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CLEARINGHOUSE RULE 96-171

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 October 1994.]

1. Statutory Authority

Section 341.405 (1), Stats., provides that the Secretary of Transportation, with approval of the Governor, must ratify and do all things necessary to effectuate the international registration plan. Section 341.45 (1g) (a), Stats., provides that certain persons must pay the Wisconsin motor vehicle fuel or alternate fuels tax and an oil inspection fee on gallons of fuel consumed by a qualified motor vehicle while operated on the highways of Wisconsin. Under s. 341.45 (1g) (b), Stats., the Department of Transportation may require an appropriate person to pay these taxes and fees in the manner specified by the department. A person who does not comply with the requirements of the rule regarding the international registration plan is subject to the penalties under s. 85.16, Stats. A person who fails to make a payment with respect to the international fuel tax agreement is subject to penalties under s. 341.45 (6) (b), Stats. In view of the specific statutory penalties set forth in the statutes, the department should more fully explain the statutory authority for s. Trans 152.16, which in effect says that before any tax or fee becomes due under ch. Trans 152, the department may ensure the payment of taxes or fees through physical attachment of the property of a licensee or registrant, using the procedure provided in s. 78.70, Stats.

2. Form, Style and Placement in Administrative Code

- a. In s. Trans 152.01 (2), should “apportioned” be “apportionable”? See s. Trans 152.02 (2).
- b. It appears that SECTIONS 7 and 8 can be deleted and SECTION 6 can be redrafted to read:

SECTION 6. Trans 152.02 (3) to (9) are renumbered 152.02 (4) to (10) and 152.02 (5) (intro.), as renumbered, is amended to read:

c. In s. Trans 152.02 (13), as renumbered, “a country” should be “another country.”

d. In s. Trans 152.02 (20) (intro.), the stricken language “other than a recreational vehicle” should be restored and, in sub. (20) (c), the last sentence should be deleted.

e. The treatment clauses of SECTIONS 24 and 25 should be combined to read:

Trans 152.05 to 152.08 are renumbered 152.06 to 152.08 and 152.13 and Trans 152.13 (1), (2) (intro.), (3) and (4) (title), as renumbered, are amended to read:

f. It appears that ss. Trans 152.13, 152.14 and 152.15 are to appear in subch. III of ch. Trans 152. This can be clarified in SECTION 35 by the following treatment: “Subchapter III (title) of chapter Trans 152 [precedes Trans 152.13] is created to read:”.

g. In s. Trans 152.13 (1), the stricken phrase “this chapter” should be restored and the underscored phrase “the applicable subchapter” should be deleted.

h. In s. Trans 152.13 (2) (intro.), the first sentence should begin: “If the records of an applicant, a licensee or a registrant are not made available”

i. In s. Trans 152.13 (3), the last sentence should be redrafted, perhaps along the lines of the following: “The determination by the department shall be presumed to be correct. If that determination is challenged, the burden of proving its invalidity shall be on the person challenging it.”.

j. The treatment clauses of SECTIONS 26 and 27 should be combined to read: “Trans 152.09 is renumbered 152.14 and Trans 152.14 (2), as renumbered, is amended to read:”.

k. In s. Trans 152.095 (1), first sentence, substitute “sells the licensee’s business, supplies or equipment” for “sells out the licensee’s business, supplies or equipment or quits the business” and insert “licensee” after “former.” Also, the phrase “valued in money” in the second sentence is not entirely clear; is there an alternative? Finally, since the term “successor” is defined in sub. (2) to include “assigns,” it is unnecessary to include the phrase “or assigns” in the first sentence of sub. (1).

l. SECTION Trans 152.095 (2) should read as follows:

152.095 (2) DEFINITIONS. In this section:

(a) 1. “Successor” includes any of the following:

a. . . .

. . .

2. “Successor” does not include:

...

3. A personal representative or special administrator.

(b) “Purchase price” includes all of the following:

... [Consequently, all of the material following the first sentence of s. Trans 152.095 (3) (b) should be deleted.]

m. In s. Trans 152.095 (3) (d), the word “Successor’s” should be replaced by the phrase “A successor’s.”

n. The second sub. (3) of s. Trans 152.095 should be renumbered sub. (4) and sub. (4) should be renumbered sub. (5). In newly renumbered sub. (4) (c), the word “form” should be replaced by the word “former.” In par. (c) 2., the phrase “purchaser and successor in business” should be replaced by the defined term “successor.” Finally, in newly renumbered sub. (4) (d), the notation “d.” should be replaced by the notation “(d)”; the word “department” should be replaced by the word “department’s”; and the phrase “under par. (c)” should be inserted after the word “period.”

o. In s. Trans 152.11 (1) (intro.), insert “all of” before “the following:”. Paragraph (d) (intro.) should read: “Supporting information, which shall contain all of the following:”.

p. In s. Trans 152.123 (intro.), the phrase “the required records” should be replaced by the phrase “the records required under s. Trans 152.11.” Also, pars. (a) to (c) should be renumbered as subs. (1) to (3).

q. In s. Trans 152.124 (3) (b), insert “a” before the first “renewal.”

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

a. Given the content of s. Trans 152.095 (2) (a) 1., what is the necessity of setting forth subd. 2.? An acquiring corporation can be included under the terms of subd. 1. Or, is subd. 2. a reference to a sole proprietor who incorporates? If so, the provision should so state.

b. In s. Trans 152.095 (2) (b) 3., it appears that the provision should be rewritten to clearly state that a successor does not exist upon the death of a sole proprietor, if that is what is intended by the provision.

c. In par. (b) of the second sub. (3) of s. Trans 152.095, what is the meaning of the phrase “real name”? Also, in par. (c) 2., the phrase “served and handled as a notice of action, including appeal rights and revocation actions” is unclear and should be rewritten. If this provision is referring to a procedure found elsewhere in the Administrative Code, a cross-reference should be used.

d. In s. Trans 152.095 (4) (a), the term “predecessor” should be replaced by the phrase “a licensee who sells the licensee’s business, supplies or equipment.”

e. In s. Trans 152.11 (1) (c), the phrase “or both” gives inadequate direction to a licensee. Also, sub. (2) appears to be either a title or an incomplete sentence. The subsection needs to be rewritten.

f. In s. Trans 152.12, the first sentence is very confusing and needs to be rewritten.