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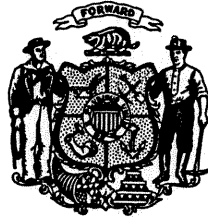
LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-078

AN ORDER to renumber WGC 61.02 (5), (6) and (7); to amend WGC 61.04 (1) (d) and 61.08 (11) (c) and (21) (c); and to create WGC 61.02 (5) and (8) and 61.085, relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Submitted by **DEPARTMENT OF REVENUE**

04-18-00 RECEIVED BY LEGISLATIVE COUNCIL.

05-16-00 REPORT SENT TO AGENCY.

RNS:AS:rv;jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

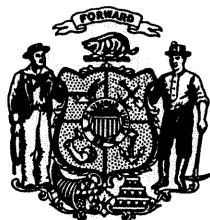
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-078

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. WGC 61.085 (1), the introductory paragraph should be par. (a) and par. (a) should be numbered par. (b).

b. The last two sentences of s. WGC 61.085 (1) (h) are substantive and should not be included in a definition.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. WGC 61.08 (11) (c), "WGC61.04(1)(d)" should be written as "s. WGC 61.04 (1) (d)." This comment also applies to sub. (21) (c) and s. WGC 61.085 (2) (e), (3) (a), (8) and (9).

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

a. The heading at the beginning of the rule, "PROPOSED ORDER OF THE DEPARTMENT OF REVENUE RENUMBERING, AMENDING AND CREATING" appears to be incomplete.

b. The analysis of the rule is not effective in advising the reader as to the substantive content of the rule. It would be helpful to include an explanation of the order's requirement that

a retailer sell \$400 worth of tickets instead of 500 tickets and a brief description of the retailer performance program.

c. In s. WGC 61.02 (8) (intro.), "either" could be replaced with "any" to accommodate the possibility of additional paragraphs in the future.

d. In s. WGC 61.04 (1) (d) and in subsequent provisions, the term "administrator" is used; however, "administrator" is not defined. Also, should the definition of "executive director" in current s. WGC 61.02 (2) be repealed?

e. In s. WGC 61.085 (1), "or 'RPP'" should be deleted or should be replaced with "or RPP." Also, "department" is used in the subsection but is not defined at the beginning of the chapter. "[D]epartment" should be replaced with "department of revenue" or should be defined.

f. In s. WGC 61.085 (1) (a), "January 1st" should be replaced with "January 1." Also, the date in that paragraph has already passed. Is it intended that the section apply retroactively?

g. Section WGC 61.085 (2) (c) defines "gross sales." However, it appears that the term is not used in the section and the definition should therefore be deleted.

h. In the first line of s. WGC 61.085 (2) (f) and (h), "incentives" should replace "incentive."

i. In s. WGC 61.085 (3) (intro.), "provided" should be replaced with "if."

j. Section WGC 61.085 (3) (a) to (c) should be written in the present tense. For example, par. (a) should read: "The retailer honors the current retailer contract, including any applicable addenda, and sells a minimum amount of instant tickets as indicated under WGC 61.08 (11) (c)."

k. In s. WGC 61.085 (3) (b), what is a "not-for-profit" organization? How does it differ from a "nonprofit" organization?

l. In s. WGC 61.085 (4) (a) (intro.), "as stated" should be deleted. This comment also applies to sub. (b) (intro.).

m. In s. WGC 61.085 (4) (b) (intro.), "three" should be replaced with "3."

n. In s. WGC 61.085 (4) (b) 1., the third and fourth sentences should be rewritten to read: "If a sales increase has occurred, the retailer shall receive 10% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year." This comment also applies to subds. 2. and 3.

Also in those subdivisions, the last sentence should indicate that information must be made available upon request to the administrator.

o. In the note to s. WGC 61.085 (4) (b), both instances of "June 30th" should be replaced with "June 30."

p. In the title of s. WGC 61.085 (4) (c) (intro.), a hyphen should be inserted between "Short" and "term."

q. In s. WGC 61.085 (4) (c) 6., should ", where" be replaced with "and that"? The sentence is confusing. Also, "payments" should replace "payment."

r. In s. WGC 61.085 (5) (b) 2., "as defined under sub. (2) (d)" could be deleted as it seems to be superfluous. This comment also applies to subd. 3. and subs. (4) (b) (intro.) and (c) (intro.) and (9).

s. In s. WGC 61.085 (7), "no less often than" should be replaced with "at least."

t. In s. WGC 61.085 (8), "the" should be inserted before "RPP."

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
RENUMBERING, AMENDING AND CREATING**

The Wisconsin Department of Revenue hereby proposes an order to: renumber WGC61.02(5), (6) and (7); amend WGC61.04(1)(d) and WGC61.08(11)(c) and (21) (c); and create WGC61.02(5) and (8) and WGC61.085, relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Analysis by the Department of Revenue

Statutory authority: ss.227.11(2)(a) and 565.10(14)(b)3m., Stats.

Statutes interpreted: ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9), consistent with Legislative Council Rules Clearinghouse standards to insert, in alphabetical order, the definitions in Section 2.

SECTION 2. WGC 61.02(5) and (8) are created, to provide additional definitions relating to the Wisconsin lottery.

