

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

The Wisconsin Department of Revenue hereby proposes an order to: **repeal** Tax 61.02(3), Tax 61.08 (15) (c) and Tax 63.04(2)(a) and (b); **renumber** Tax 61.02(4), (5), (6) and (9); **renumber and amend** Tax 61.02(7), (8) and (10), and Tax 63.04(2)(intro.); **amend** Tax 61.01, Tax 61.02(2), Tax 61.03, Tax 61.04(1)(intro.), (a) and (e), (3) and (4), Tax 61.05(1), Tax 61.06(2) and (4), Tax 61.07, Tax 61.08(1), (3), (5), (7), (8), (10), (11)(b), (e) and (h), (13), (14)(b), (bm), (c) and (d), (15), (16), (19), (20) and (21)(intro.) and (a) to (h), Tax 61.09, Tax 61.10, Tax 62.01, Tax 62.20, Tax 63.01, Tax 63.03, Tax 63.04(1), (3), (4) and (5), Tax 63.06 (1), (2), (3), (5), (6), (7), (8)(b), (c), (d) and (g), (9), (10), (11)(a) and (d), (12), (13), (14) and (15)(intro.), (a), (e), (f), (g) and (h), Tax 63.07 and Tax 63.08; and **repeal and recreate** Tax 62.02, Tax 63.02 and Tax 63.06(11)(c), **relating to** Wisconsin lottery retailers and nonprofit organization retailers, and the Wisconsin lottery's major procurements.

Analysis by the Department of Revenue

Statutory authority: ss. 227.11(2)(a), 565.01(4) to (4g), 565.02 (3) (b) and (4) (a) and 565.10, Stats.

Statutes interpreted: ss. 565.01(4), 565.10, 565.12, 565.25 and 565.30, Stats.

The proposed order is intended to improve chs. Tax 61, 62 and 63 by updating various definitions and terminology, clarifying various provisions, reflecting proper format and providing statutory references throughout the chapters. Additionally, the Wisconsin Lottery is proposing a change in the way in which nonprofit retailer contracts are administered. This change results in a potential for savings to taxpayers in administrative labor and data management activities, as well as allowing for the improvement of Lottery customer service to nonprofit retailers.

SECTIONS 1, 2, 6, 7, 8, 9, 11, 12, 15, AND 25. Tax 61.01, 61.02(2), 61.04(1)(intro.), (a) and (e), (3) and(4), 61.05(1), 61.06(2) and (4), 61.07, 61.09, 61.10, 62.01, 63.01, 63.07 and 63.08 are revised, to update terminology and to reflect proper language and punctuation per Legislative Council Rules Clearinghouse (Clearinghouse) standards.

SECTION 3. Tax 61.02(3) is repealed, because the term "executive director" is obsolete.

SECTION 4. As a result of the repeal of Tax 61.02(3), Tax 61.02(4) to (10) are renumbered Tax 61.02(3) to (9). As renumbered, subs. (6), (7) and (9) are revised, to update terminology and to reflect proper language and punctuation per Clearinghouse standards.

SECTION 5. Tax 61.03(1) is revised, to place a mailing address and location in a note rather than in the text of the rule, per Clearinghouse standards.

Tax 61.03(2) is revised, to update terminology and to provide further clarification of the subsection.

SECTION 10. Tax 61.08 (15) (c) is repealed, to remove language regarding late processing of returned tickets. The language is no longer consistent with lottery business practices.

SECTION 11. Tax 61.08(1), (3), (5), (7), (8), (10), (11)(b) and (e), (13), (14)(b), (bm), (c) and (d), (15) (a), (b) and (d), (16), (19), (20) and (21)(intro.) and (a) to (h) are revised, to update terminology and to reflect proper language and punctuation per Clearinghouse standards.

Tax 61.08(11)(h) is revised, to reflect that it is no longer necessary, but it is permissible, to stamp lottery tickets. Tax 61.08 (15) (c) and (d) are repealed, to remove code that is outdated due to changes in computer-monitored pack return procedures. Tax 61.08 (15) (d) is revised, to eliminate the authority to accept returned packs of tickets for credit after the last date on which it is permitted to sell those tickets.

SECTION 13. Tax 62.02 is repealed and recreated, to add additional definitions relevant to ch. Tax 62.

SECTION 14. Tax 62.20 is revised, to update terminology, to reflect proper punctuation per Clearinghouse standards and to provide further clarification of the subsection.

SECTION 16. Tax 63.02 is repealed and recreated, to add an introduction, to delete obsolete definitions, to add a new definition, to update language and punctuation per Clearinghouse standards, and to revise the definition of "Wisconsin lottery" to reference Tax 61.02(9).

SECTION 17. Tax 63.03(1) is revised, to update terminology and to place a mailing address and location in a note rather than in the text of the rule, per Clearinghouse standards.

Tax 63.03(2) is revised, to update terminology and to provide further clarification of the subsection.

SECTIONS 18, 19 AND 20. Tax 63.04(1) is revised, Tax 63.04(2)(intro.) is renumbered Tax 63.04(2) and revised, and Tax 63.04(2)(a) and (b) are repealed, to more properly reflect the scope of a certificate of authority, in compliance with s. 565.10(12), Stats. This significantly improves the method for administering non-profit retailer contracts while generating savings in cost and time for both the lottery and non-profit organizations. The limits of 26 events and 1 special event or of 2 special events per retailer are repealed, and replaced by administrative control on the locations at which a non-profit may conduct events for the 3-year duration of a contract. This proposed change results in operational efficiency for the lottery. It also allows non-profit retailers the opportunity to utilize pre-approved alternative locations in a case where unforeseen circumstances such as weather cause a scheduled event or special event to be canceled or relocated.

