

## ☞ 07hr\_JCR-AR\_Misc\_pt28



☞ Details: Emergency Rules by Department of Revenue.

(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**



**State of Wisconsin • DEPARTMENT OF REVENUE**

2135 RIMROCK ROAD • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX (608) 266-5718 • <http://www.revenue.wi.gov>

*Jim Doyle*  
Governor

*Roger M. Ervin*  
Secretary of Revenue

January 25, 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 2.505

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., a 60-day extension of the emergency rule updating Tax 2.505, relating to the computation of the apportionment fraction by multistate professional sports clubs. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule expires March 10, 2008.

A permanent rule has been developed and has been reviewed by the Legislative Council Rules Clearinghouse. A public hearing was held on December 10, 2007, on both the emergency and permanent rules. However, since the permanent rule cannot be in place before the emergency rule expires, a 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  
January 25, 2008

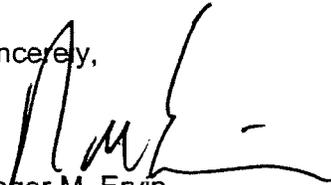
### Analysis

The rule pertains to the computation of the apportionment fraction by multistate professional sports clubs.

The emergency rule is necessary to prescribe the method to be used for apportioning the apportionable income of interstate professional sports clubs.

Thank you for your consideration in this matter.

Sincerely,



Roger M. Ervin  
Secretary of Revenue

RME:DSK  
e:rules2505 Emergency - Extension - JCRAR

Enclosure

## ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 71.04 (4) and 71.25 (6), Stats., relating to the computation of the apportionment fraction by multistate professional sports clubs.

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### *Analysis by the Department of Revenue*

**Statutes interpreted:** ss. 71.04 (4) and 71.25 (6), 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(s) or rule(s):** ss. 71.04 (4m), (5), (6), and (7) and 71.25 (6m), (7), (8), and (9), Stats., and s. Tax 2.39.

**Plain language analysis:** This emergency rule prescribes the method to be used for apportioning the apportionable income of interstate professional sports clubs.

Section 1. The phase-in of the single sales factor apportionment formula will apply to professional sports clubs.

**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:**

- Illinois does not have a special apportionment formula for interstate professional sports clubs. Their apportionment formula consists solely of a sales factor. Sales of services are attributed to the state where the income-producing activity occurred.
- Iowa does not have a special apportionment formula for interstate professional sports clubs. The apportionment formula consists solely of a sales factor. Sales of services are sourced where the benefit of the service is received.
- Michigan does not have a special apportionment formula for interstate professional sports clubs. The apportionment formula consists of a three-factor formula with sales weighted 90%, and property and payroll each weighted 5%. Sales of services are sourced where the income-producing activity occurred.
- Minnesota's apportionment formula for interstate professional sports clubs consists of a three-factor formula with sales weighted 75%, and property and payroll each weighted 12.5%. Sales of services are sourced where the benefit of the service is received, where the service was ordered, or where the service was billed, depending on the circumstances. All income from the operation of an athletic team when the visiting team does not share in the gate receipts is assigned to the state in which the team's operation is based.

**Summary of factual data and analytical methodologies:** 2003 Wisconsin Act 37 changed the apportionment formula used by multistate businesses for determining the income taxable by Wisconsin. As a result of this legislation, single sales factor apportionment will be phased in for most businesses. The phase-in of single sales factor apportionment begins for taxable years beginning on January 1, 2006. 2005 Wisconsin Act 25 changed how gross receipts from services are sourced for purposes of the apportionment formula. Receipts from services are sourced where the benefit of the service is received. The change in the sourcing rules first applies to taxable years beginning January 1, 2005.

**Analysis and supporting documents used to determine effect on small business:** The department has determined that this emergency rule will not have a significant economic impact on a substantial number of small businesses. The department is not aware of any interstate professional sports clubs to which the rule will apply that meet the definition of a small business under s. 227.114(1), Stats.

**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 fiscal effect on small business.

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), 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 emergency rule and the accompanying 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

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### 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 prescribe the method to be used for apportioning the apportionable income of interstate professional sports clubs.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate professional sports clubs.

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.

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SECTION 1. Tax 2.505 (title) and (intro.), (1), (2), and (3) (intro.) and (d) are amended to read:

**Tax 2.505 Apportionment of net business apportionable income of interstate professional sports clubs.** The apportionable income of professional sports clubs engaged in ~~income-producing activities~~ business both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using ~~an~~ the apportionment fraction ~~composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined~~ described in s. 71.25 (6), Stats., and the apportionment formula computation described in s. 71.25 (6m), Stats., if applicable. The property, payroll, and sales factors described in s. 71.25 (6) and (6m), Stats., shall be determined as follows:

(1) PROPERTY FACTOR. The property factor is a fraction as defined in s. 71.25 (7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.25 (7), Stats., and s. Tax 2.39 ~~(3)~~ (4). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), Stats., and s. Tax 2.39 ~~(4)~~ (5). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) SALES FACTOR. The sales factor is a fraction as defined in s. 71.25 (9), Stats. Sales shall be included in the factor in accordance with s. 71.25 (9), Stats., s. Tax 2.39 ~~(5)~~ (6) and the following rules:

(d) *Player contracts, franchises, etc. and similar sources.* Income from player contract transactions, franchise fees, and other similar sources shall be excluded from the numerator and the denominator of the sales fraction.

