

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

The Wisconsin Department of Revenue hereby proposes an order to: **repeal** Tax 61.04(1)(c), Tax 61.08(11)(h), Tax 61.08(12) and (15); **renumber** Tax 61.085(2)(b), (c), (d), (e), (g), (h) and (i), and Tax 61.085(6)(a); **renumber and amend** Tax 61.02(8) and (9), and Tax 61.085(2)(f), (4)(b)1., 2. and 3., and (6)(b); **amend** Tax 61.02(2), (3), (4), Tax 61.04(1)(d), Tax 61.05(1) and (2), Tax 61.08(11)(c), (13)(a), (14)(d), (16)(a) and (21)(c), Tax 61.085(2)(a), (4)(a)1. and 2., (4)(b) and (c), (4)(c)3., 4. and 6., (5)(a), (5)(b), (5)(b)1., 2. and 3., (6), and (7); **repeal and recreate** Tax 61.04(1)(b), Tax 61.08(17)(a) and Tax 61.085(6)(c); and to **create** Tax 61.02(3)(a), (b) and (c), and (8), Tax 61.08(13)(c) and (d), and Tax 61.085(2)(b) and (f), (4)(b)1. and 2., (4)(b)2.a. and b., (4)(d), (4)(d)1., 2. and 3., (5)(am), (6)(a), (b), (d) and(e), and(6)(e)2. and 4. **relating to** operational improvements to the Wisconsin Lottery, to the Retailer Performance Program of the Lottery, and affecting small businesses.

Analysis by the Department of Revenue

Statutory authority: ss. 227.11(2)(a) and 565.10(14)(b)3m., Stats.

Statutes interpreted: ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

The proposed order is intended to improve ch. Tax 61. The Wisconsin Lottery is proposing an amendment to the rule authority for the Retailer Performance Program (RPP). Administratively, it is apparent that under the current rules, some retailers could receive payment for performance which is not completely consistent with the intent of the program. These proposed changes will address those issues in a manner consistent with current program standards regarding eligibility, qualification and payment, and are expected to improve the overall return on investment. Additionally, under this rule order there are technical changes being proposed which update Lottery operations of retailer contracting, ticket security and product definition.

The Department of Revenue maintains two Chapters of Administrative Code that provide for the administration of Lottery retailer activity. Other than Chapter Tax 61, which is covered by this proposed rule order, Chapter Tax 63 pertains to non-profit organizations that sell Lottery tickets. Regarding either this proposed rule order or other related rules, the public may contact James Amberson, Lottery Budget/Policy Analyst, at (608) 267-4840. Alternately, the public may e-mail Mr. Amberson at jjamberson@dor.state.wi.us.

Statutory small business review: ss. 227.114(2), Stats.

Consistent with s.227.114(2)(c), Stats., the proposed order is intended to implement technical changes which allow Wisconsin Lottery retailers to more easily and simply satisfy requirements of the Lottery's retailer contract. Specifically, Sections 10 through 22 of this rule order are examples of improvements to small business compliance, and affecting small businesses.

None of the proposed changes generate increased cost of compliance to Lottery retailer small businesses, and in some cases may reduce slightly some operating costs.

Overall the changes to the Retailer Performance Program in particular may improve the likelihood that a small business could earn increased revenues from the sale of lottery products.

Consistent with s.227.114(2)(d), Stats., the proposed order is intended to clarify the expected sales performance of retailers who wish to earn incentives within the Retailer Performance Program (RPP) under Tax 61.085. Within this rule order, from Section 24 onward, the remaining sections re-align the RPP consistent with the expectations of the Legislative Audit Bureau, as represented in Audit Report 02-9, May 2002.

Consistent with the review required by 2003 Wisconsin Act 118, there is no relevant outstanding federal legislation that would require comparative review.

Consistent with the review required by 2003 Wisconsin Act 118, the Wisconsin Lottery examined the administrative rules in other adjacent states, all of which offer a lottery. Illinois, Iowa, Michigan and Minnesota were contacted and copies of their applicable statutes and administrative code were requested. Upon review, it appears that each adjacent state tends to codify less lottery retailer small business policy into administrative rule or law than does Wisconsin. Therefore, the Wisconsin Lottery's administrative rules are typically more comprehensive and detailed than adjacent states.

Specifically, Illinois statutes address retailer compensation under 20 ILCS 1605/7.2. The language indicates:

"Sec. 7.2. The rules and regulations of the Department may include, but shall not be limited to, the following: (9) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;..."

There does not appear to be any Illinois rule or law that is comparable to Wisconsin Lottery administrative code. The commentary on "...rules and regulations..." appears to refer to policy documentation of the Illinois Department of Revenue, to which the Illinois Lottery is attached.

Iowa statutes address retailer compensation in more detail. Within their statutory language:

99G.9 (3) (i) -- allows the Lottery's administrative rules to set the "manner and amount of compensation to lottery retailers."

99G.21 (2) (j) -- authorizes the Lottery Board to "select and contract with vendors and retailers."

99G.24 (2) -- "The board shall determine the compensation to be paid to licensed retailers. Compensation may include provision for variable payments based on sales volume or incentive considerations."

Iowa Administrative Code 531---13.6, regarding Retailer costs and compensation, further states:

"13.6(1) Retailers shall purchase pull-tab tickets for a price equal to the retail price of the tickets less the value of prizes that the retailer is required to pay and any discounts or commissions authorized by the lottery. Retailers shall purchase scratch tickets at retail price and shall be credited for validations and commissions.

13.6(2) The lottery may impose a service fee on retailers to cover operational costs.

13.6(3) The lottery, with board approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the agreement

between the retailer and the lottery. The lottery may increase the total amount of retailer compensation by implementing sales incentive programs.”