SECTION 21. Tax 63.04(3) is revised, to remove an outdated policy relating to charging a fee for obtaining a duplicate certificate of authority.

Tax 63.04(4) is revised, to update terminology.

Tax 63.04(5) is revised, to remove fee statements that are no longer applicable and to update procedures relating to amending a retailer contract.

SECTION 22. Tax 63.06(1), (3), (5), (7), (8)(b), (c) and (d), (9), (10) and (11)(a) are revised, to update terminology and to reflect proper language and punctuation per Clearinghouse standards.

Tax 63.06(2) is revised, to provide procedures for amending a list of contract locations.

Tax 63.06(6) is revised, to update language per Clearinghouse standards and to reflect that a certificate is to be displayed at every event or location, not just at every event.

Tax 63.06(8)(g) is revised, to reflect that it is no longer necessary, but it is permissible, to stamp lottery tickets.

SECTION 23. Tax 63.06(11)(c) is repealed and recreated, to reflect a change in position that certain lottery tickets may be returned by a retailer, and to indicate the circumstances under which they may be returned.

SECTION 24. Tax 63.06(11)(d), (12), (13), (14) and (15)(intro.), (a), (e), (f), (g) and (h) are revised, to update language per Clearinghouse standards and to clarify the manner in which retailers are responsible for redeeming break-open tickets for players.

ALL APPLICABLE SECTIONS. In addition to the revisions described above, notes are added at the end of each section in chs. Tax 61, 62 and 63, to cite the statutes that each section interprets.

SECTION 1. Tax 61.01 is amended to read:

Tax 61.01 **Purpose.** The purpose of this chapter is to provide the ~~executive director~~ administrator with the procedure and criteria for selecting retailers to sell lottery tickets, to establish the retailer's duties and obligations under the contract, to provide the ~~executive director~~ administrator with the procedure and criteria to terminate or suspend the retailer's contract, and to provide the applicant and retailer an appeal procedure if a contract is denied or a contract is terminated or suspended.

Note to Revisor: Insert the following note at the end of Tax 61.01:

Note: Section Tax 61.01 interprets ss. 565.10 and 565.12, Stats.

SECTION 2. Tax 61.02(2) is amended to read:

Tax 61.02(2) "Commencement of a game" means the date, designated by the ~~executive director~~ administrator, on which lottery tickets for a particular instant scratch lottery game shall go on sale to the general public.

SECTION 3. Tax 61.02(3) is repealed.

SECTION 4. Tax 61.02(4) to (10) are renumbered Tax 61.02(3) to (9). As renumbered, Tax 61.02(6), (7) and (9) are amended to read:

Tax 61.02(6) "Selling location" means each cash register at a Wisconsin lottery retail outlet where a lottery ticket is sold.

(7) "Settlement date" means the date, designated by the ~~executive director~~ administrator, by which the retailer is to return unsold instant scratch tickets for a particular game.

(9) "Wisconsin lottery" means the ~~commission, appointees, staff, and employees who administer the state lottery~~ the department of revenue Wisconsin lottery division, the executive assistant, the secretary or the deputy secretary of revenue.

Note to Revisor: Insert the following note at the end of Tax 61.02:

Note: Section Tax 61.02 interprets ss. 565.10 and 565.12, Stats.

SECTION 5. Tax 61.03 is amended to read:

Tax 61.03 **Procedure for selecting and renewing contracting retailers.** (1) Any person may apply for a contract to sell lottery tickets by submitting to the Wisconsin lottery a completed application for a lottery retail sales contract. Applications are available upon request by ~~writing~~ contacting the Wisconsin Lottery, ~~1802 West Beltline Highway, P.O. Box 8941, Madison, WI 53708-8941~~ lottery. A nonrefundable check for \$75.00 made payable to the Wisconsin lottery shall accompany each application for a contract. A nonrefundable electronic fund transfer or check for \$25.00 made payable to the Wisconsin lottery shall accompany each application for a contract renewal.

Note to Revisor: Insert the following note at the end of sub. (1):

Note: Applications and application fees should be mailed or delivered to Wisconsin Lottery, 2135 Rimrock Road, PO Box 8941, Madison WI 53708-8941.

(2) The ~~executive director~~ administrator shall examine the completed application, and based on criteria under s. 565.10(2) to (5), Stats., and s. Tax 61.04(1), shall either grant a contract or deny the application. The ~~executive director~~ administrator shall either grant the contract or deny the ~~applicant a contract~~ application within 35 business days after receipt by the Wisconsin lottery ~~of~~ receives the completed application and application fee under sub. (1) or within 35 business days after the completion of ~~completion of~~ administrator completes a credit check under s. Tax 61.04(1)(a), whichever is later.

Note to Revisor: Insert the following note at the end of Tax 61.03:

Note: Section Tax 61.03 interprets s. 565.10(1) to (5), Stats.

SECTION 6. Tax 61.04(1)(intro.), (a) and (e), (3) and (4) are amended to read:

Tax 61.04(1)(intro.) In addition to the criteria under s. 565.10(1) to (5), Stats., the ~~executive director~~ administrator shall determine if the applicant meets all of the following conditions:

(a) The applicant or the applicant's business shall satisfactorily pass a credit check by the ~~executive director~~ administrator.

(e) The applicant may not be an employee ~~or member of the commission or reside in the same household with a member or employee of the commission~~ of the department of revenue Wisconsin lottery division, or the executive assistant, the secretary or the deputy secretary of revenue, per s.565.05 (1) (b).

(3) If the ~~executive director~~ administrator finds that there are so many qualified applicants in a given geographic area of the state that, if all those applicants would be granted contracts to sell lottery tickets, there would be an undue concentration of ~~such~~ retailers selling lottery tickets in that area, the ~~executive director will~~ administrator shall perform market evaluations on the

retail establishments seeking a contract. Contracts shall only be granted to those retailers achieving the highest marketing evaluation score until the undue concentration is eliminated. The ~~executive director~~ administrator shall, however, grant a sufficient number of contracts in a given area to serve public convenience.