**Note:** The provisions of s. Tax 2.505 first apply for taxable years beginning on January 1, 2005.

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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: \_\_\_\_\_

By: \_\_\_\_\_  
Roger M. Ervin  
Secretary of Revenue

E:Rules/2505 Proposed Order (emergency)

**FISCAL ESTIMATE FORM**

**2007 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

**LRB # 07-**

**INTRODUCTION #**

**Admin. Rule # Chapter Tax 2.505 (emergency)**

**Subject**

**Apportionment of Apportionable Income of Interstate Professional Sports Clubs**

**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:**

The proposed emergency rule amends Tax 2.505, Wis. Admin. Rules, to incorporate two recent legislative changes.

2003 Wisconsin Act 37 changed the apportionment formula used by multi-state businesses for determining the income taxable by Wisconsin. As a result of this legislation, a single sales factor apportionment formula will be phased in for most businesses that operate both within and outside of the state. The phase-in of single sales factor apportionment begins for taxable years beginning on or after January 1, 2006. Additionally, 2005 Wisconsin Act 25 changed how gross receipts from services are sourced for purposes of the apportionment formula. Receipts from services are sourced where the benefit of the services is received. The change in sourcing rules first applies to taxable years beginning on or after January 1, 2005.

The proposed emergency rule amends Tax 2.505 to conform to these law changes.

The fiscal effect from implementation of single sales factor apportionment for professional sports teams was included in the fiscal estimate of 2003 Act 37. The fiscal effect from the special sourcing language as it applies to professional sports teams was included in the estimate for 2005 Act 25. Therefore, the rule has no fiscal effect.

**Long-Range Fiscal Implications:**

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Michael Oakleaf (608) 261-5173	Rebecca Boldt (608) 266-6785	

10 - only 3 days - morning 9:00 AM -

call get some  
meeting room

1/2 hour

• hearing notice -

Tom Steensky -

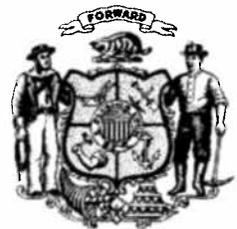
rules object - a to -

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only to call → 23, 24, 25



# WISCONSIN STATE LEGISLATURE





# State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK RD. • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933  
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.revenue.wi.gov>

**Jim Doyle**  
Governor

**Roger M. Ervin**  
Secretary of Revenue

Joint Committee for Review of Administrative Rules Hearing, March 5, 2008

## **Request for Emergency Rule Extension – Tax 2.505, Apportionment for Multi-state Professional Sports Clubs**

### *Description of Current Law and Proposed Change*

2003 Wisconsin Act 37 changed the apportionment formula used by multi-state businesses for determining the income taxable by Wisconsin. As a result of this legislation, single sales factor apportionment will be phased in for most businesses. The phase-in of single sales factor apportionment begins for taxable years beginning on January 1, 2006. 2005 Wisconsin Act 25 changed how gross receipts from services are sourced for purposes of the apportionment formula. Receipts from services are sourced where the benefit of the service is received. The change in the sourcing rules first applies to taxable years beginning January 1, 2005.

Chapter Tax 2.505 prescribes the method to be used for apportioning the apportionable income of interstate professional sports clubs. The emergency and permanent rule changes are needed to conform to the changes in 2003 Act 37 and 2005 Act 25. A public hearing was held on both the emergency and permanent rules on December 10, 2007. The emergency rule is scheduled to expire on March 10, 2008. The permanent rule has been reviewed by the Legislative Council Rules Clearinghouse, and is anticipated to take effect on April 1, 2008. The proposed rule has already passed through legislative committee review; no concerns were expressed. Because the emergency rule expires before the permanent rule is anticipated to take effect, the Department is requesting a 60-day extension.

### *Fairness/Tax Equity*

- The department has determined that this emergency rule will not have a significant economic impact on small businesses. The department is not aware of any interstate professional sports clubs to which the rule will apply that meet the definition of a small business under s. 227.114(1), Stats.

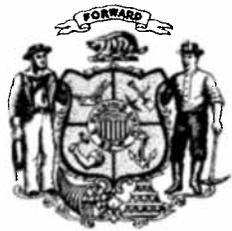
### *Impact on Economic Development*

- The rule is expected to have minimal impact on economic development.

### *Administrative Impact/Fiscal Effect*

The fiscal effect from implementation of single sales factor apportionment for professional sports teams was included in the fiscal estimate of 2003 Act 37. The fiscal effect from the special sourcing language as it applies to professional sports teams was included in the estimate for 2005 Act 25. Therefore, the rule has no additional fiscal effect.

