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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-123

AN ORDER to create Tax 9.69, relating to the master settlement agreement between the state of Wisconsin and tobacco product manufacturers.

Submitted by **DEPARTMENT OF REVENUE**

08-15-00 RECEIVED BY LEGISLATIVE COUNCIL.
09-08-00 REPORT SENT TO AGENCY.

RS:LR:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 00-123

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. Tax 9.69 (2) (a), the material after the statutory citation should be deleted. The statutory reference already includes the material that was added after the statutory citation.
- b. In s. Tax 9.69 (4), the escrow fund referred to should be consistently referred to as the "escrow fund," rather than the "escrow account."
- c. To the extent that "any other information the department may deem necessary," as referenced in s. Tax 9.69 (3) (b) 6., is currently known, it should be placed in the rule. [See also sub. (5) (d).]
- d. In s. Tax 9.69 (5) (intro.), the phrase "all of" should be inserted before the phrase "the following."
- e. The material in the note to s. Tax 9.69 (6) should be placed in a subsection at the beginning of the rule relating to scope or purpose.

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. Tax 9.69 (2) (f), does the phrase "similar intermediary" refer to both a distributor and a retailer? The sentence structure can be maintained by replacing the phrase "similar

intermediary” with either the phrase “intermediary similar to a distributor or a retailer” or the phrase “intermediary similar to a retailer.”



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

September 28, 2000

Honorable Fred Risser
President, State Senate
Rm 220 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Scott Jensen
Speaker State Assembly
Rm 211 W State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 00-123

Dear Senator Risser and Representative Jensen:

This is to notify you, in accordance with s. 227.19(2), Stats., that the proposed rule order relating to the tobacco product manufacturers' Master Settlement Agreement is in final draft form. The proposed rule order and Notice of Hearing were published in the **Wisconsin Administrative Register** on August 31, 2000. A public hearing was held on September 18, 2000.

Copies of the proposed rule order and Report required under s. 227.19(2) and (3), Stats., are enclosed. A brief summary of the proposed rule order follows:

Summary of Proposed Rule Order

Statutory authority: ss. 227.24 and 895.10(4), Stats.

Statutes interpreted: subchs. II and III of ch. 139, Stats., and s. 895.10, Stats.

SECTION 1. Tax 9.69 is created, to describe methods and requirements relating to collecting, maintaining and reporting data to ascertain the amount of Wisconsin excise tax paid each year, on cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund or, if the department deems it appropriate, is a participating manufacturer under the Master Settlement Agreement. The information is necessary in order to be in

September 28, 2000
Page 2

compliance with 1999 Wis. Act 122, the model statute enacted as part of the Master Settlement Agreement with tobacco product manufacturers.

Sincerely,



Cate Zeuske
Secretary of Revenue

CZ:MPW:cll
e:rules969 Committees - President Speaker

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 00-123
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to describe methods and requirements relating to collecting, maintaining and reporting data to ascertain the amount of Wisconsin excise tax paid each year, on cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund or, if the department deems it appropriate, is a participating manufacturer under the Master Settlement Agreement. The information is necessary in order to be in compliance with 1999 Wis. Act 122, the model statute enacted as part of the Master Settlement Agreement with tobacco product manufacturers.

Public Hearing

A public hearing was held on September 18, 2000. Nobody appeared at the hearing to provide testimony or comment. One person appeared but did not wish to register or speak.

Legislative Council Staff Recommendations

All recommendations of the Legislative Council staff have been incorporated into the proposed rule, except as follows:

- Comment 2.a - The change in s. Tax 9.69(2)(a) was not made. The additional material is necessary to avoid confusion, because the definition of "cigarette" in s. 139.30(1), Stats., does not include "roll-your-own" cigarette tobacco.
- Comment 2.c - No additional information is added in s. Tax 9.69(3)(b)6. or (5)(d), because the department is not aware of any additional information it may deem necessary.
- Comment 2.e - The note at the end of s. Tax 9.69 is not changed because all rules of the Department of Revenue contain a note at the end of the rule, relating to what statutes the section interprets.

Regulatory Flexibility Analysis

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

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
CREATING RULES**

The Wisconsin Department of Revenue proposes an order to create Tax 9.69, relating to the Master Settlement Agreement between the state of Wisconsin and tobacco product manufacturers.

Analysis by the Department of Revenue

Statutory authority: ss. 227.24 and 895.10(4), Stats.

Statutes interpreted: subchs. II and III of ch. 139, Stats., and s. 895.10, Stats.

SECTION 1. Tax 9.69 is created, to describe methods and requirements relating to collecting, maintaining and reporting data to ascertain the amount of Wisconsin excise tax paid each year, on cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund or, if the department deems it appropriate, is a participating manufacturer under the Master Settlement Agreement. The information is necessary in order to be in compliance with 1999 Wis. Act 122, the model statute enacted as part of the Master Settlement Agreement with tobacco product manufacturers.

SECTION 1. Tax 9.69 is created to read:

Tax 9.69 Master settlement agreement with tobacco product manufacturers. (1)

PURPOSE. This section describes requirements and methods relating to collecting, maintaining and reporting data regarding the number of Wisconsin state cigarette excise tax stamps affixed to packages of cigarettes, and the amount of "roll-your-own" cigarette tobacco, sold in Wisconsin each year.

Note: The data collected, maintained and reported under this section shall be used to ascertain the amount of Wisconsin excise tax paid on the cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund under s. 895.10, Stats., for each year, or, if the department deems it appropriate, is a participating manufacturer under the master settlement agreement between the state and tobacco product manufacturers, pursuant to 1999 Wis. Act 122.

