, which makes this provision confusing. Consider rewording this provision as follows: "... shall assess a penalty, which the licensee may appeal in the same manner as provided in s. Trans 178.07".

k. In s. Trans 178.10, the term "fee difference" should be defined.

l. In s. Trans 178.10, each type of offense and corresponding penalty should be clearly described. The penalty should clearly describe the offense that it applies to. This may be done by using a citation to the applicable offense.

m. In s. Trans 178.10, it is not clear that each offense for "inadequate records" or "failure to provide records" will result in a fee difference. Is this the desired formula to determine the applicable penalty for these offenses?

n. In s. Trans 178.11 (2), it is not clear when the department may refer delinquent registration fees to DOR for collection.