

Clearinghouse Rule 16-058

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 2.05, 2.66 (2) (b) (Note) and (4) (c) (Note), and 2.67 (2) (c) 2. and 3.; **amend** Tax 1.15 (title), (1), and (5) (intro.) and (Note), 2.61 (9) (c) 3. (Example), 2.67 (2) (c) 1. and 4. and (d) 1. and 3., 2.82 (1) (a), (4) (c) (Example), and (5) (a) (Example), 2.88 (3) (a), 4.10 (3) (b) 2., 4.65 (3) (c), 14.01 (4) (a), (b), and (c), and 14.03 (3) (a) and (a) (Example), (4) (b) 23. h., and (5) (a) 7.; **repeal and recreate** Tax 1.15 (2), (3), and (4); and **create** Tax 2.88 (3) (c) and 14.01 (4) (a) (Note); **relating to** income, franchise, and excise tax provisions.

The scope statement for this rule, SS 065-14, was approved by the Governor on July 1, 2014, published in Register No. 703 on July 31, 2014, and approved by the Chair of the Investment and Local Impact Fund Board on August 27, 2014.

Analysis by the Department of Revenue

Statutes interpreted: ss. 70.395 and 70.396, Stats.

Statutory authority: s. ss. 70.395 (2) (c), (hg), (hr), and (i), Stats.

Explanation of agency authority: Under s. 70.395 (2) (c), Stats., the board shall, according to procedures established by rule:

1. Certify to the department of administration the amount of funds to be distributed under pars. (d) to (g) and to be paid under (j).

2. Determine the amount which is not distributed under subd. 1. Which shall be invested under s. 25.17 (1) (jc).

Section 70.395 (2) (c) 1., Stats. authorizes the board to promulgate parts of Tax 13.05, 13.06, 13.07, and 13.08. Most of the statutorily authorized procedures are promulgated in Tax 13.07 (2). The proposed rule seeks to repeal the portions of these sections which repeat statutory provisions and lack statutory authority for promulgation.

Section 70.395 (2) (c) 2., Stats. authorizes the board to promulgate Tax 13.05 (1) (b) 3. and 4.

Section 70.395 (2) (hg), Stats. reads:

The board shall, by rule, establish fiscal guidelines and accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub (3) and ss. 293.65 (5) and 295.61 (9).

Tax 13.10 and 13.11 implement the board's policies regarding fiscal guidelines and accounting procedures clearly authorized by s. 70.395 (2) (hg), Stats.

Section 70.395 (2) (hr), Stats. reads:

The board shall, by rule, establish procedures to recoup payments made, and to withhold payments to be made, under pars. . (d), (f), (fm) and (g), sub (3) and ss. 293.65 (5) and 295.61 (9) for noncompliance with this section or rules adopted under this section.

Tax 13.12 implements the board's policies regarding recoupment and withholding of payments clearly authorized by s. 70.395 (2) (hr), Stats.

Section 70.395 (2) (i), Stats. reads, in part:

The board may require financial audits of all recipients of payments made under pars. (d) to (g). The board shall require that all funds received under pars. (d) to (g) be placed in a segregated account.

Section 70.395 (2) (i) authorizes the board to promulgate Tax 13.09 relating to audits of fund recipients.

Related statute or rule: The net proceeds occupation tax on mining of metallic minerals is created by s. 70.375. There are no other applicable rules.

