

CR 08-065

ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue adopts an order to: **create** Tax 8.03; **relating to** wine collectors and Tax 8.05; **relating to** small winery cooperative wholesalers.

Analysis by the Department of Revenue

Statutes interpreted: ss. 125.02 (23), 125.06 (11m) and 125.545, Stats.

Statutory authority: s. 125.03 (1) (b) and 125.545 (6) (b), Stats.

Related statute or rule: ss. 125.01, 125.02 (23), 125.06 (11m), 125.545, and 185.043 (2), Stats.

Plain language analysis: This rule does the following:

- Provides the requirements for registration of wine collectors, the sale of wine held by the collector to other wine collectors and notice to the department in advance of any sale.
- Details the procedure for the creation and organization of small winery cooperative wholesalers. Listing the application process, and requirements for the members of the cooperative.
- Creates a provision specifying that the department may approve cooperative wholesaler applications to provide greater public convenience and service to all areas of Wisconsin.
- Details the activities authorized for small winery cooperative wholesalers.

Summary of, and comparison with, existing or proposed federal regulation:

The Federal Alcohol Administration Act, title 27 chapter 8 of the United States Code, provides for regulation of those engaged in the alcohol beverage industry. In particular 27 U.S.C. §203 (a) and 27 C.F.R. §1.22 requires cooperatives engaging in the business of purchasing wine for resale at wholesale to obtain a federal wholesaler's basic permit.

The rule does not conflict with, overlap, or duplicate other rules or federal regulations.

Comparison with rules in adjacent states:

Illinois – No similar rule exists.

Iowa – No similar rule exists.

Michigan – No similar rule exists.

Minnesota – No similar rule exists.

Summary of factual data and analytical methodologies: 2007 Wisconsin Act 85 created s. 125.03 (1) (b), which established the registration of wine collectors and the requirements for the sale of wine by a wine collector, and s. 125.545 Stats., which defines small wineries and establishes the standards for the creation of a small winery cooperative wholesaler. The principal purpose of cooperative wholesalers is to sell and distribute wine manufactured by small wineries. Within the provisions of s. 125.03 (1) (b), Stats., is a requirement that the department promulgate rules to:

- Provide for the registration of wine collectors.
- Establish the standards of eligibility for registration as a wine collector.
- Specify the form and manner of notice required before the sale of wine by a wine collector.

Within the provisions of s. 125.545(6) (b), Stats., is a requirement that the department shall promulgate rules to administer and enforce the requirements relating to small winery cooperative wholesalers.

In consultation with wineries, the Wisconsin federation of cooperatives, the University of Wisconsin center for cooperatives, and the liquor wholesaler industry, the department has created this rule order to satisfy the above requirements.

Analysis and supporting documents used to determine effect on small business: This rule is created in accordance with SECTION 50 of 2007 Wisconsin Act 85 and ss. 125.03(1)(b) and 125.545(6)(b), Stats., to administer and enforce statutory requirements pertaining to wine collectors and small winery cooperative wholesalers. As the rule does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

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

Effect on small business: This rule does not have a significant effect on small business.

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

SECTION 1. Tax 8.03 is created to read:

Tax 8.03 Wine collectors. (1) PURPOSE. The purpose of this section is to set forth the requirements for the registration and sales activities of wine collectors.

(2) DEFINITIONS. For purposes of ss. 125.02 (23) and 125.06 (11m), Stats., and in this section, “wine collector” means an individual who collects and holds, or intends to collect and hold manufacturer-sealed bottles or containers of wine and is registered with the department as a collector of wine.

Note: Wine collector registrations may be addressed to Wisconsin Department of Revenue, PO Box 8900, Madison, Wisconsin 53708-8900.

(3) WINE SALES BY WINE COLLECTORS. (a) A wine collector may sell to any other wine collector manufacturer-sealed bottles or containers of wine held by the selling collector for at least 8 years, if the selling wine collector files a written notice of the sale with the department at least 30 days prior to the sale. The notice shall contain all of the following information:

1. The date and location of the sale.
2. The date the wine was originally purchased by the selling collector.
3. A description of the transaction, listing the quantity and price of the wine to be sold.
4. The name and address of an agent, consignee, lienor, or broker contracted to sell the wine by the selling collector, and a copy of any contract entered into between the selling collector and the agent, consignee, broker, or lienor.

Note: A notice of sale may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to Wisconsin Department of Revenue, PO Box 8900, Madison, Wisconsin 53708-8900

(b) No more than one sale in any 12 month period may be conducted by a wine collector under this subsection.

(c) A wine collector conducting a sale under this subsection shall provide purchase invoices or any other information as required by the department to verify that the requirements described in s. 125.06 (11m), Stats., have been met.

(4) ELECTRONIC FILING. (a) The department may require a wine collector to file the notice required under sub. (3)(a) electronically by means prescribed by the department. The department shall notify the wine collector at least 90 days prior to the effective date of the requirement to file electronically.

