

CR 13-034

**ORDER OF THE DEPARTMENT OF REVENUE AMENDING AND CREATING RULES**

The Wisconsin Department of Revenue adopts an order to: **amend** Tax 61.08 (11) (h) and (k) and (13) (a) and **create** Tax 61.08 (13) (cm); **relating to** lottery retailers.

The scope statement for this rule, SS 001-13, was approved by the Governor on December 27, 2012, published in Register No. 685 on January 31, 2013, and approved by the Secretary of Revenue on February 11, 2013.

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***Analysis by the Department of Revenue***

**Statute interpreted:** ss. 565.10 (1) and 565.17 (2), Stats.

**Statutory authority:** s. 565.02 (4) (a), Stats.

**Explanation of agency authority:** Section 565.02 (4) (a), Stats., provides the department may promulgate rules “[i]mplementing the provisions of this chapter.”

**Related statute or rule:** There are no other applicable statutes or rules.

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

- Amends s. Tax 61.08 (11) (h) and (k) to eliminate discretionary authority of the Lottery Administrator that is not provided by law.
- Creates a provision in s. Tax 61.08 (13) to allow a retailer's account to be credited for the value paid for instant scratch tickets that have been stolen.

**Summary of, and comparison with, existing or proposed federal regulation:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Comparison with rules in adjacent states:** The department is not aware of a similar rule in an adjacent state.

**Summary of factual data and analytical methodologies:** 2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency's administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. No other data was used in the preparation of this rule order or this analysis.

**Analysis and supporting documents used to determine effect on small business:** This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

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

**Effect on small business:** This rule order does not affect small business.

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

**Place where comments are to be submitted and deadline for submission:** The deadline for comments concerning this rule order was July 12, 2013.

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**SECTION 1.** Tax 61.08 (11) (h) and (k) and (13) (a) are amended to read:

Tax 61.08 (11) (h) The retailer may not add any service fee, handling fee or other expense to the purchase of a ticket or share ~~without the written permission of the administrator.~~

(k) The retailer may not conduct sales of lottery tickets or shares to off-premises customers by telephone, email, instant messaging or similar electronic means, or by mail, parcel, delivery service or similar service, ~~without the written permission of the administrator.~~

(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~~ Except as provided in pars. (c) and (cm), the administrator may not reimburse the retailer for those losses ~~other than unsalable tickets under par. (c).~~

**SECTION 2.** Tax 61.08 (13) (cm) is created to read:

Tax 61.08 (13) (cm) 1. The administrator may credit the retailer's account for the value the retailer paid for instant scratch tickets that are stolen. In determining whether to provide credit, the administrator may consider the following factors:

- a. Compliance with the reporting requirement under par. (b).
- b. Whether the theft has been reported to law enforcement.
- c. Final return date of the game to which the stolen tickets belong.
- d. Validation of any ticket that is reported stolen.
- e. The retailer's prior record of reporting stolen tickets to the department.
- f. Security of the retailer's business and the place where tickets are stored.
- g. Any other facts and circumstances the administrator believes pertinent.

2. Credit under this paragraph shall be the retailer's purchase price, and any credit shall be made to the retailer's electronic fund transfer account.

**SECTION 3.** Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

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DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Richard G. Chandler  
Secretary of Revenue

E:Rules/SBRRB (Lottery) Final Order