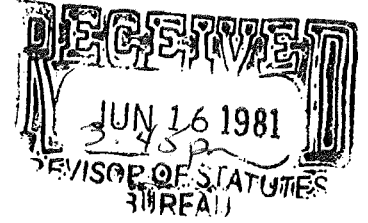


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CERTIFICATE

STATE OF WISCONSIN)
DEPARTMENT OF REVENUE) SS

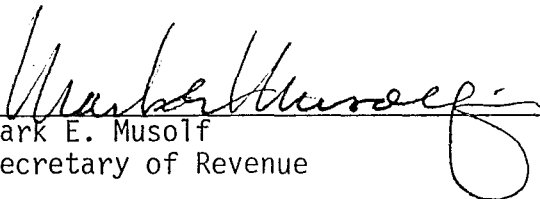


TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Mark E. Musolf, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed rule relating to sales and use tax security deposits was duly approved and adopted by this department on June 8, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 8th day of June, 1981.


Mark E. Musolf
Secretary of Revenue

8-1-81

ORDER OF THE DEPARTMENT OF REVENUE

ADOPTING RULE TAX 11.925, SALES AND USE TAX SECURITY DEPOSITS

Relating to security deposits required from persons subject to the Wisconsin sales or use tax.

Analysis by the Department of Revenue

This rule interprets section 77.61(2), Wis. Stats., which, in order to protect the revenue of the state, permits the Department of Revenue to require a security deposit up to \$5,000 from any person liable to it for payment of sales or use taxes. Under s. 77.61(2), the department may refuse to issue, or may revoke a seller's permit if a taxpayer fails or refuses to place such security. If a taxpayer is delinquent in the payment of sales or use tax, the department may, upon 10 days notice, recover the taxes, interest, costs and penalties from the security deposit.

Chapter 125, Laws of 1979, which became effective on March 13, 1980, provides that any sales or use tax security deposit with the Department of Revenue must be returned to the taxpayer if the taxpayer has complied with all the requirements of the sales and use tax law for 24 consecutive months.

Subsection (1) of the rule summarizes the general provisions of section 77.61(2). Subsection (2) describes the factors which the Department may consider in determining whether a security deposit will be required and provides that the Department shall give written notice of the reasons for requiring a deposit. Subsection (3) describes the acceptable types of security deposits. Subsection (4) provides how the amount of the security deposit will be determined. Subsection (5) describes procedures and considerations for returning the deposit.

Pursuant to authority vested in the Department of Revenue by section 227.014, Wis. Stats., the Department of Revenue proposes to adopt a rule interpreting section 77.61(2), Wis. Stats., as follows:

Section Tax 11.925 of the Wis. Adm. Code is adopted to read:

Tax 11.925 Sales and use tax security deposits (s. 77.61(2), Stats.)

(1) GENERAL. Under s. 77.61(2), the department may require any person liable to it for sales and use taxes to place with it, before or after a permit is issued, such security as the department determines. The amount of security shall not exceed \$5,000. If any person fails or refuses to place such security, the department may refuse to issue a permit or revoke the permit.

(2) FACTORS FOR DEPARTMENT'S CONSIDERATION. (a) In determining whether or not security will be required and the amount of security to be required, the department may consider all relevant factors including the person's:

1 Evidence of adequate financial responsibility. Such evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.

2. Prior record of filing tax returns and paying taxes of any kind with the department.

3. Type of business (e.g., a temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location).

4. Type of entity (e.g., a sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets).

(b) Although the individual factors listed in sub. (2)(a) may be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department of revenue. Protection of the sales and use tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines that a security deposit in excess of \$50.00 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) TYPES OF SECURITY. Acceptable types of security include, but are not limited to: (a) Non Interest-Bearing: 1. Cash, certified check or money order.

2. Surety bonds issued by authorized underwriters.

3. Personal guarantee of a third party, if approved by the department.

(b) Interest-Bearing: 1. Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on such certificates shall be paid to the depositor.

