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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(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**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



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

May 12, 2009

Honorable Jim Holperin
Co-Chair Joint Committee for Review
of Administrative Rules
Room 409 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Josh Zepnick
Co-Chair Joint Committee for Review
of Administrative Rules
Room 219 North State Capitol
PO Box 8953
Madison WI 53708-8953

Re: Clearinghouse Rule 08-065

Dear Senator Holperin and Representative Zepnick:

Enclosed are copies of Clearinghouse Rule 08-065 in final draft form, and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats.

Sincerely,

Roger M. Ervin
Secretary of Revenue

RME:DSK
e:rules\803 805 Committees - JCRAR

Enclosure

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue proposes 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 proposed 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 proposed 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 proposed rule order to satisfy the above requirements.

Analysis and supporting documents used to determine effect on small business: This proposed 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 proposed rule does not have a significant fiscal effect on the private sector.

Effect on small business: This proposed 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 proposed 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 September 5, 2008. 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

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.

Initial Regulatory Flexibility Analysis

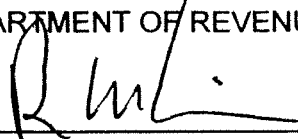
This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: _____

5/4/07

DEPARTMENT OF REVENUE

By: _____


Roger M. Ervin
Secretary of Revenue

E:Rules/803 805 Proposed Order (v5)

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 08-065
SECTION 227.19(2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

This proposed rule order is necessary to meet the requirements of 2007 Wis. Act 85:

- Providing the requirements for registration of wine collectors, the sale of wine held by the collector to other wine collectors, and the advance notice to be provided to the department before a sale.
- Specifying the procedure for the creation and organization of small winery cooperative wholesalers.
- Listing the requirements for the members of the cooperative.
- Detailing the activities authorized for small winery cooperative wholesalers.

Public Hearing

A public hearing was held on August 26, 2008. One person presented oral testimony at the hearing. The department received a number of other comments that are summarized below.

Summary of Public Comments and Agency Response

The department received comments from Marion Weglarz, owner of Weggy Winery, 30940 OakRidge Drive, Muscoda, WI 53573.

Mr. Weglarz raised several concerns regarding the rule, including the following:

- An objection to the requirements for the cooperative bylaws found in Tax 8.05 (4) (b) 2, 3., and 4., stating that requirements relating to the rights and responsibilities of cooperative members, the process to elect a board of directors, and the plans for a membership meeting, are items customarily addressed in bylaws, and therefore, requiring such provisions by rule is unnecessary.

The department believes that specifying the provisions of cooperative bylaws in the administrative rule is in keeping with the requirement in sec. 125.545 (6) (b) that "The department shall promulgate rules to administer and enforce the requirements (relating to the creation and organization of a cooperative wholesaler.)"

- An objection to the Tax 8.05 (4) (b) 1. provision which requires that the bylaws provide "reasonable membership requirements ... and that new members meeting such requirements be admitted."

Wis. Stats., Sec. 185.11 specifies the rules relating to membership in a cooperative. The department believes s. 185.11 and the provisions found in s. 125.545 (3) (b) 4. Which states: "A cooperative wholesaler shall work with all of its

members on evenhanded terms," provides the authorization for the department to require that any winery wishing to join a cooperative must be allowed to join the cooperative.

- A request to require wine distributors to report on the origin of the wine they sell. Mr. Weglarz seeks to obtain information about the proportion of wine sold in Wisconsin that is "Wisconsin" wine vs. Wisconsin sales of wine manufactured in other states or foreign nations.

It is unclear what is meant by "Wisconsin" wine. A number of wineries holding WI winery permits manufacture wine in the state by importing bulk wine from other states and foreign countries yet bottle and label the wine in Wisconsin, while some wineries holding WI winery permits bottle wine made exclusively from grapes and fruits grown and fermented in Wisconsin. No labeling standard establishing "Wisconsin" wine, currently exists. The department believes such a labeling standard to be beyond the scope of an administrative rule regarding the creation and operation of a cooperative wholesaler.