(b) The secretary of revenue may waive the requirement for a wine collector to file the notice required under sub. (3)(a) electronically when the secretary determines that the requirement causes an undue hardship, if the wine collector does all of the following:

1. Requests the waiver in writing.

Note: Written waiver requests should be addressed to: Wisconsin Department of Revenue, PO Box 8900, Madison WI 53708-8900.

2. Clearly indicates why the requirement causes an undue hardship.

(c) In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the wine collector from filing electronically.

Example: The wine collector does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

SECTION 2. Tax 8.05 is created to read:

Tax 8.05 Small winery cooperative wholesalers. (1) PURPOSE. The purpose of this section is to set forth the requirements for the creation and operation of small winery cooperative wholesalers, under s. 125.545, Stats.

(2) DEFINITIONS. In this section, and in s. 125.545, Stats.:

(a) "Member" has the meaning given in s. 125.545 (1) (a), Stats.

(b) "Out-of-state winery" has the meaning given in s. 125.545 (1) (b), Stats.

(c) "Purchase on consignment" means to receive, purchase or acquire wine from a member of the small winery cooperative wholesaler for cash or credit for a period of not more than 90 days.

(d) "Retailer" has the meaning given in s. 125.545 (1) (c), Stats.

(e) "Small winery" has the meaning given in s. 125.545 (1) (d), Stats.

(f) "Small winery cooperative wholesaler" has the meaning given in s. 125.545 (1) (e), Stats.

(g) "Wisconsin winery" has the meaning given in s. 125.545 (1) (f), Stats.

(3) CREATION OF SMALL WINERY COOPERATIVE WHOLESALERS. (a) Three or more individuals, at least one of whom must be a Wisconsin resident and all of which must be owners of small wineries certified by the department under s. 125.545(6)(a), Stats., may, with a wholesaler's permit issued under s. 125.54, Stats., operate in Wisconsin as a small winery cooperative wholesaler.

(b) The application for the wholesaler's permit required under par. (a) shall be filed on the Wisconsin liquor-wine permit application, form AB-115, and shall be submitted to the department within 7 days after the cooperative's articles of incorporation are filed with the department of financial institutions, under the provisions of ch. 185, Stats.

Note: Form AB-115 may be obtained by writing to: Wisconsin Department of Revenue, PO Box 8900, Madison, WI 53708-8900.

(c) The agent and principal office of a cooperative wholesaler shall be in Wisconsin.

(d) To provide greater public convenience and service to all areas of Wisconsin, when making a determination on an application for a wholesaler's permit filed under par. (b), the department shall consider the ability of the cooperative to effectively serve its members and Wisconsin retailers, as indicated by the location of the principal office, the location of

the participating wineries, the location of any warehouse or storage facility, requirements for membership as detailed in its bylaws, and any other relevant factors.

(e) The department may not issue a new wholesaler's permit to a cooperative wholesaler before October 1, 2008 or after December 31, 2008, and shall make a determination on an application for a wholesaler's permit in accordance with the requirements of s. Tax 8.61.

(4) AUTHORIZED ACTIVITIES OF SMALL WINERY COOPERATIVE WHOLESALERS.

(a) A cooperative wholesaler may sell market and distribute wine manufactured, blended, or mixed, and bottled by the members of the cooperative wholesaler.

(b) Within 21 days after filing the articles of incorporation, the cooperative wholesaler shall adopt bylaws and file a copy of the articles and bylaws with the department. The bylaws shall contain all of the following information:

1. Reasonable membership requirements that recognize the cooperative wholesaler's duty to negotiate in good faith with wineries that seek to sell products and to diligently ensure that distribution channels are available for the sale of wine from small wineries.
2. A statement that any applicants meeting such requirements be admitted into the cooperative.
3. A description of the rights and responsibilities of members.
4. The process for the election of the board of directors.
5. The plans for a membership meeting.
6. Whether the cooperative will allow non-members to purchase preferred stock.

(c) A cooperative wholesaler is permitted to purchase wine industry trade goods, including bottles, corks, and other supplies consumed in the bottling and sale of wine, and marketing materials and services, including signs, menu boards, and clothing such as caps and t-shirts. The trade goods may not include any alcohol beverages.

(d) A cooperative wholesaler may provide compensation for reasonable expenses of winery owners and employees, acting as volunteers in the sale and distribution of wine by the cooperative. Reasonable expenses may not include compensation for time spent acting as a volunteer.

(e) 1. The cooperative wholesaler shall provide the department with a biennial report with its application for wholesaler permit renewal. The biennial report shall summarize the sales quantity and product data for all wine and wine industry trade goods sold by the cooperative wholesaler.

2. The department will send a renewal notice to the cooperative wholesaler prior to the time the wholesaler permit reaches its expiration date.

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 rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Roger M. Ervin
Secretary of Revenue