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☛ Details: DOR Emergency Rule Extension, Tax 8.63. Public hearing held May 20, 2008.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Record of Committee Proceedings

Joint Committee for Review of Administrative Rules

DOR Emergency Rule Extension, Tax 8.63

Relating to liquor wholesaler warehouse facilities. Request for additional 60-day extension, to prevent any lapse in coverage until the permanent rule becomes effective. Set to expire on May 26, 2008.

May 20, 2008

PUBLIC HEARING HELD

Present: (10) Senators Jauch, Lehman, Kreitlow, Grothman and Leibham; Representatives LeMahieu, Zipperer, Friske, Black and Berceau.

Absent: (0) None.

Appearances For

- Sherrie Gates-Hendrix, Madison — Legislative Liaison, Department of Revenue

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- None.

Registrations Against

- None.

Registrations for Information Only

- None.

May 20, 2008

EXECUTIVE SESSION HELD

Present: (10) Senators Jauch, Lehman, Kreitlow, Grothman and Leibham; Representatives LeMahieu, Zipperer, Friske, Black and Berceau.

Absent: (0) None.

Moved by Senator Lehman, seconded by Senator Grothman that **DOR Emergency Rule Extension, Tax 8.63** be recommended for adoption.

Ayes: (10) Senators Jauch, Lehman, Kreitlow, Grothman and Leibham; Representatives LeMahieu, Zipperer, Friske, Black and Berceau.

Noes: (0) None.

ADOPTION RECOMMENDED, Ayes 10, Noes 0

Sarah Barry
Committee Clerk

Vote Record
Joint Committee for Review of Administrative Rules

Date: 5/20/08

Moved by: Grothman, Lehman

Seconded by: Groth

DOR tax 8.63

AB _____ SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

- Be recommended for:
- | | | | | |
|---------------------------------------|------------------------------------|---------------------------------------|---|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Adoption | <input type="checkbox"/> Confirmation | <input type="checkbox"/> Concurrence | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Rejection | <input type="checkbox"/> Tabling | <input type="checkbox"/> Nonconcurrency | |

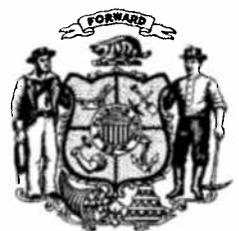
<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Robert Jauch, Co-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Daniel LeMahieu, Co-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator John Lehman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Pat Kreitlow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Joseph Leibham	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Rich Zipperer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Donald Friske	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Terese Berceau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	_____	_____	_____	_____

Motion Carried

Motion Failed



WISCONSIN STATE LEGISLATURE





State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK ROAD • P.O. BOX 8925 • MADISON, WISCONSIN 53708-8925 • 608-266-6466 • FAX (608) 266-5718 • <http://www.revenue.wis.gov>

Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

April 16, 2008

Honorable Robert Jauch
Co-Chair Joint Committee for Review
of Administrative Rules
Room 118 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Daniel LeMahieu
Co-Chair Joint Committee for Review
of Administrative Rules
Room 17 North State Capitol
PO Box 8952
Madison WI 53708-8952

Re: Emergency Rule Extension - Tax 8.63

Dear Senator Jauch and Representative LeMahieu:

To provide for additional time necessary to promulgate a permanent rule, I am requesting, under s. 227.24(2)(a), Stats., an additional 60-day extension of the emergency rule updating Tax 8.63, relating to liquor wholesaler warehouse facilities. This additional extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule expires May 26, 2008.

A permanent rule has been developed and has been approved by the Assembly Committee on State Affairs and the Senate Committee on Commerce, Utilities, and Rail. However, since the permanent rule cannot be in place before the emergency rule expires, an additional 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

Honorable Robert Jauch
Honorable Daniel LeMahieu
Page 2
April 16, 2008

Analysis

The emergency rule is to change the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of permits denied solely because they do not meet the square footage requirement in the existing rule.

Thank you for your consideration in this matter.

Sincerely,



Roger M. Ervin
Secretary of Revenue

RME:DSK

e.rules1863 - 2007 - Emergency - 2nd Extension - JCRAR

Enclosure

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 125.54 (7), Stats. relating to liquor wholesaler warehouse facilities.

Analysis by the Department of Revenue

Statute interpreted: s. 125.54 (7), Stats.

Statutory authority: s. 227.24, Stats.

Explanation of agency authority: An agency may promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements of the statutes if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Related statute or rule: s. 125.54 (7), Stats.

