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State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 155

Relating to: Interest on Real Estate Trust Accounts

Clearinghouse Rule No.: 05-110

COM-10535 (N.03/97)

The Department of Commerce proposes an order to repeal and recreate s. Comm 155.06, relating to interest on real estate trust accounts and affecting small business.

Analysis of Proposed Rules

1. Statutes Interpreted.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25

2. Statutory Authority.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25

3. Related Statute or Rule.

None.

4. Explanation of Agency Authority.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25, requires the department to promulgate rules necessary to administer section 452.13, Stats.

5. Summary of Rule.

Currently, banks and lending institutions submit a statement and remit the interest from an interest bearing real estate trust account (IBRETA) to the department in any format and at any time of the year. The proposed rules require the submittal of the IBRETA information on a standardized form, or an equivalent form, and by a specific date each year.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

There is no existing or proposed federal regulation that addresses the submittal of the IBRETA information to the department.

7. Comparison with Rules in Adjacent States.

Minnesota

The Wisconsin IBRETA statute was modeled after the Minnesota statute, and as a result the two statutes are quite alike. In Minnesota, each real estate broker is required to deposit all client funds, inferred to include at least earnest money and other down payments, into an

interest-bearing trust account. As in Wisconsin, it is the responsibility of the financial institution, not the broker, to pay the interest, less transaction costs, to the state. The financial institution must also submit a statement including the name of the broker, the rate of interest, the amount of service charges deducted, and the account balance for the period.

The method of collection and disbursement of these funds differs slightly. In Minnesota, the interest accruing to these accounts is paid to the Commissioner of Finance and deposited in the Housing Trust Fund account. The Housing Trust Fund is managed by the Minnesota Housing Finance Agency (the equivalent of WHEDA) and consists of funds from these interest-bearing accounts along with other state funds, gifts, grants, donations, and other agency monies. The funds in the Housing Trust Fund account are used to support low-income housing in the state by providing loans or grants for the development, construction, acquisition, preservation, and rehabilitation of low-income rental housing, for the operating costs of low-income or supportive housing, and for rental assistance. Funds from the housing trust fund account may only be used to benefit persons and families with income less than 60 percent of the median income, and 75 percent of these funds must be used for the benefit of persons and families with income less than 30 percent of the median income for a defined seven county area. These funds may also be used to benefit households receiving section 8 vouchers.

Receipts from the real estate brokerage accounts have varied greatly since the program's inception in 1989. Below is a table of receipts by year for the past ten years. The figure for 2005 has been estimated based on receipts through March, 2005. In general, these receipts are comparable to those of the Wisconsin IBRETA program.

1996	1997	1998	1999	2000
\$386,677	\$399,527	\$419,028	\$412,398	\$376,645
2001	2002	2003	2004	2005
\$421,598	\$370,564	\$274,928	\$221,305	\$300,503

Iowa

The state of Iowa also requires that brokers deposit all money belonging to others, including receipts from property management, rental or lease, advanced fee, or earnest money contracts, into a trust account. Interest accruing to these accounts, less services charges, is to be remitted to the Iowa Department of Economic Development. It is the responsibility of the broker, as opposed to the financial institution as in Wisconsin and Minnesota, to see that the interest is remitted. Interest is remitted quarterly along with a Real Estate Interest Remittance Form and a copy of the bank statement.

Funds received by the Department of Economic Development are deposited in the Local Housing Assistance Fund. These funds are used for housing programs but are not limited to projects that benefit low-income households. The Iowa Department of Economic Development reports that in recent years these funds have amounted to roughly \$200,000. There has been a decline in the amount of funds received in recent years as a result of both low interest rates and a provision in Iowa law that permits brokers or clients to keep the interest on such accounts if specified in the contract.

Michigan

Michigan does not require brokers to deposit client funds into interest-bearing trust accounts. The Michigan statutes say that a broker may deposit such funds into an interest-bearing account and that the interest accrued by this account should be handled according to the contract between the broker and the client.

Illinois

Illinois similarly does not require brokers to deposit client funds into interest-bearing trust accounts. On the contrary, Illinois requires that brokers deposit escrow funds, meaning earnest money and security deposits, in non-interest-bearing accounts except in cases where the principals specifically require otherwise. In the case of an interest-bearing account, the recipient of the interest must be specified in the contract between the principals.

8. Summary of Factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The proposed rules should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

SECTION 1. Comm 155.06 is repealed and recreated to read:

Comm 155.06 Statement. The information required under s. 452.13. (2) (e) 2., Stats., shall be submitted annually by February 1, for the previous calendar year, to the department on form CDH-10829 or on an equivalent form. One report covering the aggregate accounts at a depository institution shall be submitted.

Note: Copies of form CDH-10829 are available at no charge from the Department of Commerce, P.O. Box 7970, Madison, WI 53707-7970, or by telephone at 608/266-8273, or on the Internet at www.commerce.wi.gov/CD.

Note: The address for submitting the annual report and payment to the department is the Wisconsin Department of Commerce – Administrative, P.O. Box 78257, Milwaukee, WI 53293-0257.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
