

Report From Agency

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, AMENDING, AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 4.55 (3) (b) (Note 1), 8.11, 9.19 (1), 9.26 (1), and 9.68 (3) (b) (Note 1); **amend** Tax 4.12 (3) (b) 1. (Example 1) and (Example 2) and 3.a. (Example), 4.65 (3) (f) (Note 1), 8.001 (2) (c) 1. (Note), 8.03 (2) (Note), 9.001 (2) (c) 1. (Note), 9.19 (Title) and (2), 9.21 (3), 9.47 (4), 9.51 (1), and 9.70 (3) (d) (Example 1) and (Example 2); and **create** Tax 4.55 (2) (a) (Note) and 9.68 (2) (a) (Note); **relating to** general provisions of excise taxation and enforcement.

The scope statement for this rule, SS 077-12, was approved by the Governor on September 18, 2012, published in Register No. 682 on October 14, 2012, and approved by the Secretary of Revenue on October 29, 2012.

Analysis by the Department of Revenue

Statute interpreted: ss. 139.34 (3) and 995.12 (2) and (4), Stats.

Statutory authority: ss. 78.79, 125.03, and 139.08 (2), Stats.

Explanation of agency authority: Section 78.79, Stats., provides "[t]he department may promulgate reasonable rules relating to the administration and enforcement of this chapter..."

Section 125.03, Stats., provides "[t]he department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139."

Section 139.08 (2), Stats., provides "[t]he secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter."

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis: The proposed rule makes the following changes:

- Updates notes and examples throughout Chapter Tax 4 to provide current rates of tax and department contact information.
- Repeals s. Tax 8.11 concerning the submission of paper reports, as all reports are electronically filed.
- Updates notes throughout Chapter Tax 8 to provide current contact information for the department.
- Amends s. Tax 9.19 to reflect that, due to advances in technology, machines other than fusion machines may be used to affix cigarette stamps.
- Amends s. Tax 9.21 (3) to be consistent with s. 139.34 (3), Stats., which prohibits out-of-state distributors from shipping unstamped cigarettes to other distributors.

- Repeals s. Tax 9.26 (1) to ensure compliance with Master Settlement Agreement requirements concerning the level of trade or transfer of unstamped cigarettes between distributors among themselves and also with manufacturers.
- Amends ss. Tax 9.47 (4) and 9.51 (1) to be consistent with s. 995.12 (2) and (4), Stats., which requires records be kept for 5 years.
- Updates notes and examples throughout Chapter Tax 9 to provide current rates of tax and department contact information.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency's administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. No other data was used in the preparation of this rule order or this analysis.

Analysis and supporting documents used to determine effect on small business: This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector: This rule order does not have a fiscal effect on the private sector.

Effect on small business: This rule order does not affect small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule order.

Place where comments are to be submitted and deadline for submission: The deadline for comments on this proposed rule order was April 1, 2013.

SECTION 1. Tax 4.12 (3) (b) 1. (Example 1) and (Example 2) and 3.a. (Example) are amended to read:

Tax 4.12 (3) (b) 1. (Example 1) An account of a supplier who is still in business becomes worthless and meets the requirements to be charged off for income or franchise tax purposes on January 10, ~~1995~~ 2011. The supplier may claim a bad debt deduction on the motor vehicle fuel tax return, form MF-002, filed for the month of January ~~1995~~ 2011, even though the bad debt deduction may not be claimed for income or franchise tax purposes until the ~~1995~~ 2011 income or franchise tax return is filed in ~~1996~~ 2012.

(Example 2) Assume the same facts as in Example 1, except the account is that of a wholesaler distributor. Irrespective of when the wholesaler distributor files the income or franchise tax return on which the bad debt deduction is claimed, the wholesaler distributor may file a claim for refund to recover the uncollected motor vehicle fuel tax any time between January 10, ~~1995~~ 2011 and April 15, ~~2000~~ 2016.