(4) (intro.) Any applicant ~~or group of applicants~~, who has a physical or mental disability ~~which that~~ constitutes or results in a substantial handicap to the applicant's employment ; may be awarded a contract exclusively to sell lottery tickets if ~~each such applicant or group of applicants each meet~~ the applicant meets all of the following conditions:

(a) Each applicant ~~shall include~~ includes with the retailer application a letter from the Wisconsin division of vocational rehabilitation verifying that the applicant's disability is a substantial handicap to employment ;

(b) Each applicant meets all other criteria under subs. (1) ~~through (3)~~; and to (3).

(c) ~~The commission approves the~~ Each applicant's or the group's contract is approved by the administrator.

Note to Revisor: Insert the following note at the end of Tax 61.04:

Note: Section Tax 61.04 interprets s. 565.10(1) to (5), Stats.

SECTION 7. Tax 61.05(1) is amended to read:

Tax 61.05(1) The ~~commission~~ Wisconsin lottery may require from each retailer a fidelity bond in the amount determined by the ~~executive director~~ administrator and based upon the applicant's projected lottery ticket sales.

Note to Revisor: Insert the following note at the end of Tax 61.05:

Note: Section Tax 61.05 interprets s. 565.10(13), Stats.

SECTION 8. Tax 61.06(2) and (4) are amended to read:

Tax 61.06(2) The retailer ~~will~~ shall be issued a year-round certificate of authority if the retailer intends to sell lottery tickets all 12 months of the year. If the retailer intends to sell lottery tickets less than 12 months a year, the retailer may be issued a seasonal certificate of authority. If the retailer intends to sell lottery tickets throughout the year but only at selected times and places, such as at weekly events or at fairs and festivals, the retailer may be issued a temporary certificate of authority.

(4) A mutilated certificate shall be surrendered to the ~~executive director~~ administrator upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the ~~executive director~~ administrator within 15 calendar days of its recovery.

Note to Revisor: Insert the following note at the end of Tax 61.06:

Note: Section Tax 61.06 interprets s. 565.10(8) to (12), Stats.

SECTION 9. Tax 61.07 is amended to read:

Tax 61.07 **Contract denial appeal procedure.** (1) If the applicant was denied a contract, the ~~executive director~~ administrator shall notify the applicant, in writing, of the denial along with a brief statement why the applicant was denied a contract. The applicant shall also be notified that a request for ~~a~~ reconsideration must be made by the applicant within 30 calendar days of the denial and that the request ~~must~~ shall contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the denial, the applicant may request a reconsideration by filing with the ~~executive director~~, administrator a written statement setting forth the applicant's legal, factual, or equitable arguments and submitting any supporting documents. The request for reconsideration shall be deemed filed on the date it is received by the ~~executive director~~ administrator.

(3) Within 20 calendar days of receipt of the filing request for reconsideration, the ~~executive director~~ administrator may, in writing, request the applicant to submit any additional

facts, legal and equitable arguments ; or documents ~~which the executive director~~ that the administrator deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile a file containing all the material submitted by the applicant and any relevant material the ~~executive director~~ administrator may have, including but not limited to, the completed application and credit check report. Legal counsel shall then review the file, research , if necessary, the applicable laws and rules ; and prepare an analysis and recommendation for the ~~executive director's~~ administrator's consideration.

(5) The ~~executive director~~ administrator, after considering all the facts and arguments submitted by the applicant, and legal counsel's recommendation, shall independently evaluate whether to grant or deny the applicant a contract. Within 45 calendar days of the ~~executive director's~~ administrator's receipt of the filing request for reconsideration or any supplemental information and documentation requested, the ~~executive director~~ administrator shall notify the applicant, in writing, of the determination. If the applicant is denied a contract, the notice shall include a written statement setting forth the reasons for the denial and notifying the applicant of the right to a hearing on the denial under s. 227.42, Stats. The applicant shall be notified that a request for a hearing must be made by the applicant within 20 calendar days and that the request must contain the information in sub. (6).

(6)(intro.) Within 20 calendar days of the administrator's mailing of the final determination ~~by executive director~~, the applicant may ~~in writing~~ request , in writing, a hearing under s. 227.42, Stats. A request for a hearing shall be deemed filed on the date it is received by the ~~executive director~~ administrator. A request shall contain all of the following:

- (a) The applicant's name and address ;
- (b) The reasons why the applicant requests a hearing ;
- (c) The facts ~~which~~ that the applicant intends to prove at the hearing ;

(d) A description of the mistake the applicant believes was made, if the applicant claims that the denial of contract is based on a mistake in fact or in law ~~;~~ and .

(e) Any supporting documents not previously submitted to the ~~executive director~~ administrator.

(7) Within 20 calendar days of receipt of a request for hearing, the ~~executive director~~ administrator shall ~~in writing~~ grant or deny the request for a hearing , in writing. A hearing shall be granted if the criteria in s. 227.42(1), Stats., are met, and the ~~executive director~~ administrator shall reasonably notify the applicant of the time and place of the hearing. A hearing shall be denied if criteria ~~in~~ under s. 227.42(1), Stats., are not met, and the ~~executive director~~ administrator shall ~~in writing~~ inform the applicant , in writing, of the reason for denial.

(8) In the event that neither the applicant nor the applicant's representative appears at the time and place designated for the hearing, the ~~executive director~~ administrator may take action based upon the record as submitted. By failing to appear, an applicant waives any further right to appeal before the Wisconsin lottery.