Michigan has two internal policy papers which cover the concept of retailer bonus incentives. The first paper, “Retailer Directive No. 1.”, revised date of 2/28/00, reads in relevant part:

“Lottery retailers, upon issuance of a sales license by the Bureau of State Lottery and payment of the licensing fee, shall be entitled to a commission of two percent on valid winning tickets purchased at their retail location and redeemed for prizes of \$601 to \$100,000. Lottery retailers shall be entitled to a flat commission payment of \$2,000 on valid winning tickets purchased at their retail location and redeemed for prizes greater than \$100,000. Only retailers in active status, with no outstanding delinquencies due to the bureau at the time of validation, qualify for the bonus commission.”

The second Michigan policy paper, “Retailer Directive No. 8”, revised date of 12/31/02, reads in complete text:

“ This directive outlines a special, additional retail sales commission for instant games sold by Michigan Lottery retailers during period December 30, 2003, through December 27, 2004.

1. PROGRAM DESCRIPTION

a. Marketing Division will establish a sales goal (percent increase in sales) quarterly on which the special commission will be based. The sales goal will be announced to retailers prior to the beginning of each calendar quarter (evaluation period) in the monthly Lottery publication GAME LINE. Each calendar quarter will be compared to the same quarter of the prior year (hereafter referred to as the "base" period) to determine if the sales goal has been met. For first quarter calendar year 2004 (December 30, 2003, through March 29, 2004), the sales goal shall be two and three-quarters percent (2¾%).

b. Retailers meeting or exceeding the quarterly sales goal will be paid an additional one percent commission on all instant tickets sold during the evaluation period.

c. This special sales commission is in addition to the regular sales and redemption commission paid to all retailers.

d. Lottery business weeks are established as Tuesday through Monday. Lottery business quarters (used for the special commission evaluation period) for calendar year 2004 are as follows: Tuesday, December 30, 2003, through Monday, March 29, 2004; Tuesday, March 30, 2004, through Monday, June 28, 2004; Tuesday, June 29, 2004, through Monday, September 27, 2004; and Tuesday, September 28, 2004, through Monday, December 27, 2004. Sales for these periods will be compared to comparable sales periods last year to determine qualification for the special sales commission.

2. PROGRAM DURATION

This program will be in effect beginning December 30, 2003, through December 27, 2004.

3. ELIGIBLE RETAILERS

a. Retailers must be licensed prior to start of the promotion sales period.

- b. Retailers must be in Active or Temporarily Closed status at the start of the promotion sales period
- c. Retailers must have base period instant ticket sales total greater than zero attributable to their agent number, or to the agent number(s) of any other previously licensed retailer(s) at the same location code
- d. Retailers whose license has been terminated during the sales period and before the special sales commission is paid, shall be excluded from this special commission arrangement.
- e. Retailers must comply with all other rules, regulations, directives and instructions issued by the bureau for the redemption of winning tickets.

4. TERMINATION OF PROGRAM

- a. The commissioner may announce termination of this program at any time. The program is in effect from December 30, 2003, through December 27, 2004, or on the termination date announced by the commissioner, whichever occurs first. “

Minnesota maintains statutory and administrative rules language that addresses incentive and bonus payment activities. Specifically in statute, 349A.06 Lottery retailers, in relevant part indicates:

“ Subd. 12. Retailer bonus. The director may adopt a plan whereby eligible lottery retailers will receive a bonus payment, in addition to commissions or incentives earned for the sale of lottery tickets, if total lottery sales for a fiscal year increase when compared to the total lottery sales for the previous fiscal year. The bonus payment shall be no more than ten percent of any increase in total lottery sale, which shall be paid to active lottery retailers at the end of a fiscal year on the basis of each lottery retailer's market share.”

Minnesota also maintains administrative rule language. The relevant parts read:

“7856.4030 COMPENSATION.

Subpart 1. Commission. Retailers shall receive a commission of five and one-half percent of the price of each ticket sold by that retailer. Retailers shall also receive a commission of one percent on the amount of each winning ticket cashed by that retailer.

Subp. 2. Incentive program. The director may establish lottery retailer incentive programs for retailers and their employees.

Subp. 3. Acceptance of other money prohibited. A lottery retailer or employee of a retailer may not request, demand, or accept gratuities or similar remuneration in exchange for the performance of duties authorized under the lottery retailer's contract with the lottery other than as specifically authorized by the director.

7856.1020 DIRECTOR; POWERS AND DUTIES.

The director shall have the power and duty to operate and administer the lottery and to have the overall supervisory authority and responsibility of the lottery, including the adoption of rules and game procedures governing its establishment and operation, subject to review and comment by the board as provided by law. Those powers and duties include, but are not limited to, the administration of the following:

H. the manner and amount of compensation to be paid to retailers necessary to provide for adequate availability of tickets to prospective buyers and for the convenience of the public;...”

In review of the above language from the four neighboring states, it is clear that the Wisconsin Lottery maintains incentive authority similar to those neighboring states. However, it also appears that Wisconsin includes much greater detail in its Administrative Code than its neighbors, regarding the specifics of retailer bonus incentives. Additionally, Wisconsin’s commission and incentive package is financially very competitive when compared to neighboring states. According to page 216 of the *NASPL 2004 Lottery Resource Handbook*, published annually by the North American Association of State and Provincial Lotteries (NASPL), Wisconsin pays its retailers an average commission of 5.92%. By comparison, Illinois pays 5%, Iowa pays a range 5% to 7%, Michigan offers 6%, and Minnesota offers retailers 5.5%. When Wisconsin’s Retailer Performance Program is factored in, however, Wisconsin’s percentage moves to an estimated 6.92% of gross sales. In summary of the state by state comparison, Wisconsin’s authority and funding are similar, but there is much greater detail in Wisconsin’s rule language.