- The difficulty small wineries face in finding distributors for wine manufactured by small wineries. A request was made that the department assign a distributor to provide distribution service to a winery that has been rejected by three distributors. The department has no legal authority to compel two companies to do business with each other, and contends this request is also beyond the scope of the rule, and would require a statute change.

- A concern that the language of Tax 8.05 (4) (c) was too restrictive, specifically that the cooperative should be allowed to purchase marketing "services", as well as "materials."

The rule was amended to include "services"

- A request that the cooperative wholesaler be relieved of the requirement to file monthly liquor tax returns, in addition to the twice yearly "... detailed report of operations and sales activities ...", required in sec. 125.545 (5) (a), and the biennial report required with the application for renewal of a wholesaler's permit, required in sec. 125.545 (5) (b). Mr. Weglarz contends that these reports are redundant and result in additional cost for professional services for the cooperative, thereby imposing further hardship on the Wisconsin winery industry.

This request would require a statute change. Wis. stats., sec. 139.06 (1) (b) requires holders of Wisconsin wholesaler's permits to file monthly liquor returns with the department and pay any tax due. The statute provides no exception for a cooperative wholesaler.

- The department received questions from several winery owners asking if a winery could be a member of more than one cooperative.

The statute authorizing the creation and organization of the small winery cooperative wholesaler (Wis. stats., sec. 125.545) contains no prohibition on a winery joining more than one cooperative.

- The department also received a question concerning the purpose of Tax 8.05 (3) (d). Wis. stats., sec. 125.545 (3) (b) provides that the department may not issue more than a total of 6 wholesalers' permits to cooperative wholesalers. In the event that the department receives applications for more than 6 cooperative wholesalers, Tax 8.05 (3) (b) provides criteria the department would use in selecting which applications to approve.
- Representative Gary Tauchen raised several issues regarding Tax 8.03, the requirements for the registration and sales activities of wine collectors. He requested that the rule provide guidance regarding collectors' ability to donate wine to non-profits and charitable organizations.

The statutes currently provide an exception to alcohol beverage license and permit requirements for "... awarding of alcohol beverages in original, unopened packages, containers or bottles as a prize, in a raffle conducted by an organization licensed to conduct the raffle under ch. 563, to any person who has attained the legal drinking age."

By adopting Senate Amendment 1 to Senate Substitute amendment 1 to Senate Bill 485, later signed into law as 2007 Wisconsin Act 85, the Legislature rejected an effort to amend the statutes to further address wine collector donations to charitable organizations. As a result, the department believes addressing such donations in the proposed administrative rule is beyond the scope of the department's rule-making authority.
- Rep. Tauchen also expressed concern with the requirement in Tax 8.03 (3) (c) that a wine collector provide purchase invoices to verify that the collector has held the wine for at least eight years, stating that collectors may not always have original purchase invoices.

The department believes the specific language in the proposed rule already addresses Rep. Tauchen's concern. See: "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 in s. 125.06 (11m), Wis. stats., have been met." (Emphasis added.)
- Finally, Rep. Tauchen noted that collectors may take possession of wine at a later time than their purchase of the wine, and suggested further clarification was needed in the rule.

The department believes the definition of "Purchase" found in the Uniform Commercial Code in sec. 401.201 (32), Wis. stats., provides sufficient clarification of the meaning of "purchased" as used in Tax 8.03 (3) (a) 2., and that no further change is necessary.
- The Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) notified the Department that sec. 125.545 (3) (b) 2., Wis. stats., was in violation of the prohibition on consignment sales found in the Federal Alcohol Administration Act, 27 U.S.C. §205(d).

To address this conflict with federal law, the department amended the rule to define "purchase on consignment" as requiring the cooperative wholesaler to

provide cash or credit for the purchase of wine for a period of not more than 90 days after the purchase.

- The Wisconsin Federation of Cooperatives requested clarification that cooperative profits returned as patronage payments to cooperative members would not violate the prohibition on compensation to winery owners and employees acting as cooperative volunteers. The department does not believe such payments violate the compensation prohibitions found in Tax 8.05 (4) (d).

Legislative Council Staff Recommendations

All Legislative Council staff recommendations have been incorporated in the proposed rule order.

Regulatory Flexibility Analysis

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

e:\rules\803 805 committees - report