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





*Jim Doyle*  
Governor

**State of Wisconsin • DEPARTMENT OF REVENUE**

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*Roger M. Ervin*  
Secretary of Revenue

June 23, 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: Section Tax 8.03 and 8.05

Dear Senator Jauch and Representative LeMahieu:

I am forwarding an advance copy of an emergency rule which the Department of Revenue intends to adopt effective June 26, 2008.

The rule pertains to wine collectors and small winery cooperative wholesalers.

The emergency rule is necessary to meet the requirements of ss. 125.03(1)(b) and 125.545, Stats., which require the department to 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, and administer and enforce the statutory requirements relating to small winery cooperative wholesalers.

If you have any questions or require further information, please let me know.

Sincerely,

Roger M. Ervin  
Secretary of Revenue

RME:DSK  
e:rules1803 805 Emergency - JCRAR

Enclosure

## ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 125.03 (1) (b), and 125.545 (6) (b), Stats., relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

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### *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, 185.043 (2), Stats.

**Plain language analysis:** This emergency 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:**

Federal law 26 U.S.C. Sec. 5691 contains a presumption that the sale of 20 wine gallons or more is evidence that the person making such sale is carrying on the business of a wholesale dealer and would be required to hold a wholesaler's basic permit under the Federal Alcohol Administration Act.

### **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 emergency rule order to satisfy the above requirements.

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

This emergency 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 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](mailto: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 emergency 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

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## EXEMPTION FROM FINDING OF EMERGENCY

The legislature by SECTION 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

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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) DEFINITION OF WINE COLLECTOR.** In order to be a "wine collector" under s. 125.02 (23), Stats., an individual must be a natural person who has collected and held manufacturer-sealed bottles or containers of wine for at least 8 years.

**(3) REGISTRATION OF WINE COLLECTORS.** A nonlicensed person owning manufacturer-sealed bottles or containers of wine is authorized to register with the department as a wine collector.

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

**(4) 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, in the manner prescribed by the department. 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 seller.
3. A description of the transaction, listing the quantity and price of the wine to be sold.

**Note:** A notice of sale may be addressed 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) In accordance with 26 USC 5691, a sale under this subsection must be in quantities of 20 gallons or less.

(d) 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., are met.

**Note:** Section Tax 8.03 interprets ss. 125.02(23), 125.03(1)(b), and 125.06(11m), Stats.

**Note:** Sections 125.02(23), 125.03(1)(b), and 125.06(11m), Stats., were created by 2007 Wis. Act 85, effective October 1, 2008.

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.

**(2) DEFINITION OF SMALL WINERY.** In this chapter, unless otherwise specified, "small winery" has the meaning given in s. 125.545 (1)(d), 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, pursuant to the authority and 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 is authorized to sell, market, and distribute wine manufactured, blended, or mixed, and bottled by the members of the cooperative.

(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 to small wineries, and a requirement that new members meeting such requirements be admitted.
2. A description of the rights and responsibilities of members.
3. The process for the election of the board of directors.
4. The plans for a membership meeting.

5. Whether the cooperative will allow non-members to purchase preferred stock.

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

(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) The cooperative wholesaler shall provide a biennial report with its application for wholesaler permit renewal. The department will send a renewal notice to the cooperative wholesaler at the time the wholesaler permit reaches its expiration date. The report shall summarize the sales quantity and product data for all products sold by the cooperative wholesaler.

**Note:** Section Tax 8.05 interprets ss. 185.043 (2), 125.545 (3), and 125.54 Stats.

**Note:** Sections 185.043 (2) and 125.545 (3), Stats., were created by 2007 Wis. Act 85, effective October 1, 2008.

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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: \_\_\_\_\_

*June 20, 2008*

By: \_\_\_\_\_

*Roger M. Ervin*  
Roger M. Ervin  
Secretary of Revenue

**FISCAL ESTIMATE FORM**

**2007 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

**LRB # 07-**

**INTRODUCTION #**

**Admin. Rule # Emergency Rule – Tax 8.03 and 8.05**

**Subject Chapter Tax 8.03 and 8.05 – Wine collectors and small winery cooperative wholesalers.**

**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:**

2007 Wisconsin Act 85 established requirements for the registration of wine collectors and for the sale of wine by a wine collector. In addition, Act 85 also defined small wineries and created standards for the formation of a small winery cooperative wholesaler to distribute wine manufactured by small wineries.

As authorized by Act 85, the proposed emergency rule, under s. 125.03 (1) (b) Stats., provides for the registration of wine collectors, establishes the standards of eligibility for the registration, and specifies the form of notice required for the sale of wine by a wine collector. In addition, under s. 125.545 Stats., the proposed emergency rule establishes a framework to administer and enforce the requirements relating to small winery cooperative wholesalers.

While the Department of Revenue anticipates that the costs to administer the entirety of Act 85 to be \$96,800 on an annualized basis, this proposed emergency rule, which establishes requirements only for the portions of the act described above, does not have any significant fiscal effect.

**Long-Range Fiscal Implications:**

Agency/Prepared by:	Authorized Signature/Telephone No.	Date
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