Regarding business policy, the Lottery has discussed retailer business policies with lottery management from other states, to identify any best practices that have impact upon small business lottery retailers. In particular, industry publications such as *La Fleur’s 2004 World Lottery Almanac*, by TFL Publications, cover the topic of retailer compensation nation-wide in some detail. It appears that each state uses unique rules and guidelines for interaction with small business, and often mixes administrative rules, feature and procedure documents, and policy documents in ways that encourage sound small business practices.

Consistent with s.227.114(4)(b), Stats., the Lottery has sought and received feedback from the Lottery retailer small business community, by directly contacting representative trade associations as well as corporate and independent retailer representatives. Specific changes to the program have been discussed, both in terms of the changes to the utilization of the funding, as well as regarding the details of program eligibility and qualification. In particular, Sections 36, 39, 41, 43 and 46 of this order were highlighted and reviewed. The responses thus far have been generally positive, with few negative comments.

Consistent with s.227.114(4)(b), Stats., The Wisconsin Lottery has also conducted focus group research methodology to perform analysis of these proposed changes to small business rules. Lottery retailers attended two small-group discussions conducted by the Lottery, regarding the proposed changes to the Lottery business model. These sessions, on April 28th and May 4th of 2004, were recorded on videotape. Additional discussions were incorporated into retail industry conferences, as well as regularly scheduled meetings with key corporate and independent retail managers. These groups were given one-to-one discussion time, which included those proposed administrative rule changes that were considered potentially restrictive to small business. For example, the language proposed under Section 46 of this rule order, where notice for short-term incentives would be shortened from 21 to 14 days, was discussed with retailers. Retailers generally considered this change as positive, because the current 21-day notice is often too long; retailers often forget about the program announcement, as it happened too many days prior to the event. The Lottery also produced an article in its monthly retailer newsletter, and plans to do follow-up discussions regarding the changes prior to the implementation of the rule changes.

The resultant feedback was compared to the best-practices review mentioned previously, as well as to the Legislative Audit Bureau’s report. Specifically, Sections 10 to 22 of

this rule order include many changes to lottery retailer requirements that were a direct result of the feedback from these discussions.

SECTION 1. Tax 61.02(2) is amended, to clarify the definition of "commencement of a game".

SECTION 2. Tax 61.02(3) is amended, to clarify the definition of "lottery ticket".

SECTION 3. Tax 61.02(3)(a) is created, to expand the definition of "lottery ticket" where it applies to instant scratch ticket games.

SECTION 4. Tax 61.02(3)(b) is created, to expand the definition of "lottery ticket" where it applies to on-line ticket games.

SECTION 5. Tax 61.02(3)(c) is created, to expand the definition of "lottery ticket" where it applies to break-open ticket games.

SECTION 6. Tax 61.02(4) is amended, to bring the definition of "low tier prize" up to date with current industry standards of product development.

SECTION 7. Tax 61.02(8) is renumbered Tax 61.02(9), and is amended to remove language that is cumbersome, and to clarify the definition.

SECTION 8. Tax 61.02(8) is created, to define the term "Validation".

SECTION 9. Tax 61.02(9) is renumbered Tax 61.02(10), and is amended to remove a repeated word.

SECTION 10. Tax 61.04(1)(b) is repealed and recreated to allow lottery retailers the ability to affirm the security measures they are expected to take to protect Lottery tickets, products and equipment.

SECTIONS 11, 16, 17 and 21. Tax 61.04(1)(c), Tax 61.08(11)(h), (12) and (15), are repealed, as the language in each is no longer necessary for appropriate Lottery operations.

SECTIONS 12, 15 and 24. Tax 61.04(1)(d), Tax 61.08(11)(c) and (21)(c) are amended, with language which clearly and consistently states the performance expectations which a retailer must achieve to contract with the Lottery to sell the Lottery's products.

SECTION 13 and 14. Tax 61.05(1) and (2) are amended, to provide the Lottery the authority to accept an irrevocable letter of credit in addition to a fidelity bond. An irrevocable letter of credit is generally less expensive and less cumbersome for a retailer to obtain, and can be claimed directly by the Lottery, avoiding additional administrative costs currently associated with the collection of overdue retailer debt.

SECTION 18. Tax 61.08(13)(a) is amended, to improve customer service by providing the authority necessary to account for unsalable tickets returned for credit.

SECTION 19. Tax 61.08(13)(c) and (d) are created, to provide specific conditions for the return for credit of unsalable tickets, and for tickets returned consistent with a settlement date declared by the administrator, respectively.

SECTION 20. Tax 61.08 (14)(d) is amended, to provide the administrator the ability to utilize the method of interest penalty, consistent with other retail industries and the banking industry, for any dishonored check or electronic fund transfer.

SECTION 22. Tax 61.08(16)(a) is amended, to clarify language that allows for the industry practice of cross-redemption, which is the redeeming of lottery tickets at a location different from where the tickets were purchased. This language was inadvertently omitted from previous proposed rule orders regarding Chapter Tax 61.

SECTION 23. Tax 61.08(17)(a) is repealed and recreated as Tax 61.08(17)(a) and (a)1., 2., and 3., to provide for reasonable circumstances under which the Lottery administrator may allow the return of break-open tickets sold to retailers. This language is similar to language under Chapter Tax 63.06(11)(c), which provides for returns of break-open tickets by non-profit organizations.

SECTION 25. Tax 61.085(2)(a) is amended, to broaden the definition of the term "Appropriate sales history" consistent with changes in the RPP which will make both quarterly and annual payments.

SECTION 26. Tax 61.085(2)(b) is renumbered Tax 61.085(2)(c).