Note to Revisor: Insert the following note at the end of Tax 61.07:

Note: Section Tax 61.07 interprets s. 565.10(1) to (5), Stats.

SECTION 10. Tax 61.08 (15) (c) is repealed.

SECTION 11. Tax 61.08(1), (3), (5), (7), (8), (10), (11)(b), (e) and (h), (13), (14)(b), (bm), (c) and (d), (15) (a), (b) and (d), (16), (19), (20) and (21)(intro.) and (a) to (h) are amended to read:

Tax 61.08(1) CONTRACT PERIOD AND SALES AUTHORIZATION. The retailer's contract shall remain in effect for at least one year and shall expire on the date shown on the certificate of authority. The ~~executive director~~ administrator may renew the contract. However, the retailer does not have a substantial interest in, or a vested legal or equitable right to a contract renewal.

(3) RETAILER IS NOT AN EMPLOYEE OR AGENT OF THE STATE. The retailer is not an employee or agent of the state of Wisconsin, and is not entitled to any right, privilege, or benefit ~~which~~ that would accrue to an employee or agent of the state of Wisconsin.

(5) COMPLIANCE WITH STATE LAW AND RULES. During the term of the retailer contract, the retailer shall comply with ch. 565, Stats., the ~~commission's~~ Wisconsin lottery's administrative rules, and any other applicable state law and administrative rules.

(7) CERTIFICATE OF AUTHORITY. The certificate of authority is not assignable ~~and not~~ or transferable and ~~must~~ shall be conspicuously displayed at the point of sale.

(8) NOTIFICATION OF CHANGES IN THE RETAILER'S APPLICATION. (a) The retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days of every change of its organizational structure, including but not limited to changes from a sole proprietorship to a partnership or to a corporation.

(b) The retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, at least 30 calendar days in advance of any change of the retailer's business address.

(c) The retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days if the retailer, or any of the retailer's partners, officers, directors, or owners, as described under s. 565.10(3), Stats., have been convicted of or pleaded guilty or no contest to a felony, a gambling related offense, or fraud or misrepresentation in any connection.

(10) INSURANCE REQUIREMENT. (a)(intro.) During the term of the retailer's contract, the retailer shall do all of the following:

1. Maintain worker's compensation insurance, if required to do so under ch. 102, Stats.; ~~and~~

2. Maintain public liability and property damage insurance against any claim ~~which might~~ that may occur in carrying out the retailer's contract. Minimum coverages are \$300,000 single

limit liability or \$100,000 bodily injury per person and \$300,000 per occurrence and \$100,000 property damage.

(b) The insurance ~~requirement~~ requirements under par. (a)1. and 2. do not apply to a state agency or a local unit of government.

(c) The retailer, by signing and executing the contract, warrants and represents to the Wisconsin lottery that the retailer has in place and will maintain during the contract period the insurance set forth under par. (a)1. and 2. and at the minimum levels set forth under par. (a)2.

(d) During the term of the retailer's contract, the ~~executive-director~~ administrator reserves the right to request from the retailer verification that the retailer has complied with the insurance ~~requirement~~ requirements under par. (a)1. and 2.

(11)(b) The retailer may not intentionally sell a lottery ticket to ~~persons~~ a person under 18 years of age.

(e) The retailer may not sell any lottery tickets at a price different from the price authorized by the Wisconsin lottery, condition the sale of a lottery ticket upon purchase of any other item or service, or impose any restriction upon the sale of a lottery ticket unless specifically authorized by the ~~executive-director~~ administrator.

(h) The retailer ~~shall~~ may stamp each ticket with the retailer's identification number assigned by the Wisconsin lottery.

(13) RETAILER RESPONSIBILITY FOR TICKETS. (a) The retailer shall be responsible for the condition and security of lottery tickets received. If the retailer's lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. The ~~executive-director~~ administrator may not reimburse the retailer for ~~such~~ those losses or for instant scratch tickets not returned by the retailer in the proper sequentially numbered order.

(b) The retailer shall report by telephone within 24 hours any stolen tickets to the ~~director of security in Madison, Wisconsin~~ Wisconsin lottery, consistent with the instructions for reporting stolen tickets as indicated in the retailer contract.

(14)(b) The retailer's accounting records and correspondence under par. (a) shall be available to the ~~executive director~~ administrator for examination and copying during the retailer's regular business hours. All ~~such~~ of those records and correspondence are subject to seizure and audit without prior notice.

(bm) The retailer's electronic fund transfer account shall be debited once a week by the Wisconsin lottery for tickets received the previous week.

(c) If the retailer failed to place sufficient funds in the electronic fund transfer account for the tickets received the previous week, the retailer ~~shall~~ may not receive more tickets until the Wisconsin lottery is paid in full.

(d) The ~~executive director~~ administrator may assess the retailer a ~~\$20.00~~ surcharge for each dishonored retailer's check or electronic fund transfer.

(15) UNSOLD INSTANT SCRATCH TICKETS RETURNED FOR CREDIT. (a) On or before the settlement date, the retailer may return ~~to the lottery~~ to the Wisconsin lottery unsold instant scratch tickets to and receive credit. Credit shall be the retailer's purchase price.

(b) The Wisconsin lottery shall credit the retailer's electronic fund transfer account for all returned unopened packs of tickets ~~;~~ and for one opened, partial pack of tickets per selling location.

(d) The ~~executive director~~ administrator may not accept unsold tickets ~~which~~ for credit that are returned ~~more than 90 calendar days~~ after the settlement date.

(16) INSTANT SCRATCH TICKET REDEMPTION. (a) The retailer shall redeem low tier prizes for tickets sold at the retailer's outlet and presented to the retailer by the customer. If the

customer elects to redeem the low tier prize from the Wisconsin lottery's office, the Wisconsin lottery shall debit the retailer's account in that amount.