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A Security Assignment, Form S-127, shall be completed if this type of security is selected. (Note: Form S-127 may be obtained at any Department of Revenue office or by writing to: Wisconsin Department of Revenue, P.O. Box 8902, Madison, Wisconsin 53708.)

3. Bearer bonds issued by the U.S. Government, any unit of Wisconsin municipal government or by Wisconsin schools. The depositor should clip 2 full years' coupons before depositing this type of security.

(4) DETERMINATION OF AMOUNT. (a) If a security deposit is required, the amount generally shall be equal to the depositor's average quarterly Wisconsin sales and use tax liability increased to the next highest even \$100 amount. The average quarterly sales and use tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances: 1. The depositor's previous sales and use tax liability at the location specified on the permit.

2. The predecessor's sales and use tax liability at the location specified on the permit,

3. The estimated tax liability shown on the application for permit.

4. Other factors, such as the department's estimate of estimated tax liability based on its experience with other similar activities.

(b) If at the time of the security review the retailer has an outstanding sales and use tax delinquency, the delinquent amount shall be added to the average quarterly sales and use tax liability.

(5) RETURN OF DEPOSIT. (a) Section 77.61(2), Stats., provides: "...Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter."

(b) The 24 month compliance requirement described in sub. (5)(a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24 month period described in sub. (5)(a) the department shall review the taxpayer's compliance record. If the taxpayer has complied with chapter 77, subchapter III the department shall within 60 days after the expiration of the 24 month period certify the deposit for refund.

(d) Compliance with subchapter III means that: 1. Sales and use tax returns were timely filed.

2. All payments were made when due.

3. No delinquencies of sales or use tax, interest or other charges existed.

4. No penalties due to negligence or fraud were assessed for filing periods within the 24 month compliance period.

5. No assessment of additional tax, interest or other charges for filing periods within the 24 month compliance period is unpaid at the end of the 24 month compliance period.

(e) If a taxpayer does not meet the compliance requirements set forth in sub. (5)(d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

NOTE: Except as noted below, the interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

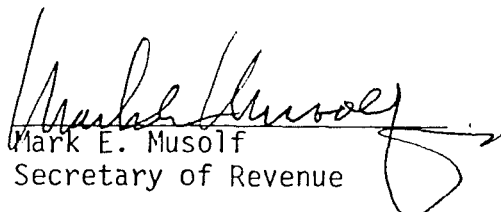
Subsection (5) relating to return of deposit is effective on March 13, 1980, the effective date of Chapter 125, Laws of 1979.

The rule contained in this order shall take effect as provided by s. 227.026(L)(intro.), Wis. Stats.

DEPARTMENT OF REVENUE

Dated: June 8, 1981

By:


Mark E. Musolf
Secretary of Revenue



State of Wisconsin \ DEPARTMENT OF REVENUE

Lee Sherman Dreyfus
Governor

June 15, 1981

Mark E. Musolf
Secretary

125 SOUTH WEBSTER STREET
MADISON, WISCONSIN 53702


Ms. Vel Phillips
Secretary of State
13 West, State Capitol
Madison, WI 53702

Dear Ms. Phillips:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Rule Tax 11.925.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,


Mark E. Musolf
Secretary of Revenue

Enclosures

cc: Revisor of Statutes



State of Wisconsin \ DEPARTMENT OF REVENUE

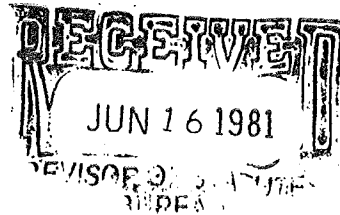
Lee Sherman Dreyfus
Governor

Mark E. Musolf
Secretary

June 15, 1981

125 SOUTH WEBSTER STREET
MADISON, WISCONSIN 53702

Orlan L. Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, WI 53702



Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue adopting Rule Tax 11.925.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,


Mark E. Musolf
Secretary of Revenue

Enclosures

cc: Ms. Vel Phillips, Secretary of State
Prentice Hall, Inc.
Commerce Clearing House, Inc.