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

- Repeals ss. Tax 13.03 (7) and (14) and amends s. Tax 13.03 (9) to eliminate definitions of terms no longer used in the rule language.
- Amends ss. Tax 13.03 (14g) and (14r) to address statutory change in 2013 Act 1.
- Repeals s. Tax 13.05 (1) to repeal rule language that is repetitive of 70.395(1e) and eliminate references to the Badger Fund which was repealed in 1997.
- Amends s. Tax 13.05 (4) (a) to update cross-reference to statutory provision and eliminate rule language that is repetitive of s. 70.395 (2) (dc), Stats.
- Amends s. Tax 13.06 (1) to update cross-reference to statutory provision and eliminate rule language that is repetitive of ss. 70.375(6) and 70.395 (2) (d), Stats.
- Repeals ss. Tax 13.06 (2), (4)-(5) to eliminate rule language that is repetitive of s. 70.395 (2) (d) or lacks statutory authority.
- Amends s. Tax 13.07 (intro.) to update cross-reference to statutory provisions.
- Repeals s. Tax 13.07 (1) to eliminate rule language that is repetitive of s. 70.395 (2) (f), Stats.
- Amends s. Tax 13.07 (2) (c) 9. to reference statutory provision and eliminate rule language that is repetitive of s. 70.395 (2) (h), Stats.
- Repeals s. Tax 13.075 to eliminate rule language that is repetitive of ss. 293.33 and 295.443, Stats.
- Amends s. Tax 13.08 to eliminate rule language that is repetitive of ss. 70.395 (g), 70.396, 293.33, and 295.443, Stats. or lacks statutory authority.

- Repeals s. Tax 13.13 to eliminate rule language that lacks statutory authority to the extent that it may be more restrictive than s. 70.395 (3), Stats.

Summary of, and comparison with, existing or proposed federal regulation: The investment and local impact board is not regulated by federal statutes or regulations.

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: The proposed rule will repeal unnecessary and confusing provisions and amend complex procedures related to the investment and local impact board's distribution of funds to local communities affected by metalliferous mining in this state. The provisions are repetitive of statutes, which were amended in 2013 Act 1. Tax 13 no longer accurately reflects the statute, and it is unnecessarily complex. The objective of the proposed rule is to clarify the procedures used by the board, reduce confusion and remove inaccuracies by repealing language that is found in the statute, and return the rule's contents to the subjects over which the board and the department of revenue were granted rule-making authority.

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 Nate Ristow at (608) 266-6466 or nate.ristow@wisconsin.gov, if you have any questions regarding this rule order.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than November 11, 2016. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

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SECTION 1. Tax 13.03 (7) is repealed.

SECTION 2. Tax 13.03 (9) is amended to read:

Tax 13.03 (9) "Mining" or "mined" has the meaning under s. 70.375 (1) (b), Stats.

SECTION 3. Tax 13.03 (14) is repealed.

SECTION 4. Tax 13.03 (14g) is amended to read:

Tax 13.03 (14g) "Notice of intent distribution" means an amount equal to ~~\$150,000~~ \$225,000 maximum disbursed by the board to eligible municipalities, Native American communities, and local impact committees, on an as-needed basis pursuant to s. 70.395 (2) (fm), Stats.

SECTION 5. Tax 13.03 (14r) is amended to read:

Tax 13.03 (14r) "Notice of intent payment" means an amount equal to ~~\$150,000~~ \$225,000 maximum to be paid in 3 increments of ~~\$50,000~~ \$75,000 each until a refund is made or negotiations for a local agreement lapse, deposited into the impact fund pursuant to s. 70.395 (2) (dc), Stats.

SECTION 6. Tax 13.05 (1) is repealed.

SECTION 7. Tax 13.05 (4) (a) is amended to read:

Tax 13.05 (4) (a) *Procedure*. Each person filing a notice of intent to collect data with the department of natural resources under s. 293.31 (1), Stats., shall make a notice of intent payment to the department of revenue for deposit in the impact fund, equal to an amount sufficient to make all of the notice of intent distributions under s. ~~Tax 13.06 (3)~~ up to a maximum amount of \$150,000. ~~This payment shall be used by the board exclusively to make notice of intent distributions until a refund is made or negotiations for a local agreement lapse. The notice of intent payment shall be made in increments of \$50,000 each until a refund is made or negotiations for a local agreement lapse~~ 70.395 (2) (dc), Stats.