(b) The retailer may not redeem winning lottery tickets for prizes in amounts different from the amounts authorized by the ~~executive director~~ administrator or condition redemption of a lottery prize upon the purchase of any other item or service, or impose any restriction upon the redemption of a lottery prize unless specifically authorized in writing by the ~~executive director~~ administrator.

(19) RIGHT TO APPEAL SUSPENSION OR TERMINATION. In the event the ~~executive director~~ administrator suspends or terminates the retailer's contract, the retailer is entitled to an appeal in accordance with the provisions set forth under s. Tax 61.10.

(20) SUSPENSION OR TERMINATION PROCEDURE. The retailer upon notice of the suspension or termination, shall immediately stop selling lottery tickets. Within 2 weeks of the suspension or termination, the retailer shall make payment on any money owed ~~for tickets for unsold tickets~~ to the Wisconsin lottery and surrender all unsold tickets and all state owned lottery property.

(21)(intro.) GROUNDS FOR SUSPENSION OR TERMINATION. The retailer's contract may be suspended or terminated without prior notice by the Wisconsin lottery for any ~~one~~ of the following reasons:

(a) The retailer failed to meet ~~any~~ one or more of the qualifications for being a retailer under s. 565.10, Stats., or under the ~~commission's~~ Wisconsin lottery's administrative rules ~~;~~

(b) The retailer violated a provision under ch. 565, Stats., or ~~any rule promulgated under of~~ this chapter ~~;~~

(c) The retailer failed to sell a monthly minimum of \$400 worth of instant scratch tickets ~~each month~~, under s. Tax 61.04(1)(d) ~~;~~

(d) The retailer intentionally sold a lottery ticket to a person under 18 ~~;~~ years of age.

(e) The retailer endangered the security of the Wisconsin lottery ;

(f) The retailer engaged in fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the Wisconsin lottery ;

(g) The retailer failed to remit money owed to the Wisconsin lottery or failed at least 3 times to make payment on or before the settlement date ;

(h) The retailer engaged in ~~telecommunication or printed~~ advertising of lottery products or services, or both, that in the ~~executive director's~~ administrator's determination was false, deceptive ; or misleading ;

Note to Revisor: Insert the following note at the end of Tax 61.08:

Note: Section Tax 61.08 interprets ss. 565.10(7) to (15) and 565.12, Stats.

SECTION 11. Tax 61.09 and 61.10 are amended to read:

Tax 61.09 **Limitation on length of suspension.** A suspension shall be limited to a maximum of 45 calendar days, during which time the ~~executive director~~ administrator shall consider the appropriate permanent action to be taken, including, but not limited to, termination of the retailer contract.

Note to Revisor: Insert the following note at the end of Tax 61.09:

Note: Section Tax 61.09 interprets s. 565.12, Stats.

61.10 **Appeal procedure for a contract termination.** (1) The ~~executive director~~ administrator shall give the retailer written notice of the retailer's terminated contract and state the grounds for the termination. The retailer shall also be notified that a request for a reconsideration must be made by the retailer within 30 calendar days and that the request must contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the notice of the termination, the retailer may request a reconsideration by filing with the ~~executive director~~ administrator a written statement setting forth the retailer's legal, factual ; or equitable arguments and submitting any supporting

documents. The request for reconsideration shall be deemed filed on the date it is received by the ~~executive director~~ administrator.

(3) Within 20 calendar days of receipt of the ~~filling~~ request for reconsideration, the ~~executive director may~~ administrator may, in writing, request the retailer to submit any additional facts, legal and equitable arguments ; or documents ~~which the executive director~~ that the administrator deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile all relevant correspondence, lottery accounting records ; and all materials submitted to the ~~executive director~~ administrator by the retailer for reconsideration. Legal counsel shall then review the file, research, if necessary, the applicable laws and rules ; and prepare an analysis and recommendation for the ~~executive director's~~ administrator's consideration.

(5) The ~~executive director~~ administrator, after considering all the facts and arguments submitted by the retailer, and legal counsel's recommendation, shall independently evaluate whether to either reinstate or terminate the contract. Within 45 calendar days of the ~~executive director's~~ administrator's receipt of the filling request for reconsideration or any supplemental information and documentation requested, the ~~executive director~~ administrator shall notify the retailer, in writing, of the determination. If the contract is terminated, the notification shall include a statement setting forth the reasons for the termination and notifying the retailer of the right to a hearing under s. 227.42, Stats. The retailer shall also be notified that a request for a hearing must be made by the retailer within 20 calendar days and that the request must contain the information in sub. (6).

Note to Revisor: Remove the note at the end of sub. (5).

(6)(intro.) Within 20 calendar days of the administrator's mailing of the final determination ~~by the executive director~~, the retailer may ~~in writing~~ request, in writing, a hearing under s. 227.42, Stats. A request shall be deemed filed on the date it is received by the ~~executive~~

~~director~~ administrator. A request for a hearing under s. 227.42 Stats., shall contain all of the following:

(a) The retailer's name and address ; _

(b) The reasons why a retailer requests a hearing ; _

(c) The facts ~~which~~ that the retailer intends to prove at the hearing ; _

(d) A description of the mistake the retailer believes was made, if the retailer claims that the termination of contract is based on a mistake in fact or in law ; ~~and~~ _

(e) Any supporting documents not previously submitted to the ~~executive director~~ administrator.

(7) Within 20 calendar days of receipt of a request for hearing, the ~~executive director~~ administrator shall ~~in writing~~ grant or deny the request for a hearing, in writing, under s. 227.42, Stats. A hearing shall be granted if the criteria under s. 227.42(1), Stats., are met. The ~~executive director~~ administrator shall reasonably notify the retailer of the time and place of the hearing. The ~~executive director~~ administrator shall inform the retailer _ in writing _ of the reason for denying a hearing.