Plain language analysis: This emergency rule changes the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

In addition to the changes to the requirements concerning liquor wholesaler warehouse facilities and liquor wholesalers, the rule creates a provision requiring the department to prepare and maintain a list of all liquor wholesale permittees and shall post the names from this list on the Internet. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

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: Tax 8.63 was created to satisfy the requirements of s. 125.54 (7), Stats., which, in part, provides that the department establish minimum requirements for warehouse facilities on premises described in wholesalers' permits. One of the requirements established by Tax 8.63 is that a liquor warehouse facility be a minimum of 4,000 square feet of floor space.

Since the provisions of Tax 8.63 became effective, the department has become aware of bona fide liquor wholesalers whose facilities are less than the required 4,000 feet of floor space. In response, the department has created this emergency rule to lessen the required amount of floor space and provide an exception so that a bona fide liquor wholesaler will not have an application for issuance or renewal of a permit denied solely because it does not meet the square footage requirement.

Analysis and supporting documents used to determine effect on small business:

As the proposed changes to Tax 8.63 ease the requirements for warehouse facilities, the department has concluded that this emergency rule does not have a significant effect on small business.

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

Effect on small business: This emergency 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 emergency rule.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the contact person shown below no later than one week after the public hearing on this this emergency rule and the accompanying proposed permanent rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to change the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of permits denied solely because they do not meet the square footage requirement in the existing rule.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

SECTION 1. Tax 8.63 (1) is amended to read:

(1) **MINIMUM REQUIREMENTS FOR WAREHOUSE FACILITIES.** The premises described in a permit issued under s. 125.54, Stats., shall be a minimum of ~~4,000~~ 1,000 square feet of floor space and shall be located in a free-standing building that is not part of or connected to a premises covered by a retail license or permit issued under s. 125.51, Stats.

SECTION 2. Tax 8.63 (1m) is created to read:

(1m) **EXCEPTION TO MINIMUM REQUIREMENTS.** The secretary of revenue may waive the requirement that a premises described in a permit issued under s. 125.54, Stats., be a minimum of 1,000 square feet of floor space when the secretary determines the waiver fair and equitable, if the applicant or permittee does both of the following:

(a) Submits a written request for a waiver along with the application for issuance or renewal of a permit.

(b) Clearly indicates how the requirements described in sub. (1) and s. 125.54 (7), Stats., otherwise will be or have been met.

SECTION 3. Tax 8.63 (7) is created to read:

(7) **INTERNET POSTING OF PERMITTEE INFORMATION.** The department shall prepare and maintain a list of all permittees under s. 125.54, Stats., and shall post the names of permittees from this list on the Internet at a site that is created and maintained by the department. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

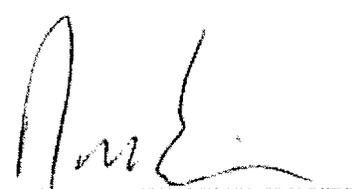
Note to Revisor: Replace the first note at the end of Tax 8.63 (7) with the following:

Note: This section interprets s. 125.54 (7), Stats.

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

DEPARTMENT OF REVENUE

Dated: 10/23/07

By: 

Roger M. Ervin
Secretary of Revenue

FISCAL ESTIMATE FORM

2007 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 07-

INTRODUCTION #

Admin. Rule # Chapter Tax 8.63 (Emergency Rule)

Subject

Chapter Tax 8.63 -- Liquor Wholesaler Warehouse Facility

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:

2005 Wisconsin Act 25 (the 2005-07 budget bill) created s. 125.54 (7) which, in part, required the Department of Revenue to establish by rule minimum requirements for liquor warehouse facilities. In response, the department established the current administrative rule under Tax 8.63, which requires a liquor wholesaler warehouse facility to have a minimum of 4,000 square feet of floor space and be located in a free-standing building that is not part of or connected to a liquor retailer facility.

The proposed emergency rule reduces from 4,000 to 1,000 the minimum square footage of floor space that a liquor wholesaler warehouse facility must have to be eligible for a liquor wholesaler's permit. It also creates a provision that allows the minimum square footage requirement to be waived, if it is determined that a waiver is fair and equitable. In addition, the proposed emergency rule requires the Department of Revenue to maintain an Internet listing of all liquor warehouse permittees, including the total square footage of floor space of the premises under each warehouse permit.

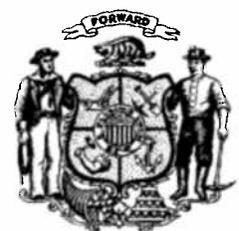
While the proposed emergency rule will avoid denying liquor warehouse permits to certain liquor wholesalers that would qualify for a permit except for the current 4,000 minimum square foot requirement, it will have no significant impact on either state tax revenues or the department's administrative costs.