SECTION 27. Tax 61.085(2)(b) is created, to create the definition for "comparable history fiscal year", consistent with the changes to the RPP.

SECTION 28, 29 and 30. Tax 61.085(2)(c), (d) and (e) are renumbered Tax 61.085(2)(d), (e) and (g).

SECTION 31. Tax 61.085(2)(f) is renumbered Tax 61.085(2)(h) and amended, to clarify language that improves the definition consistent with the intent of the program improvements.

SECTION 32. Tax 61.085(2)(f) is created, to define "instant ticket" for purposes of the retailer performance program.

SECTIONS 33, 34 and 35. Tax 61.085(2)(g), (h), and (i) are renumbered Tax 61.085(2)(i), (j) and (k), respectively.

SECTION 36. Tax 61.085(4)(a)1. is amended, to provide caps on funding for winning ticket payments, so that a single drawing of a winning number prize level will not cause payments in excess of those intended.

SECTION 37. Tax 61.085(4)(a)2. is amended, to clarify language for payment of winning tickets from TV show entries.

SECTION 38. Tax 61.085(4)(b) is amended, to clarify language that supports sales goal performance payments.

SECTION 39. Tax 61.085(4)(b)1. is renumbered Tax 61.085(4)(b)1.a. and is amended, to reduce the funding available for quarterly payments from 10% to up to 2% of sales increases of instant tickets, consistent with overall changes to the retailer performance program (RPP).

SECTION 40. Tax 61.085(4)(b)1. is created, to clarify quarterly payments of the RPP.

SECTION 41. Tax 61.085(4)(b)2. is renumbered Tax 61.085(4)(b)1.b., and is amended, to reduce the funding available for quarterly payments from 10% to up to 2% of sales increases of non-jackpot terminal-generated tickets, consistent with overall changes to the retailer performance program (RPP).

SECTION 42. Tax 61.085(4)(b)2. is created, to provide for authority to make fiscal year sales goal payments, consistent with overall changes to the RPP.

SECTION 43. Tax 61.085(4)(b)2.a. is created, to provide authority for fiscal year performance payments made for instant ticket sales goals.

SECTION 44. Tax 61.085(4)(b)2.b. is created, to provide authority for fiscal year performance payments made for non-jackpot terminal-generated ticket sales goals.

SECTION 45. Tax 61.085(4)(b)3. is renumbered Tax 61.085(4)(b)2.c. and amended, to provide authority for fiscal year performance payments made for jackpot terminal-generated ticket sales goals.

SECTION 46. Tax 61.085(4)(c) is amended, to remove or improve restrictions on the offering of short-term performance incentive payments, consistent with overall changes to the RPP.

SECTIONS 47, 48 and 49. Tax 61.085(4)(c)3., 4. and 6. are amended, to clarify the length of time, the amount of funding and the use of industry merchandise as payment, for short-term incentives.

SECTIONS 50, 51, 52 and 53. Tax 61.085(4)(d), and (d)1., 2. and 3. are created, to provide authority and control for the proper procurement and accounting of industry merchandise as payment for short-term incentives.

SECTION 54. Tax 61.085(5)(a) is amended, to clarify how a retailer will qualify for annual sales goals payments.

SECTION 55. Tax 61.085(5)(am) is created, to provide for secondary qualification for annual sales goal payments.

SECTION 56. Tax 61.085(5)(b) is amended, to clarify how a retailer will qualify for quarterly sales goals payments.

SECTIONS 57, 58 and 59. Tax 61.085(5)(b)1., 2. and 3. are amended, to provide for secondary qualification for quarterly sales goal payments.

SECTION 60. Tax 61.085(6) is amended, to list the proper sequence of incentive payments for the retailer performance program.

SECTION 61. Tax 61.085(6)(a) is renumbered Tax 61.085(6)(e)1.

SECTION 62. Tax 61.085(6)(a) is created, to list winning ticket incentives.

SECTION 63. Tax 61.085(6)(b) is renumbered Tax 61.085 (6)(e)3., and is amended, to focus the language around quarterly payment activity.

SECTION 64. Tax 61.085(6)(b) is created, to list short-term incentives.

SECTION 65. Tax 61085(6)(c) is repealed and recreated, to remove language which becomes redundant, and to list quarterly sales incentive payments.

SECTIONS 66, 67, 68 and 69. Tax 61.085(6)(d), (e), (e)2. and (e)4. are created, to list quarterly sales goals and annual sales goals, and to identify the appropriate manner of payments for the retailer performance program, respectively.

SECTION 70. Tax 61.085(7) is amended, to remove language that unintentionally limits the authority of the administrator in situations where an adjustment of RPP payments is fiscally necessary.

SECTION 1. Tax 61.02(2) is amended, to read:

Tax 61.02(2) "Commencement of a game" means the date, designated by the administrator, on which lottery tickets for a particular ~~instant scratch lottery game~~ under sub. (3) shall go on sale to the general public.

SECTION 2. Tax 61.02(3) is amended, to read:

Tax 61.02(3) "Lottery ticket" or "lottery share" means ~~an instant scratch, an on-line or a break-open ticket issued by the Wisconsin lottery~~ one of the following types:

SECTION 3. Tax 61.02(3)(a) is created, to read:

Tax 61.02(3)(a) For instant scratch ticket games under s.565.01(6m)(a)1., Stats., a chance received for consideration that may entitle a player to a prize as a winning ticket under sub. (8), consistent with lottery games under s.565.27, Stats.

SECTION 4. Tax 61.02(3)(b) is created, to read:

Tax 61.02(3)(b) For on-line ticket games under s.565.01(6m)(a)2., Stats., a chance received for consideration that may entitle a player to a prize as a winning ticket under sub. (8), consistent with lottery games under s.565.27, Stats.