(8) In the event that neither the retailer nor the retailer's representative appears at the time and place designated for the hearing, the ~~executive director~~ administrator may take action based upon the record as submitted. By failing to appear, the retailer waives any further right to appeal before the Wisconsin lottery.

Note to Revisor: Insert the following note at the end of Tax 61.10:

Note: Section Tax 61.10 interprets s. 565.12, Stats.

SECTION 12. Tax 62.01 is amended to read:

Tax 62.01 **Purpose.** The purpose of this chapter is to provide the ~~executive director~~ administrator with procedures regarding the Wisconsin lottery's major procurements.

Note to Revisor: Insert the following note at the end of Tax 62.01:

Note: Section Tax 62.01 interprets s. 565.01(4), Stats.

SECTION 13. Tax 62.02 is repealed and recreated to read:

Tax 62.02 **Definitions.** In this chapter:

- (1) "Administrator" has the meaning specified in s. Tax 61.02(1).
- (2) "Major procurement" has the meaning specified in s. 565.01(4), Stats.
- (3) "Wisconsin lottery" has the meaning specified in s. Tax 61.02(9).

Note: Section Tax 62.02 interprets s. 565.01(4), Stats.

SECTION 14. Tax 62.20 is amended to read:

Tax 62.20 **Appeal.** (1) RIGHT TO APPEAL. (a) Any vendor , who submitted a competitive bid in response to a request for proposal or request for bid for a major procurement, and who is aggrieved by the ~~executive director's~~ administrator's notice of intent to contract with another vendor, may appeal the ~~executive director's~~ administrator's decision.

(b) The vendor shall file a written notice of the intent to appeal with the ~~executive director~~ administrator no later than 5 working days after the issuance of the ~~executive director's~~ administrator's notice of intent to contract with another vendor. The notice of appeal shall be deemed to be filed on the day it is received by the ~~executive director~~ administrator.

(c) The vendor shall file the written appeal, fully identifying the contested issues , with the ~~executive director~~ administrator no later than 10 working days after the issuance of the ~~executive director's~~ administrator's intent to contract with another vendor. The appeal shall allege a violation of a state statute or the Wisconsin administrative code. The written appeal shall be deemed to be filed on the day it is received by the ~~executive director~~ administrator.

(2) AUTHORITY TO RESOLVE AN APPEAL. The ~~executive director~~ administrator may settle and resolve an appeal. A settlement or resolution under this subsection may include the issuance of a new request for proposal or request for bid.

(3) DECISION. Unless more time is required to conduct an investigation, the ~~executive director~~ administrator shall issue a written decision on the appeal to the vendor within 10 working days of receipt of the appeal. The ~~executive director's~~ administrator's decision may include the issuance of a new request for proposal or request for bid.

(4) STATE OF PROCUREMENTS DURING AN APPEAL. During the appeal process, the ~~executive director~~ administrator may not proceed further with the award of the contested contract until a decision is rendered on the appeal, unless the ~~executive director~~ administrator determines that the award of the contract without delay is necessary to protect substantial interests of the state.

Note to Revisor: Insert the following note at the end of Tax 62.20:

Note: Section Tax 62.20 interprets ss. 565.01(4) and 565.25, Stats.

SECTION 15. Tax 63.01 is amended to read:

Tax 63.01 **Purpose.** The purpose of this chapter is to provide the ~~executive director~~ administrator with the procedures and criteria for contracting with nonprofit organizations to sell break-open lottery tickets for a higher rate of compensation, to establish the nonprofit organization retailer's duties and obligations under the contract, to provide the ~~executive director~~ administrator with the procedures and criteria to terminate or suspend the retailer's contract, and to provide the applicant and nonprofit organization retailer an appeal procedure if a contract is denied or a contract is terminated or suspended.

Note to Revisor: Insert the following note at the end of Tax 63.01:

Note: Section Tax 63.01 interprets ss. 565.10(14) and 565.12, Stats.

SECTION 16. Tax 63.02 is repealed and recreated to read:

Tax 63.02 **Definitions.** In this chapter:

(1) "Administrator" has the meaning specified in s. Tax 61.02 (1).

(2) "Break-open ticket" means a ticket issued by the Wisconsin lottery that is made of laminated paper, partially perforated to permit strips to be torn from one side to reveal play symbols beneath, from which it can be immediately determined whether the ticket is a winner.

(3) "Location" means the place at which the nonprofit organization has been granted the authority to sell lottery tickets or shares by the administrator.

(4) "Nonprofit organization" has the meaning specified in s. 565.10 (14), Stats.

(5) "Wisconsin lottery" has the meaning specified in s. Tax 61.02 (9).

Note to Revisor: Insert the following note at the end of Tax 63.02:

Note: Section Tax 63.02 interprets ss. 565.10 and s. 565.12, Stats.

SECTION 17. Tax 63.03 is amended to read:

Tax 63.03 **Application to become a nonprofit organization retailer.** (1) Any nonprofit organization may apply for a contract to sell break-open tickets by completing the application for a nonprofit organization retailer sales contract prescribed by the ~~director~~ administrator and submitting it to the Wisconsin lottery. Applications are available upon request by ~~writing~~ contacting the Wisconsin Lottery, 1802 West Beltline Highway, P.O. Box 8941, Madison, WI 53708-8941 lottery. A nonrefundable check for \$25.00 made payable to the Wisconsin lottery shall accompany each application for a contract.

Note to Revisor: Insert the following note at the end of sub. (1):

Note: Applications and application fees should be mailed or delivered to Wisconsin Lottery, 2135 Rimrock Road, PO Box 8941, Madison WI 53708-8941.