~~1. Within 7 days after the filing of the notice of intent to collect data, a person shall pay the first increment of the notice of intent payment, an amount equal to \$50,000, to the department of revenue for deposit into the impact fund.~~

~~2. A person making a payment under subd. 1. shall pay an additional \$50,000 to the department of revenue for deposit into the impact fund upon notification by the board that the board has distributed 50% of the payment made under subd. 1.~~

~~3. A person making a payment under subd. 2. shall pay an additional \$50,000 for deposit into the impact fund upon notification by the board that the board has distributed all of the payment under subd. 1. and 50% of the payment under subd. 2.~~

SECTION 8. Tax 13.06 (1) is amended to read:

Tax 13.06 (1) FIRST DOLLAR PAYMENTS. Certain counties, cities, villages, towns, and Native American communities shall receive a first dollar payment under s. 70.395 (2) (d), Stats. Only county expenditures of first dollar payments are restricted under s. ~~Tax 13.08 (7)~~ 70.396, Stats. Cities, villages, towns, and Native American communities are not restricted to mining-related expenditures of first dollar payments. Each December, the board shall certify to the department of administration the specific payments to be made on the first Monday in January of the next year, ~~as follows:~~

~~(a) Counties.~~

~~1. Each county in which the metalliferous minerals are extracted shall receive a first dollar payment.~~

~~2. Each county in which the metalliferous minerals are extracted shall also receive 20% of the tax collected from persons in that county or \$250,000, whichever is less.~~

~~(b) Cities, villages, and towns. Each city, village, and town in which metalliferous minerals are extracted, or which contain at least 15% of that ore body, shall receive a first dollar payment.~~

~~(c) Native American communities. Each Native American community located within one or more cities, villages, or towns which receive a first dollar payment shall also receive a first dollar payment.~~

~~(d) Exceptions.~~

~~1. Where the tax collected is in respect to a mine located in more than one county each county's first dollar payment shall be equal to the ratio of the amount of crude ore extracted from the mine in that county to the total amount of crude ore extracted from the mines that year multiplied by the amount of the payment under par. (a) 1.~~

~~3. The dollar amounts in this subsection shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amounts shall be rounded to the nearest whole number divisible by 100. First dollar payments shall not be reduced below \$100,000. When the \$250,000 figure under par. (a) 2. is indexed, the amount shall not be reduced below \$250,000.~~

SECTION 9. Tax 13.06 (2) is repealed.

SECTION 10. Tax 13.06 (4) is repealed.

SECTION 11. Tax 13.06 (5) is repealed.

SECTION 12. Tax 13.07 (intro.) is amended to read:

Tax 13.07 **Discretionary payments.** In accordance with s. 70.395 (2) (f), (fm), and (g), Stats., any municipality may apply to the board for a discretionary payment from the impact fund.

SECTION 13. Tax 13.07 (1) is repealed.

SECTION 14. Tax 13.07 (2) (c) 9. is amended to read:

Tax 13.07 (2) (c) 9. ~~The extent to which the location of each applicant, with respect to mineral development, meets 3 distribution priorities: Priority for distribution of payments shall be determined in accordance with s. 70.395 (2) (h)., Stats.~~

~~a. Distribution shall first be made to those municipalities with active metalliferous mining sites or with metalliferous mining sites that were active within 3 years previous to December 31 of the year in which the grant application is made, or to those municipalities in which a permit has been issued under s. 293.37, Stats., to commence mining.~~

~~b. Distribution shall next be made to those municipalities adjacent to municipalities in which metalliferous minerals are extracted or were extracted more than 3 years, but less than 7 years previous to December 31 of the year in which the grant application is made.~~

~~c. Distribution shall next be made to those municipalities in which metalliferous minerals are not currently being extracted and to those municipalities which are not adjacent to municipalities in which metalliferous minerals are extracted. Within this category, a higher~~

~~priority shall be given to municipalities where a metalliferous mine is proposed and the mining company has filed a notice of intent under s. [293.31](#), Stats., a prospecting permit application under s. [293.35](#), Stats., or a mining permit application under s. [293.37](#), Stats., municipalities where metalliferous mining occurred more than 3 years ago, and municipalities where metallic mineral exploration is occurring.~~

SECTION 15. Tax 13.075 is repealed.