3.a. (Example) At the time when the tax rate is ~~23.2¢~~ 30.9¢ per gallon, Supplier A sells 8,000 gallons of gasoline to Company B. Company B has an agreement with Supplier A to delay payment of the tax. The amount of the contract is ~~\$9,696~~ \$12,942, consisting of tax, ~~\$1,856~~ \$2,472, and the cost of fuel, ~~\$7,840~~ \$10,470. Company B defaults and discontinues operations, leaving a balance due Supplier A of \$2,100, which includes interest of \$200 not included in the contract amount. The deductible tax loss is ~~\$367~~ \$363, computed as follows:

| | |
|---------------------------|------------------------------------|
| Contract amount | \$9,696 <u>\$12,942</u> |
| Unpaid contract amount | -1,900 |
| Paid contract amount | \$7,796 <u>\$11,042</u> |
| Portion constituting tax* | x.191 |
| Tax paid | \$1,489 <u>\$2,109</u> |

*~~\$1,856~~ \$2,472 tax ÷ ~~\$9,696~~ \$12,942 contract amount = .191.

Since ~~\$1,489~~ \$2,109 of the tax of ~~\$1,856~~ \$2,472 was paid, only the unpaid tax of ~~\$367~~ \$363 may be deducted.

SECTION 2. Tax 4.55 (2) (a) (Note) is created to read:

Tax 4.55 (2) (a) (Note) Form MF-100 is available on the department's web site at www.revenue.wi.gov.

SECTION 3. Tax 4.55 (3) (b) (Note 1) is repealed.

SECTION 4. Tax 4.65 (3) (f) (Note 1) is amended to read:

Tax 4.65 (3) (f) (Note 1) Copies of vendor registration form MF-112, exemption certificate form MF-209, and refund claim form MF-012 ~~may be obtained by writing or calling Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708-8906, (608) 266-7233~~ are available on the department's web site at www.revenue.wi.gov.

SECTION 5. Tax 8.001 (2) (c) 1. (Note) is amended to read:

Tax 8.001 (2) (c) 1. (Note) Written requests should be e-mailed to excise@revenue.wi.gov, faxed to (608) 261-7049, or addressed to ~~Mandate Waiver Request, Wisconsin Department of Revenue, Excise Tax Section - Mail Stop 5-107 6-107~~, PO Box 8900, Madison WI 53708-8900.

SECTION 6. Tax 8.03 (2) (Note) is amended to read:

Tax 8.03 (2) (Note) Wine collector registrations may be addressed to Wisconsin Department of Revenue, Excise Tax Section – Mail Stop 6-107, PO Box 8900, Madison, Wisconsin 53708-8900.

SECTION 7. Tax 8.11 is repealed.

SECTION 8. Tax 9.001 (2) (c) 1. (Note) is amended to read:

Tax 9.001 (2) (c) 1. (Note) Written requests should be e-mailed to excise@revenue.wi.gov, faxed to (608) 261-7049, or addressed to ~~Mandate Waiver Request~~, Wisconsin Department of Revenue, Excise Tax Section - Mail Stop 6-107, PO Box 8900, Madison WI 53708-8900.

SECTION 9. Tax 9.19 (Title) is amended to read:

Tax 9.19 (Title) ~~Fusion~~ **Stamp application machines and stamps.**

SECTION 10. Tax 9.19 (1) is repealed.

SECTION 11. Tax 9.19 (2) is amended to read:

Tax 9.19 (2) The use of ~~fusion~~ stamps and any machines or devices for their application by any distributor shall be subject to the approval of the secretary of revenue and the approval may be withdrawn at any time at the discretion of the secretary of revenue.

SECTION 12. Tax 9.21 (3) is amended to read:

Tax 9.21 (3) All out-of-state manufacturers ~~or distributors~~ may ship cigarettes either stamped or unstamped directly to any Wisconsin manufacturers or distributors who hold the proper permit issued by the department.

SECTION 13. Tax 9.26 (1) is repealed.