Long-Range Fiscal Implications:

<p>Agency/Prepared by Wisconsin Department of Revenue</p> <p>Jacek Cianciara 608 266-8133</p>	<p>Authorized Signature/Telephone No. Wisconsin Department of Revenue</p> <p>Paul Ziegler  608 266-5773</p>	<p>Date</p> <p>10-10-07</p>
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WISCONSIN STATE LEGISLATURE



SENATOR BOB JAUCH
CO-CHAIR

P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-3510



REPRESENTATIVE DANIEL LEMAHIEU
CO-CHAIR

P.O. Box 8952
MADISON, WI 53708-8952
(608) 266-9175

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

May 20, 2008

Roger M. Ervin, Secretary
Wisconsin Department of Revenue
2135 Rimrock Road
P.O. Box 8933 Mail Stop 624-A
Madison, WI 53708-8933

Dear Secretary Ervin:

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 20, 2008 and adopted the following motion:

Moved by Senator Lehman, seconded by Senator Grothman that **DOR Emergency Rule Extension, Tax 8.63**, related to liquor wholesaler warehouse facilities be granted a 60-day extension. This rule is set to expire May 26, 2008.

Motion Passed 10-0.

Pursuant to s. 227.24(2)(c), stats., we are notifying the Legislative Reference Bureau of the Committee's action through copies of this letter.

Sincerely,

Senator Bob Jauch
Senate Co-Chair

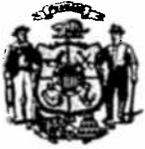
Representative Daniel LeMahieu
Assembly Co-Chair

Cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council



WISCONSIN STATE LEGISLATURE





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PHONE (608) 266-6466 • FAX (608) 268-5718 • <http://www.revenue.wi.gov>

Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

Joint Committee for Review of Administrative Rules Hearing, May 20, 2008

Tax 8.63 – DOR Emergency Rule Extension – Minimum Size of Liquor Wholesale Warehouse Facilities (Clearinghouse Rule 07-109)

Need for Extension of Emergency Rule

Permanent rule Tax 8.63 has moved through the legislative review and hearing process and was published in the Administrative Register on April 30, 2008. The permanent rule will be effective on June 1, 2008.

Emergency rule Tax 8.63 currently expires on May 26, 2008. This leaves a 5-day gap between the expiration of the emergency rule and the effective date of the permanent rule.

Description of Current Law

Current law requires that the Department of Revenue establish by administrative rule the minimum requirements for liquor warehouse facilities. This requirement was established in 2005 Act 125 and became effective July 27, 2005. See s. 125.54 (7).

Current administrative rules require that liquor warehouse facilities that are licensed by the department contain at least 4,000 square feet of floor space. Warehouse facilities must be located in a freestanding facility that is not part of a retail liquor facility. The square footage requirements were established with input from the wholesale industry.

The requirements reinforce an "at rest" provision that requires all shipments of intoxicating liquor from a manufacturer to be physically unloaded at a wholesaler's licensed premises or an alcohol beverage warehouse prior to being delivered to a retailer or another wholesaler.

Description of Proposed Change

The proposed emergency rule makes the following changes:

- reduces the minimum requirement for square footage in a liquor warehouse facility from 4,000 to 1,000 square feet
- provides that the Secretary of Revenue may waive the 1,000 square foot requirement if a waiver is determined to be fair and the applicant can demonstrate how the requirements of the statute will be met
- requires DOR to prepare and maintain a list of all liquor wholesale permittees and post the names from this list on the Internet, including the square feet of floor space of each permit holder (now available at <http://www.revenue.wi.gov/ise/excise.html>)

Fairness/Tax Equity

- A recent survey of liquor warehouse permit holders indicates that at least eleven liquor warehouses in Wisconsin have less than 4,000 square feet of floor space. All eleven have less than 2,800 square feet, with the smallest having 1,000 square feet. These small businesses would be forced to close or significantly alter their operations to comply with the 4,000 square foot requirement.
- Modification of the administrative rule will avoid denying liquor warehouse permits to small liquor wholesalers.

Administrative Impact

- DOR has issued liquor warehouse permits to 96 businesses in Wisconsin.
- The change in the administrative rule is expected to have no significant impact on either state tax revenues or the department's administrative costs.

DOR Position

DOR proposed and supports the administrative rule modification. The change is important to preserve and enhance the ability of small businesses to operate in Wisconsin. The extension of the emergency rule is needed to ensure that the rule is in force through the June 1st effective date of the permanent rule.

Contact: Sherrie Gates-Hendrix, (608) 267-1262

SGH