SECTION 5. Tax 61.02(3)(c) is created, to read:

Tax 61.02(3)(c) For break-open ticket games under s.565.01(6m)(a)1., Stats., a chance received for consideration that may entitle a player to a prize as a winning ticket under sub. (8), consistent with lottery games under s.565.27, Stats.

SECTION 6. Tax 61.02(4) is amended, to read:

Tax 61.02(4) "Low tier prize" means a lottery prize of ~~\$25.00~~\$49.00 or less, unless otherwise specified in the retailer's handbook.

SECTION 7. Tax 61.02(8) is renumbered Tax 61.02(9) and is amended, to read:

Tax 61.02 (~~8~~9) "Winning lottery ticket" or "winning lottery share" means any of the following:

~~(a) For instant scratch tickets under s. 565.01 (6m) (a) 1., Stats., the terms mean any ticket that has been validated by the Wisconsin lottery as a ticket that entitles a player to a prize.~~

~~(b) For on-line tickets under s. 565.01 (6m) (a) 2., Stats., the terms mean any ticket that has been identified by a secure method by the Wisconsin lottery as a ticket that entitles a player to a prize.~~ any lottery ticket under sub. (3), for which an appropriate validation under sub. (8) has been conducted by a representative of the lottery, which indicates that the lottery ticket is a winning ticket.

SECTION 8. Tax 61.02(8) is created, to read:

Tax 61.02(8) "Validation" means the action of identifying whether a Wisconsin lottery ticket is a winning lottery ticket, by industry means consistent with the type of ticket under sub. (3).

SECTION 9. Tax 61.02(9) is renumbered Tax 61.02(10), and is amended to read:

Tax 61.02(~~9~~10) "Wisconsin lottery" means the ~~the~~ department of revenue Wisconsin lottery division, the executive assistant, the secretary or the deputy secretary of revenue.

SECTION 10. Tax 61.04(1)(b) is repealed and recreated to read:

Tax 61.04(1)(b) ~~An inspection of the applicant's retail premises shows all of the following:~~

~~1. The applicant's premises are physically secure.~~

~~2. The applicant's premises have a secure place to store lottery tickets.~~ (b) The applicant shall affirm, in the contract application, that the applicant's business is physically secure and that the premise has a secure place to store lottery tickets.

SECTION 11. Tax 61.04(1)(c) is repealed.

SECTION 12. Tax 61.04(1)(d) is amended, to read:

Tax 61.04(1)(d) The applicant is expected to sell a minimum monthly average of \$400 worth of instant scratch tickets or instant break-open tickets or the sum of both each ~~month~~ fiscal quarter, under s. 565.01(6m)(a)1., Stats., which shall be represented in any retailer contract or addenda. The administrator may deny a contract or a renewal to an applicant whose anticipated ~~monthly~~ sales will not meet ~~a the stated~~ minimum of \$400 worth of instant scratch tickets each month ~~monthly average of sales per fiscal quarter~~ or whose historical ~~monthly~~ sales ~~are less than \$400 worth of instant scratch tickets each month~~ have not met the stated minimum monthly average of sales per fiscal quarter.

SECTION 13. Tax 61.05(1) is amended, to read:

Tax 61.05(1) The Wisconsin lottery may require from each retailer a fidelity bond or an irrevocable letter of credit, or both, in the amount determined by the administrator and based upon the applicant's projected lottery ticket sales. The administrator may also require from each retailer the payment of interest for any outstanding unpaid balance that results from a dishonored retailer's check or electronic funds transfer, under s. Tax 61.08(14)(d).

SECTION 14. Tax 61.05 (2) is amended, to read:

(2) The bond shall be payable upon the order of the Wisconsin lottery and may be obtained through an insurance agency or a bond and surety company. No individual bond may be less than \$500.00. The letter of credit shall be drawn upon a financial institution with offices

within the borders of the state of Wisconsin, and shall be drafted in a manner that allows the lottery to draw upon it without additional action taken by the retailer. No letter of credit may be accepted for which the lottery must pay a sum before it can draw upon the letter of credit.

SECTION 15. Tax 61.08(11)(c) is amended, to read:

Tax 61.08(11)(c) The retailer shall sell ~~at least \$400 worth of instant scratch tickets each month~~ a minimum monthly average of \$400 worth of instant scratch tickets or instant break-open tickets or the sum of both each fiscal quarter, under s. Tax 61.04(1)(d).

SECTION 16. Tax 61.08(11)(h) is repealed.

SECTION 17. Tax 61.08(12) is repealed.

SECTION 18. Tax 61.08(13)(a) is amended, to read:

Tax 61.08(13)(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 administrator may not reimburse the retailer for those losses ~~or for instant scratch tickets not returned by the retailer in the proper sequentially numbered order~~ other than unsalable tickets under paragraph (c).

SECTION 19. Tax 61.08(13)(c) and (d) are created, to read:

Tax 61.08(13)(c) The administrator may credit the retailer's account for the value that the retailer paid for instant scratch tickets that are unsalable after all the following conditions are met:

1. The tickets became unsalable due to any malfunction of lottery equipment used in the sale of the tickets.
2. The unsalable tickets are returned to the lottery before the settlement date of the game to which the pack belongs. Tickets returned after the settlement date may not be credited for value by the administrator.

3. There is no validation of any ticket that is returned for credit, and the latex or other protective measures on each returned ticket show no signs of tampering.
4. At the discretion of the administrator, the lottery may assess a service charge against the retailer account to recover the cost of returning the tickets.
5. Credit shall be the retailer's purchase price, and any credit or service charge shall be made to the retailer's electronic fund transfer account.