SECTION 14. Tax 9.47 (4) is amended to read:

Tax 9.47 (4) A clearly legible copy of all invoices evidencing a sale or exchange of cigarettes shall be retained by each of the parties to the transaction for a period of ~~at least 2~~ 5 years from the date of the invoice, in groups covering a period of one month each.

SECTION 15. Tax 9.51 (1) is amended to read:

Tax 9.51 (1) Cigarettes shipped into this state by manufacturers to their representatives, including advertising agencies and airlines, for the purpose of free samples shall be accompanied by a memo invoice stating brands and number of cigarettes. The memos shall be retained by the representative for the statutory period of ~~2~~ 5 years.

SECTION 16. Tax 9.68 (2) (a) (Note) is created to read:

Tax 9.68 (2) (a) (Note) Form CTP-129 is available on the department's web site at www.revenue.wi.gov.

SECTION 17. Tax 9.68 (3) (b) (Note 1) is repealed.

SECTION 18. Tax 9.70 (3) (d) (Example 1) and (Example 2) are amended to read:

Tax 9.70 (3) (d) (Example 1) At a time when the cigarette tax rate is ~~3.85¢~~ 12.6¢ per stick, Person A sells cigarettes to Customer B. The amount of the invoice is ~~\$10,000~~ \$20,000, consisting of cigarette tax of ~~\$1,540~~ \$5,040, cost of cigarettes of ~~\$6,000~~ \$12,000 and sundries of ~~\$2,460~~ \$2,960. Customer B defaults and discontinues operations, leaving a balance due to Person A of \$2,100, which includes interest of \$200 not included in the original invoice amount. The deductible tax is ~~\$292.60~~ \$478.80, computed as follows:

| | | |
|--|----|---|
| Tax per invoice | | \$1,540.00 <u>\$5,040.00</u> |
| Invoice amount | \$ | 10,000.00 <u>20,000.00</u> |
| Unpaid invoice amount – | | -1,900.00 |
| Paid invoice amount | \$ | 8,100.00 <u>18,100.00</u> |
| Portion constituting tax* | | <u>x.154</u> <u>.252</u> |
| Tax paid | | - \$1,247.40 <u>\$4,561.20</u> |
| Tax that may be deducted | | \$ 292.60 <u>478.80</u> |
| * \$1,540 <u>\$5,040</u> tax ÷ \$10,000 <u>\$20,000</u> invoice amount = .154 <u>.252</u> . | | |

(Example 2) At a time when the tobacco products tax rate is ~~25%~~ 71% of the manufacturer's ~~wholesale~~ established list price, Distributor A sells tobacco products to Customer B. The amount of the invoice is ~~\$9,500~~ \$11,800, consisting of tobacco products tax of ~~\$1,250~~ \$3,550, cost of tobacco products of \$5,000 and sundries of \$3,250. Customer B defaults and discontinues operations, leaving a balance due to Distributor A of \$3,000, which includes interest of \$200 not included in the original invoice amount. The deductible tax is ~~\$365.60~~ \$841, computed as follows:

| | | |
|---|----|--------------------------------------|
| Tax per invoice | | \$1,250.00 <u>\$3,550</u> |
| Invoice amount | \$ | 9,500.00 <u>11,800</u> |
| Unpaid invoice amount – | | - 2,800.00 <u>2,800</u> |
| Paid invoice amount | \$ | 6,700.00 <u>9,000</u> |
| Portion constituting tax* | | <u>x.132</u> <u>.301</u> |
| Tax paid | | - \$884.40 <u>\$2,709</u> |
| Tax that may be deducted | | \$ 292.60 <u>841</u> |
| * \$1,250 <u>\$3,550</u> tax ÷ \$9,500 <u>\$11,800</u> invoice amount = .132 <u>.301</u> . | | |

SECTION 19. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Initial Regulatory Flexibility Analysis

This rule order does not affect small businesses.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Richard G. Chandler
Secretary of Revenue

E:Rules/SBRRB (excise) Proposed Order (v5)