(2) The ~~executive director~~ administrator shall examine the completed application, and based on criteria under s. 565.10(2) to (5) and (14), Stats., shall either grant a contract or deny the application. The ~~executive director~~ administrator shall either grant the contract or deny the applicant ~~a contract~~ application within 35 business days after ~~receipt~~ receives by the Wisconsin lottery of the completed application and application fee under sub. (1).

Note to Revisor: Insert the following note at the end of Tax 63.03:

Note: Section Tax 63.03 interprets s. 565.10(2) to (5) and (14), Stats.

SECTION 18. Tax 63.04(1) is amended to read:

Tax 63.04(1) When a nonprofit organization is awarded a contract or a contract renewal under this chapter, the organization shall pay \$10.00 to the Wisconsin lottery for a nonassignable and nontransferable certificate of authority. Included as an addendum to the certificate shall be a list from the contract document, specifying the date, times, and location for each event locations at which the nonprofit organization retailer is authorized to sell break-open tickets. Except as otherwise provided in this section, a certificate of authority may authorize sales at more than one ~~event~~ location.

SECTION 19. Tax 63.04(2)(intro.) is renumbered Tax 63.04(2) and amended to read:

Tax 63.04(2) The certificate of authority shall be temporary, limiting nonprofit organization retailer sales to specified ~~events~~ locations. A certificate of authority and any amendment of it may authorize a nonprofit organization retailer to sell Wisconsin lottery break-open tickets at ~~either:~~ more than one location, provided the contract document and certificate indicate a single permanent primary location from which the contract and certificate may not be transferred, in accordance with s. 565.10(10) and (12), Stats. Any other locations that are subsequently amended to the contract and certificate may not be considered as permanent primary locations.

SECTION 20. Tax 63.04(2)(a) and (b) are repealed.

SECTION 21. Tax 63.04(3), (4) and (5) are amended to read:

Tax 63.04(3) If the certificate is lost, mutilated or destroyed, the nonprofit organization retailer shall within 15 calendar days request in writing and submit a completed application for a duplicate certificate. ~~The retailer shall pay \$10.00 by check to the Wisconsin lottery for a duplicate certificate of authority.~~

(4) A mutilated certificate shall be surrendered to the ~~executive director~~ administrator upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the ~~executive director~~ administrator within 15 calendar days of its recovery.

(5) If an organization wishes to sell Wisconsin lottery break-open tickets at ~~an event~~ a location not specified in its retailer contract, it shall apply to the Wisconsin lottery for an amendment to its retailer contract ~~and to its certificate of authority and pay a fee of \$10.00~~. The application for an amendment ~~and a check for \$10.00~~ must be received approved by the Wisconsin lottery at least 15 calendar days before the ~~subject event~~ nonprofit organization begins selling break-open tickets at the new location.

Note to Revisor: 1) Insert the following note at the end of Tax 63.04:

Note: Section Tax 63.04 interprets s. 565.10(8) to (12), Stats.

2) Insert the following note at the end of Tax 63.05:

Note: Section Tax 63.05 interprets s. 565.10(1) to (5), Stats.

SECTION 22. Tax 63.06(1), (2), (3), (5), (6), (7), (8)(b), (c), (d) and (g), (9), (10) and (11)(a) are amended to read:

Tax 63.06(1) CONTRACT PERIOD AND SALES AUTHORIZATION. The contract shall remain in effect for ~~at least~~ no less than one year and shall expire on the date shown on the certificate of authority. The retailer does not have a substantial interest in, or a vested or equitable right to ~~a~~ a contract renewal.

(2) CONTRACT NOT ASSIGNABLE OR TRANSFERABLE. The contract may not be assigned or transferred from one organization or permanent primary location to another. The list of contract locations may be amended by the administrator using the amendment process under s. Tax 63.04(5), provided that any amendment is consistent specifically with s. Tax 63.04(2) and all other applicable administrative rules.

(3) NONPROFIT ORGANIZATION RETAILER IS NOT AN EMPLOYEE OR AGENT OF THE STATE. The nonprofit organization retailer is not an employee or agent of the state of Wisconsin, and is not entitled to any right, privilege, or benefit ~~which~~ that would accrue to an employee or agent of the state of Wisconsin.

(5) COMPLIANCE WITH STATE LAW AND RULES. During the term of the nonprofit organization retailer contract, the retailer shall comply with ch. 565, Stats., the ~~commission's~~ Wisconsin lottery's administrative rules, and any other applicable state law and administrative rules.

(6) CERTIFICATE OF AUTHORITY. The certificate of authority is not assignable ~~and not~~ or transferable and ~~must~~ shall be conspicuously displayed at every ~~event~~ location where there are sales authorized by the certificate.

(7) NOTIFICATION OF CHANGES IN THE NONPROFIT ORGANIZATION RETAILER'S APPLICATION. (a) The nonprofit organization retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days of every change of its ~~organization~~ organizational structure, including but not limited to changes from unincorporated to incorporated status.

(b) The nonprofit organization retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, at least 30 calendar days in advance of any change in the nonprofit organization retailer's official mailing address.

(c) The nonprofit organization retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days if the retailer, or any of the retailer's officers or directors, as described under s. 565.10(3), Stats., has been convicted of or pleaded guilty or no contest to a felony, a gambling related offense, or fraud or misrepresentation in any connection.

(8)(b) May not intentionally sell a break-open ticket to ~~persons~~ a person under 18 years of age.

(c) May not exchange break-open tickets with any other person or organization, including other Wisconsin lottery retailers.

(d) May not sell any break-open ticket at a price different than the price authorized by the Wisconsin lottery, condition the sale of a ticket upon the purchase of any other item or service , or impose any restriction upon the sale of a ticket unless specifically authorized by the ~~executive director~~ administrator.