Tax 61.08(13)(d) In the event that the lottery administrator announces a settlement date for a game, a retailer may return tickets for credit on or before that announced settlement provided that conditions under par. (c) 2. to 5. are met.

SECTION 20. Tax 61.08(14)(d) is amended, to read:

Tax 61.08 (14)(d) The administrator may assess the retailer a surcharge, an interest penalty, or both, for each dishonored retailer's check or electronic fund transfer.

SECTION 21. Tax 61.08(15) is repealed.

SECTION 22. Tax 61.08(16)(a) is amended, to read:

Tax 61.08(16)(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~~ at another retail location or at any Wisconsin lottery's office, the Wisconsin lottery shall debit the retailer's account in that amount.

SECTION 23. Tax 61.08(17)(a) is repealed and recreated as Tax 61.08(17)(a) and (a)1., 2., and 3., to read:

Tax 61.08(17)(a) The administrator may accept returned break-open tickets for credit only under any of the following circumstances:

1. If the tickets are defective, 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 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 retailer. 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 61.08(21)(c) is amended, to read:

Tax 61.08(21)(c) The retailer failed to sell a ~~monthly minimum of \$400 worth of instant scratch tickets~~minimum monthly average of \$400 worth of instant scratch tickets or instant break-open tickets or the sum of both in any fiscal quarter, under s. Tax 61.04(1)(d).

SECTION 25. Tax 61.085(2)(a) is amended, to read:

Tax 61.085(2)(a) "Appropriate ~~quarterly~~ sales history" means the historical sales data that is used to calculate performance of a retail location within the RPP. The appropriate quarterly sales history data may be from either the comparable history quarter as defined under par. (b) or the immediately previous quarter as defined under par. (d). The appropriate annual sales history data shall be from the comparable history fiscal year under par. (b).

SECTION 26. Tax 61.085(2)(b) is renumbered Tax 61.085(2)(c).

SECTION 27. Tax 61.085(2)(b) is created, to read:

Tax 61.085(2)(b) "Comparable history fiscal year" means the previous fiscal year that has sales history in each sales quarter for a specific retail location.

SECTION 28. Tax 61.085(2)(c) is renumbered Tax 61.085(2)(d).

SECTION 29. Tax 61.085(2)(d) is renumbered Tax 61.085(2)(e).

SECTION 30. Tax 61.085(2)(e) is renumbered Tax 61.085(2)(g).

SECTION 31. Tax 61.085(2)(f) is renumbered Tax 61.085(2)(h), and is amended, to read:

Tax 61.085(2)(h) "Sales goals incentive" means the component of the RPP that pays incentives to retailers who increase gross sales in a specified sales quarter or specified fiscal year, or both, when the sales quarter or fiscal year is compared to an appropriate ~~quarterly~~ sales history as defined under par. (a).

SECTION 32. Tax 61.085(2)(f) is created, to read:

Tax 61.085(2)(f) "Instant ticket" means any of the following:

1. Any ticket which uses a scratch, pull-tab or break-open method, or a combination of those methods, as the method of player interaction with the ticket.

2. Any ticket where the features and procedures documentation under s.565.27, Stats., indicates the ticket is an instant ticket for purposes of the retailer performance program as identified under this section.

SECTION 33. Tax 61.085(2)(g) is renumbered Tax 61.085(2)(h).

SECTION 34. Tax 61.085(2)(h) is renumbered Tax 61.085(2)(i).

SECTION 35. Tax 61.085(2)(i) is renumbered Tax 61.085(2)(j).

SECTION 36. Tax 61.085(4)(a)1. is amended, to read:

Tax 61.085(4)(a)1. For winning lottery tickets, 2% of the stated prize value shall be paid to a retailer on each prize, up to a maximum of \$100,000 per winning lottery ticket prize level per drawing. In the event that a retailer or retailers earn more than \$300,000 from any one prize level in any one drawing, then the lottery shall divide \$300,000 equally among all retailers who earned an incentive from that prize level.

SECTION 37. Tax 61.085(4)(a)2. is amended, to read:

Tax 61.085(4)(a)2. For lottery television program entry tickets selected as winning tickets, \$30 shall be paid on each winning lottery ticket.

SECTION 38. Tax 61.085(4)(b) is amended, to read:

Tax 61.085(4)(b) Sales goals incentive. The sales goals incentive component of the RPP shall pay a retailer an incentive based on an increase in the amount of sales over the appropriate quarterly sales history ~~or the appropriate fiscal year in the case of jackpot terminal-generated games under subd. 3.~~ The incentive shall be tracked, measured and paid ~~based on one of 3 product types separately for each product type.~~ For each product type, a retailer shall satisfy eligibility requirements in sub. (3) and qualify for the product type under sub. (5). ~~For the~~

~~3 product types, instant ticket sales, non-jackpot terminal-generated sales and jackpot terminal-generated sales, the retailer shall receive incentives calculated as follows:~~

SECTION 39. Tax 61.085(4)(b)1. is renumbered Tax 61.085(4)(b)1.a. and is amended, to read:

Tax 61.085(4)(b)1.a. For the instant ticket sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate ~~quarterly~~ sales history ~~as defined under sub. (2) (a)~~ to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive ~~40%~~up to 2% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers.

Information regarding the details of any adjustment shall be made available upon request to the administrator.

SECTION 40. Tax 61.085(4)(b)1. is created, to read:

Tax 61.085(4)(b)1. (intro.) Quarterly payments may be paid for instant ticket product and for non-jackpot terminal generated product, and shall be made in the following manner:

SECTION 41. Tax 61.085(4)(b)2. is renumbered Tax 61.085(4)(b)1.b., and is amended, to read:

Tax 61.085(4)(b)2.1.b. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate ~~quarterly~~ sales history ~~as defined under sub. (2)(a)~~ to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive ~~40%~~up to 2% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment

made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator.