SECTION 16. Tax 13.08 is amended to read:

Tax 13.08 Expenditures.

~~(1) DISCRETIONARY GRANTS. Discretionary grants to alleviate metalliferous mining impacts may be applied towards the following purposes, in accordance with s. 70.395 (2) (g), Stats.:~~

~~(a) Protective services, such as police and fire services associated with the construction and operation of the mining facility.~~

~~(b) Highways, as defined in s. 990.01 (12), Stats., repaired or constructed as a consequence of the construction and operation of the mining facility.~~

~~(c) Studies and projects for local development.~~

~~(d) Monitoring the effects of the mining operations on the environment.~~

~~(e) Extraordinary community facilities and services provided as a result of mining activity.~~

~~(f) Legal counsel and technical consultants to represent and assist municipalities appearing before state agencies on matters relating to metalliferous mineral mining and for processing mining related permits or other approvals required by the municipality.~~

~~(g) The preparation of area wide community service plans which identify social, economic, educational, and environmental impacts associated with mining and which set forth a plan for minimizing the impacts.~~

~~(h) Local impact committee operations, under s. 293.33, Stats.~~

~~(i) Other expenses associated with the construction and operation of the mining facility.~~

~~(j) Expenses attributable to a permanent or temporary closing of a mine including the cost of providing retraining and other educational programs designed to assist displaced workers in finding new employment opportunities and the cost of operating any job placement referral programs connected with the curtailment of mining operations in any area of this state.~~

~~(k) Provision of educational services in a school district.~~

~~(L) Expenses related to water monitoring and provision of water under s. 293.65 (5), Stats., incurred by a city, town, or village.~~

~~(2) NOTICE OF INTENT PAYMENTS. Once a notice of intent to collect data is filed pursuant to s. 293.31 (1), Stats., funds disbursed up until 6 months after the signing of the local agreement according to s. 293.43, Stats., in accordance with s. 70.395 (2) (fm), Stats., may be spent for purposes directly in response to the negotiation of a local agreement, although the expenditure may be after the 6 month period, limited to:~~

~~(a) Facilitating communications with the mining company and state agencies.~~

~~(b) Analyzing the implications of the proposed mine.~~

~~(c) Reviewing and commenting on the mining reclamation plans, permit applications, the environmental impact statement, the notice of intent to collect data, or any other submittal to state agencies under the mining permit application and environmental review process.~~

~~(d) Developing written solutions to potential mining induced growth problems.~~

~~(e) Developing and recommending priorities for local action.~~

~~(f) Legal counsel and technical consultants in the areas of transportation, utilities, economic, environmental, and social impacts, and municipal services in accordance with s. 70.395 (2) (fm), Stats.~~

~~(g) Public participation activities directly related to the review of the proposed mining project by state agencies.~~

~~(h) Planning consultants.~~

~~(i) Preparation of areawide community service plans which identify social, economic, educational, and environmental impacts associated with mining and set forth a plan for minimizing the impacts.~~

~~(k) Necessary supplies and materials pertaining to the activities listed in this subsection.~~

~~(3) CONSTRUCTION PERIOD PAYMENTS. Once mine construction begins, funds disbursed in accordance with s. 70.395 (2) (d) 5., Stats., may be spent for purposes directly in response to mine construction, limited to:~~

~~(a) Activities listed in sub. (2) (a) through (e) and (g) through (k).~~

~~(b) Protective services, such as police and fire services.~~

~~(c) Repair and construction of highways, as defined in s. 990.01 (12), Stats.~~

~~(d) Studies for local development.~~

~~(e) Monitoring the effects of the mine.~~

~~(f) Extraordinary services and facilities needed.~~

~~(g) Provision of educational services in a school district.~~

~~(h) Public service expansion and maintenance.~~

~~(i) Capital equipment and improvements.~~

~~(j) Legal counsel and technical consultants in accordance with s. 70.395 (2) (g) 6. and (hw), Stats.~~