(g) ~~Shall~~ May stamp each ticket with the retailer's identification number assigned by the Wisconsin lottery.

(9) (title) SALES AT UNAUTHORIZED LOCATIONS, ~~OR BEFORE COMMENCEMENT OR AFTER CONCLUSION OF EVENT.~~ ~~The nonprofit organization retailer may not sell any break-open tickets purchased from the lottery under this chapter before the commencement or after the conclusion of any event specified in its retailer contract and certificate of authority.~~ The retailer may not sell tickets purchased from the Wisconsin lottery under this chapter at locations ~~which~~ that are not specified in its contract ~~and certificate of authority,~~ consistent with s. Tax 63.04 (1).

(10) RESPONSIBILITY FOR TICKETS. (a) The nonprofit organization retailer shall be responsible for the condition and security of lottery tickets received. If the retailer's lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. The ~~executive director~~ administrator may not reimburse the retailer for ~~such~~ those losses.

(b) The nonprofit organization retailer shall report by telephone within 24 hours any stolen tickets to the ~~director~~ administrator of security in Madison, Wisconsin.

(11)(a)(intro.) The nonprofit organization retailer shall elect ~~one of~~ either of the following 2 payment options in its contract:

1. ~~payment~~ Payment by check or money order upon delivery of tickets to the retailer ; ~~or~~ .

2. ~~payment~~ Payment through an electronic ~~funds fund~~ transfer account ~~which that~~ shall be debited once a week by the Wisconsin lottery for tickets received the previous week.

SECTION 23. Tax 63.06(11)(c) is repealed and recreated to read:

Tax 63.06(11)(c) The administrator may accept returned tickets for credit only under the following circumstances:

1. If the tickets are defective, the administrator may allow the nonprofit organization retailer to make a return. The retailer shall return as many of the suspected defective tickets as is possible, using the original packaging materials if possible.

2. If the order was filled incorrectly by the Wisconsin lottery, the administrator may allow the nonprofit organization retailer to make a return. The retailer shall return any incorrectly shipped break-open tickets, using the original packaging materials if possible.

3. If the shipment of tickets is unopened by the nonprofit organization retailer, the administrator may allow the retailer to make a return. To be considered unopened, the package shall contain all the tickets that it contained when delivered to the retailer and have the original packaging and shipping seals intact and unopened.

SECTION 24. Tax 63.06(11)(d), (12), (13), (14) and (15)(intro.), (a), (e), (f), (g) and (h) are amended to read:

Tax 63.06(11)(d) The ~~executive director~~ administrator may assess the retailer a \$20.00 surcharge for each dishonored check or electronic fund transfer.

(12) PRIZE REDEMPTION. The nonprofit organization retailer shall redeem all prizes from break-open tickets purchased ~~at the event~~ from that retailer, on the day of sale and at the ~~place~~ location of sale.

(13) RIGHT TO APPEAL SUSPENSION OR TERMINATION. In the event the ~~executive director~~ administrator suspends or terminates the nonprofit organization retailer's contract, the

retailer is entitled to an appeal in ~~accord~~ accordance with the provisions ~~in~~ set forth under s. Tax 61.10.

(14) SUSPENSION OR TERMINATION PROCEDURE. The nonprofit organization retailer, upon notice of suspension or termination, shall immediately stop selling lottery tickets. Within 2 weeks of the suspension or termination, the retailer shall make payment on any money owed to the Wisconsin lottery and surrender all unsold tickets and all state owned lottery property.

(15)(intro.) GROUNDS FOR SUSPENSION OR TERMINATION. The nonprofit organization retailer's contract may be suspended or terminated without prior notice by the Wisconsin lottery for any of the following reasons:

(a) The retailer fails to meet ~~any~~ one or more of the qualifications for being a retailer under s. 565.10, Stats., or under the ~~commission~~ Wisconsin lottery's administrative rules.

(e) The retailer endangers the security of the Wisconsin lottery.

(f) The retailer engages in fraud, deceit, misrepresentation ; or other conduct prejudicial to public confidence in the Wisconsin lottery.

(g) The retailer fails to remit money owed to the Wisconsin lottery or fails at least 3 times to have sufficient funds available resulting in the electronic ~~funds~~ fund transfer, check or money order not clearing the bank.

(h) The retailer engages in telecommunication or printed advertising that in the ~~executive director's~~ administrator's determination is false, deceptive or misleading ; ~~or~~ .

Note to Revisor: Insert the following note at the end of Tax 63.06:

Note: Section Tax 63.06 interprets ss. 565.10(7) to (15) and 565.12, Stats.

SECTION 25. Tax 63.07 and 63.08 are amended to read:

Tax 63.07 **Limitation on length of suspension.** A suspension shall be limited to a maximum of 45 calendar days, during which time the ~~executive director~~ administrator shall

consider the appropriate permanent action to be taken, including, but not limited to, termination of the nonprofit organization retailer contract.

Note to Revisor: Insert the following note at the end of Tax 63.07:

Note: Section Tax 63.07 interprets s. 565.12, Stats.

Tax 63.08 **Prize structure of nonprofit organization retailer break-open ticket games.**

The ~~executive director~~ administrator shall offer nonprofit organization retailers under this chapter a selection of at least 2 break-open ticket games with prize structures ranging from not less than 50% of sales to not more than 80% of sales.

Note to Revisor: 1) Insert the following note at the end of Tax 63.08:

Note: Section Tax 63.08 interprets s. 565.30, Stats.

2) Insert the following note at the end of Tax 63.09:

Note: Section Tax 63.09 interprets s. 565.10(14) and (15), Stats.

The rules contained in this order 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 proposed order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Richard G. Chandler
Secretary of Revenue