SECTION 42. Tax 61.085(4)(b)2. is created, to read:

Tax 61.085(4)2. (intro.) Annual payments may be paid for instant ticket product, non-jackpot terminal generated product and jackpot terminal-generated product, and shall be made in the following manner:

SECTION 43. Tax 61.085(4)(b)2.a. is created, to read:

Tax 61.085(4)(b)2.a. For the instant ticket sales product type the retailer shall receive an incentive calculated by comparing a fiscal year against the appropriate sales history to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase unless the administrator adjusts the payment to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator. Any incentive paid to a retailer shall be adjusted by the percentage of locations contracted to that retailer that do not generate an increase, except that locations which do not have a comparable history fiscal year are not considered when this adjustment is made.

Note: For example: If a retailer has a contract to sell lottery products that includes three retail locations and one of the retail locations fails to generate an increase, then the lottery will adjust the incentive payments to those retail locations which earned an increase. In this example, the adjustment of each payment is calculated by reducing each payment by one third, the number of retail locations included in the contract but for which an increase was not earned.

SECTION 44. Tax 61.085(4)(b)2.b. is created, to read:

Tax 61.085(4)(b)2.b. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the appropriate sales history to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase unless the administrator adjusts the payment to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator. Any incentive paid to a retailer shall be adjusted by the percentage of locations contracted to that retailer that do not generate an increase, except that locations which do not have a comparable history fiscal year are not considered when this adjustment is made.

Note: For example: If a retailer has a contract to sell lottery products that includes three retail locations and one of the retail locations fails to generate an increase, then the lottery will adjust the incentive payments to those retail locations which earned an increase. In this example, the adjustment of each payment is calculated by reducing each payment by one third, the number of retail locations included in the contract but for which an increase was not earned.

SECTION 45. Tax 61.085(4)(b)3. is renumbered Tax 61.085(4)(b)2.c., and is amended, to read:

Tax 61.085(4)(b)~~3-2.c.~~ For the jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the ~~previous fiscal year~~appropriate sales history to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase unless the administrator adjusts the payment

percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any other adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator. Any incentive paid to a location shall be adjusted by the percentage of locations contracted to that retailer that do not generate an increase, except that locations which do not have a comparable history fiscal year are not considered when this adjustment is made.

Note: For example: If a retailer has a contract to sell lottery products that includes three retail locations and one of the retail locations fails to generate an increase, then the lottery will adjust the incentive payments to those retail locations which earned an increase. In this example, the adjustment of each payment is calculated by reducing each payment by one third, the number of retail locations included in the contract but for which an increase was not earned.

SECTION 46. Tax 61.085(4)(c) is amended, to read:

Tax 61.085(4)(c) Short-term incentive. The short-term incentive shall pay a retailer an incentive based on the achievement of expected performance. Short-term incentives shall be designed to support a certain product or product type or to strengthen sales during certain times of the fiscal year. Performance expectations shall be related to the increasing of sales of lottery products and may be different for each short-term incentive offered to retailers. ~~The administrator may not offer more than 4 short-term incentives in one fiscal year.~~ A short-term incentive may not continue from one fiscal year into another fiscal year. The administrator shall determine whether short-term incentives are offered. The expected performance, and all other information important to the development of a specific short-term incentive, shall be indicated in a document that shall represent the features and procedures of the short-term campaign. Payment may be in the form of merchandise or lottery products. The features and procedures

document shall be published to the retailers no later than 2114 calendar days prior to the start date of the incentive and shall include the following:

SECTION 47. Tax 61.085(4)(c)3. is amended, to read:

Tax 61.085(4)(c)3. A statement of the start and end dates of the program and the expected time period that the plan will run, ~~not to exceed 13 weeks.~~

SECTION 48. Tax 61.085(4)(c)4. is amended, to read:

Tax 61.085(4)(c)4. A statement of how much funding may be made available for payment under the plan, not to exceed ~~\$100,000~~\$300,000 per short-term incentive.

SECTION 49. Tax 61.085(4)(c)6. is amended, to read:

Tax 61.085(4)(c)6. A detailed explanation of how incentive payments will be made, and that payments shall be made no later than the last Thursday of the month following the last day of the sales quarter in which the short-term incentive ends. If payment is made in merchandise or lottery product, the explanation will include information about the merchandise or lottery product.

SECTION 50. Tax 61.085(4)(d) is created, to read:

Tax 61.085(4)(d) *Merchandise as payment.* If merchandise is used as payment, all of the following conditions must be met:

SECTION 51. Tax 61.085(4)(d)1. is created, to read:

Tax 61.085(4)(d)1. The lottery may spend up to 10% of the funding available for the RPP, under s.565.02(4)(g), Stats., for merchandise or lottery product per fiscal year.

SECTION 52. Tax 61.085(4)(d)2. is created, to read:

Tax 61.085(4)(d)2. The lottery shall procure appropriate merchandise, merchandise fulfillment or inventory control for the implementation of short-term incentives by conducting procurement activities under s.565.25, Stats. The lottery shall properly account for lottery product used in a short-term incentive.

SECTION 53. Tax 61.085(4)(d)3. is created, to read:

Tax 61.085(4)(d)3. The lottery shall provide for the appropriate control of the merchandise or lottery product, including provisions for inventory and physical security where necessary.

SECTION 54. Tax 61.085(5)(a) is amended, to read:

Tax 61.085(5)(a) To qualify for ~~the annual sales goals incentives under sub. (4)(b)2.,~~ jackpot terminal-generated sales product type, a retail location shall have ~~no less than 52 weeks of sales history in the previous fiscal year~~ comparable history fiscal year as defined under sub. (2)(b).