~~(k) Other expenses incurred as a direct result of mine construction.~~

~~(4) OPERATION PERIOD PAYMENTS. Once mining begins, discretionary payments made in accordance with s. 70.395 (2) (g), Stats., and payments paid to counties in accordance with s. 70.395 (2) (d) 1. and 1m., Stats., may be spent for mining related purposes, limited to:~~

~~(a) Activities listed in subs. (1), (2) (a) through (e) and (g) through (k), and (3).~~

~~(b) Other expenses resulting directly from the mine.~~

~~(5) CURTAILMENT AND CESSATION PERIOD PAYMENTS. In preparation for either the permanent or temporary cessation of mining, discretionary payments made in accordance with s. 70.395 (2) (g), Stats., and first dollar payments paid to counties in accordance with s. 70.395 (2) (d) 1. and 1m., Stats., may be spent for mining related purposes limited to:~~

~~(a) Economic development activities.~~

~~(b) Planning consultants and projects.~~

~~(c) Monitoring the effects of the mine.~~

~~(d) Legal counsel and technical consultants pursuant to s. 70.395 (2) (g) 6. and (hw), Stats.~~

~~(e) Analysis and implementation of plans to address economical, social, educational, and environmental impacts of the mine closing.~~

~~(f) Services needed in direct response to mine closing.~~

~~(g) Expenses attributable directly to the temporary or permanent closing of a mine.~~

~~(6) OTHER MINING-RELATED COSTS. Municipalities may seek approval from the board for other mining-related projects not outlined in this section. Applications seeking expenditure approval shall contain:~~

~~(a) Documentation of a metallic mining impact.~~

(b) Documentation of need.

(c) Documentation that the proposal is well reasoned, cost effective, and will accomplish its purpose.

~~(7) SPECIAL COUNTY EXPENDITURES. First dollar payments received by counties under s. 70.395 (2) (d) Tax 13.06 (1), may also be applied as follows:~~

~~(a) A county's first dollar payment may be placed in a county mining investment fund for investment by the state investment board or placed in a financial institution located in the state. Funds may be withdrawn to alleviate impacts associated with the closing of the mine in the county or the curtailment of mining activity in the county. If a county deposits funds in the county mining investment fund, withdrawals are subject to the restrictions contained in s. 25.65, Stats. If a county deposits mining impact funds with a financial institution, withdrawals made within 10 years of deposit shall be subject to review and approval of the board. The county shall notify the board of withdrawals made 10 years after deposit. The county shall report annually to the board any deposits, withdrawal, and use of funds in that year.~~

~~(b) A maximum of \$25,000 of a county's first dollar payment may be distributed to any town, city, or village in the county.~~

~~(c) For metalliferous mining related purposes as defined by the board, in addition to those listed in s. Tax 13.08.~~

(8) OTHER ALLOWABLE EXPENDITURES. Discretionary grants and other funds disbursed by the board may be applied toward a variety of uses as they relate directly to a mining impact project. In general, costs for the compensation of personal services, costs of materials and supplies, travel, and other administrative costs are allowable. All expenditures shall comply with state and local laws, rules, and policies. Costs which shall not be allowed include:

(a) Costs incurred prior to, and after, the effective date of a discretionary grant period.

(b) Costs of social activities, ceremonies, amusements, and other entertainment.

(c) Costs incurred for lobbying members of the legislature or other legislative activities.

(d) Costs incurred which are not directly related to the eligible funding activities listed in this chapter.

(9) MINING-RELATED PURPOSES. Except for any first dollar payments to a city, village, town, or Native American community, all funds distributed to a municipality by the board shall be used for mining-related purposes, in accordance with s. 70.375 (1) (bm), Stats.

SECTION 17. Tax 13.13 is repealed.

SECTION 18. 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.

INVESTMENT AND LOCAL IMPACT
BOARD

Dated: _____

By: _____

Richard G. Chandler
Chair

