tax008_EmR0820.pdf **Revenue – Revises Ch. Tax 8 – EmR0820**

Publication Date: June 26, 2008
Effective: June 26, 2008 through July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

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.

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, 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

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.