SECTION 55. Tax 61.085(5)(am) is created, to read:

Tax 61.085(5)(am) If no appropriate sales history can be determined, the retail location may not be considered qualified for annual incentives for that product type. The administrator shall review qualification under each product type no less often than yearly, so that retail locations that become qualified may be included for incentive payments as soon as possible.

SECTION 56. Tax 61.085(5)(b) is amended, to read:

Tax 61.085(5)(b) To qualify for ~~instant ticket sales or non-jackpot terminal-generated sales product type~~ quarterly sales goals incentives under sub.(4)(b)1., a retail location shall meet the qualification criteria for that product type. Each product type shall be reviewed separately to determine if an appropriate quarterly sales history as defined under sub. (2)(a) is available to satisfy the criteria. The criteria are as follows:

SECTION 57. Tax 61.085(5)(b)1. is amended, to read:

Tax 61.085(5)(b)1. For a retail location, if there is ~~appropriate quarterly sales history as defined under sub. (2) (a), which is based on~~ comparable history quarter sales data as defined under sub. (2)(~~bc~~), the retailer shall be considered qualified for that product type.

SECTION 58. Tax 61.085(5)(b)2. is amended, to read:

Tax 61.085(5)(b)2. If no comparable history quarter exists for a retail location, the administrator shall substitute sales history from the immediately previous quarter as defined under sub.(2)(e).

SECTION 59. Tax 61.085(5)(b)3. is amended, to read:

Tax 61.085(5)(b)3. If no appropriate quarterly sales history can be determined, either by using data from a comparable history quarter or from an immediately previous quarter, the retail location may not be considered qualified for ~~the program~~ quarterly incentives for that product type. The administrator shall review qualification under each product type no less often than quarterly so that retail locations that become qualified may be included for incentive payments as soon as possible.

SECTION 60. Tax 61.085(6) is amended, to read:

Tax 61.085(6) PAYMENT OF INCENTIVES. The RPP incentives shall be paid in the following ~~manner~~ sequential order:

SECTION 61. Tax 61.085(6)(a) is renumbered Tax 61.085(6)(e)1.

SECTION 62. Tax 61.085(6)(a) is created, to read:

Tax 61.085 (6) (a) Winning Ticket Incentives, under sub. (4)(a).

SECTION 63. Tax 61.085(6)(b) is renumbered Tax 61.085(6)(e)3., and amended, to read:

Tax. 61.085(6)(~~be~~)3. The sales goals quarterly incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned, ~~except for the jackpot terminal-generated games which shall be paid no later than the last Thursday of the month following the last day of the fiscal year in which the incentive is earned.~~

The sales goals incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

SECTION 64. Tax 61.085(6)(b) is created, to read:

Tax 61.085(6)(b) Short-Term Incentives, under sub. (4)(c).

SECTION 65. Tax 61.085 (6)(c) is repealed and recreated, to read:

Tax 61.085(6)(c) Quarterly Sales Goals Incentives, under sub. (4)(b)1., where the sequence of product types paid shall be instant ticket sales products, then non-jackpot terminal-generated products.

SECTION 66. Tax 61.085(6)(d) is created, to read:

Tax 61.085(6)(d) Annual Sales Goals Incentives, under sub. (4)(b)2., where the sequence of product types paid shall be instant ticket sales products, then non-jackpot terminal-generated products, and last jackpot terminal-generated products.

SECTION 67. Tax 61.085(6)(e) is created, to read:

Tax 61.085(6)(e) The RPP incentives shall be paid in the following manner:

SECTION 68. Tax 61.085(6)(e)2. is created, to read:

Tax 61.085(6)(e)2. The short-term incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

SECTION 69. Tax 61.085(6)(e)4. is created, to read:

Tax 61.085(6)(e)4. The annual incentive payments shall be paid no later than the last Thursday of the month following the last day of the fiscal year in which the incentive is earned. Jackpot terminal-generated products shall be paid last of all incentive payments in a fiscal year. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

SECTION 70. Tax 61.085(7) is amended, to read:

Tax 61.085(7) FUNDING AUTHORITY. The administrator shall monitor the expenditures of the RPP at least quarterly, to ensure that the funding authority is not exceeded. Prior to the payment of incentives under sub. (4)(b), the administrator may implement a pre-payment adjustment to ensure that funding authority for the RPP is not exceeded, by reducing the payment of incentives earned ~~from an unexpectedly large jackpot or from an unexpectedly large increase in instant ticket or non-jackpot ticket sales.~~ Any pre-payment adjustment in any product type shall be implemented as indicated under sub. (4)(b), to limit the incentive paid so that the payments do not exceed the funding available or negatively impact the payment of earned incentives in the other components of the RPP.

SECTIONS 1. to 24. of 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.

SECTIONS 25. to 31. of the rules contained in this order shall take effect on July 2nd, 2005, following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 32. of 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.

SECTIONS 33. to 35 of the rules contained in this order shall take effect on July 2nd, 2005, following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTIONS 36. and 37. of 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.

SECTIONS 38. to 45. of the rules contained in this order shall take effect on July 2nd, 2005, following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTIONS 46. to 53. of 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.

SECTIONS 54. to 69. of the rules contained in this order shall take effect on July 2nd, 2005, following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 70. of 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.

Final Regulatory Flexibility Analysis

This order does not have a significant economic impact on a substantial number of small businesses, and does not generated new costs for any small businesses. This order does simplify and clarify a number of small business processes between the state and lottery retailers, and also improves the retailer performance program in ways which make the expected performance clearer and more consistent with state policy and lottery retailer activities.

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Michael L. Morgan
Secretary of Revenue