(2) **DEFINITIONS.** In this section:

(a) "Cigarette" has the same meaning as in s. 895.10(1)(d), Stats., and includes "roll-your-own" cigarette tobacco.

(b) "Master settlement agreement" has the same meaning as in s. 895.10(1)(e), Stats.

(c) "Qualified escrow fund" has the same meaning as in s. 895.10(1)(f), Stats.

(d) "Sell" or "sale" has the same meaning as in s. 139.30(12), Stats.

(e) "Tobacco product manufacturer" has the same meaning as in s. 895.10(1)(i), Stats., and includes both a cigarette manufacturer under subch. II of ch. 139, Stats., and a tobacco products manufacturer under subch. III of ch. 139, Stats., that sells "roll-your-own" cigarette tobacco.

(f) "Wisconsin consumer" means a consumer within this state, including a direct consumer, distributor, retailer or intermediary similar to a distributor or a retailer.

(3) REPORTING REQUIREMENT. (a) Every tobacco product manufacturer that elects to sell cigarettes to Wisconsin consumers shall, by the 15th day of each month, file a schedule with the department that reconciles the number of Wisconsin state cigarette excise tax stamps affixed to packages of cigarettes sold to Wisconsin consumers and the amount of "roll-your-own" cigarette tobacco sold to Wisconsin consumers in the previous calendar month.

(b) The schedule required under par. (a) shall contain all of the following information that is applicable:

1. A listing of each sale of cigarettes other than "roll-your-own" cigarette tobacco manufactured, or the name of the manufacturer of the cigarettes that were delivered to Wisconsin consumers, onto which state cigarette excise tax stamps were affixed.

2. A listing of each sale of "roll-your-own" cigarette tobacco manufactured, or the name of the manufacturer of the "roll-your-own" cigarette tobacco, that was delivered to Wisconsin consumers.

3. For each manufacturer listed pursuant to subd. 1., a listing of all brands of cigarettes sold and the number of Wisconsin state cigarette excise tax stamps affixed to cigarette packages with respect to each brand.

4. For each brand of cigarettes listed for each manufacturer pursuant to subd. 3., the following additional information, if known:

a. The name of the manufacturer of the cigarettes.

b. The name of the person or entity first responsible for the cigarettes being designated or identified for sale in the United States.

5. For each sale of "roll-your-own" cigarette tobacco listed for each manufacturer pursuant to subd. 2., the following additional information, if known:

a. The name of the manufacturer of the "roll-your-own" cigarette tobacco.

b. The name of the person or entity first responsible for the "roll-your-own" cigarette tobacco being designated or identified for sale in the United States, by brand.

6. Any other information the department may deem necessary to administer the provisions of this section.

(4) ESCROW FUND CERTIFICATION REQUIREMENTS. (a) Every tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement shall by April 15 of each year certify to the department and to the attorney general that the amounts required under s. 895.10(2)(b), Stats., have been placed into a qualified escrow fund that is designated for Wisconsin judgments or release payments.

(b) The certification required under par. (a) shall include all of the following:

1. The name of the qualified financial institution where the escrow fund is maintained.

2. The amount of funds placed into the escrow fund since the last reporting period, based on Wisconsin sales.

3. The amounts, if any, paid out of the escrow fund in judgments or release payments and the purpose of the disbursements.

4. The balance in the escrow fund as of March 31 of each year.

5. A copy of the escrow fund balance statement as of March 31 of each year.

(5) RECORDKEEPING REQUIREMENTS. Every tobacco product manufacturer required to file a schedule under sub. (3) shall maintain complete and accurate records to

support the information reported on the required schedule. These records shall be maintained for a period of 4 years from the date of sale into Wisconsin and shall include all of the following:

(a) Purchase records indicating the tobacco product manufacturer of the cigarettes, the date of purchase and the number of cigarettes by brand or amount of "roll-your-own" cigarette tobacco purchased, by brand.

(b) Sales records indicating to whom the sale was made, the tobacco product manufacturer of the cigarettes, the date of sale and the number of cigarettes by brand or amount of "roll-your-own" cigarette tobacco sold.

(c) The number of Wisconsin cigarette tax stamps placed on packages of cigarettes for sale in the state of Wisconsin.

(d) Any additional records deemed necessary by the secretary.

(6) REMEDIES FOR NONCOMPLIANCE. The failure of a tobacco product manufacturer to either become a participating manufacturer under the terms of the master settlement agreement or place funds into a qualified escrow fund, as provided in s. 895.10(2)(b)1., Stats., shall be subject to civil action and penalties under s. 895.10(2)(b)3., Stats.

Note: Section Tax 9.69 interprets subchs. II and III of ch. 139, Stats., and s. 895.10, Stats.

The rule 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(intro.), Stats.

Initial Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: _____

9/28/00

By: _____

Cate Zeuske

Cate Zeuske
Secretary of Revenue

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
- CORRECTED SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # Tax 9.69

Subject

Tobacco Product Manufacturers' Master Settlement Agreement

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

- Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No Local Government Costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This rule prescribes the mechanisms for collecting, maintaining and reporting data required by the master settlement agreement with tobacco product manufacturers. It has no effect on state tax or other revenues.

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue Dennis Collier, (608) 266-5773	Authorized Signature/Telephone No. Dennis Collier <i>Dennis Collier</i> (608) 266-5773	Date 8/11/00
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