SECTIONS 3, 4 AND 5. WGC 61.04(1)(d) and 61.08(11)(c) and (21)(c) are amended and WGC 61.085 is created, to address the implementation and maintenance of the retailer performance program, or "RPP." The RPP was implemented effective January 1, 2000.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9).

SECTION 2. WGC 61.02(5) and (8) are created to read:

WGC 61.02(5) "Retailer performance program" or "RPP" means a program that is designed to provide additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to retailers who meet certain performance goals identified by the Wisconsin lottery.

(8) "Winning lottery ticket" or "winning lottery share" means either of the following:

(a) For instant scratch tickets under s.565.01(6m)(a)1., Stats., the terms mean any ticket that has been validated by the Wisconsin lottery as a ticket that entitles a player to a prize.

(b) For on-line tickets under s.565.01(6m)(a)2., Stats., the terms mean any ticket that has been identified by a secure method by the Wisconsin lottery as a ticket that entitles a player to a prize.

SECTION 3. WGC 61.04(1)(d) is amended to read:

WGC 61.04(1)(d) The applicant is expected to sell a minimum of ~~500 tickets a month~~ \$400 worth of instant scratch tickets each month, under s.565.01(6m)(a)1., Stats., which shall be represented in any retailer contract or addenda. The ~~executive director administrator~~ may deny a contract to an applicant whose anticipated monthly sales will not meet a minimum of ~~500 tickets~~ \$400 worth of instant scratch tickets each month or whose historical monthly sales are less than ~~500 tickets~~ \$400 worth of instant scratch tickets each month.

SECTION 4. WGC 61.08(11)(c) and (21)(c) are amended to read:

WGC 61.08(11)(c) The retailer shall sell at least ~~500 tickets a month~~ \$400 worth of instant scratch tickets each month, under WGC 61.04(1)(d).

(21)(c) The retailer failed to sell a monthly minimum of ~~500 lottery tickets~~ \$400 worth of instant scratch tickets each month, under WGC 61.04(1)(d);

SECTION 5. WGC 61.085 is created to read:

WGC 61.085 Retailer performance program. (1) PURPOSE. The retailer performance program or "RPP" is intended to provide additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to retailers who meet certain performance goals identified by the department. This additional compensation is authorized under ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

(a) This program is applicable to lottery retailer sales transactions beginning on January 1st, 2000. — *already passed*

(2) DEFINITIONS. In this section:

(a) "Appropriate quarterly sales history" means the historical sales data that is used to calculate performance of a retail location within the RPP. The appropriate quarterly sales history data may be from either the comparable history quarter as defined under par. (b) or the immediately previous quarter as defined under par. (d).

(b) "Comparable history quarter" means the full sales quarter that is one year prior to the current sales quarter in which the RPP is being administered.

(c) "Gross sales" means the sales data as indicated by Wisconsin lottery accounts receivable documentation of weekly invoicing of the purchase of Wisconsin lottery products by retailers.

(d) "Immediately previous quarter" means the full sales quarter immediately prior to the current sales quarter in which the RPP is being administered.

(e) "Retail location" means the place of business at which lottery products such as instant tickets or terminal generated tickets are sold, as selected under WGC61.04.

(f) "Sales goals incentive" means the component of the RPP that pays incentive to retailers who increase sales in a specified sales quarter or specified fiscal year, or both, when the sales quarter or fiscal year is compared to an appropriate quarterly sales history as defined under par. (a).

(g) "Sales quarter" means a quarter of the Wisconsin lottery fiscal year that is 13 weeks in length. Beginning in fiscal year 2001, the administrator shall determine the start and end dates of all sales quarters of a fiscal year no later than one month prior to the beginning of that fiscal year, and upon request shall provide the calendar dates that define each quarter of a fiscal year. A quarter shall start and end on dates that are

consistent with the standard billing cycle that the lottery uses to collect revenue from retailer accounts.

(h) "Short-term incentive" means the component of the RPP that pays incentive^e to retailers who satisfy a performance expectation as established in short-term incentive features and procedures documentation. Short-term incentives shall have features and procedures documentation as indicated under sub. (4)(c). Short-term incentives shall be designed to support a certain product or product type or to strengthen sales during certain times of the fiscal year. } *sub.*

(i) "Winning ticket incentive" means the component of the RPP that pays an incentive to retailers who sell winning lottery tickets.

(3) ELIGIBILITY. Any retailer may participate in the RPP provided it meets all of the following eligibility requirements:

(a) The retailer shall honor⁵ the current retailer contract, including any applicable addenda, and shall sell a minimum amount of instant tickets as indicated under WGC61.08(11)(c).

(b) The retailer may not be a not-for-profit or nonprofit organization as defined in s. 565.10(14)(a), Stats.

(c) The retailer shall satisfy any qualifying requirements specific to each component of the RPP. If a retailer fails to satisfy the requirements specific to a component of the RPP, the retailer may not be considered qualified for that component of the RPP. A retailer shall qualify for each component separately, and qualifying for one component of the RPP may not affect qualifying for another component.

(4) DESIGN. The retailer performance program shall consist of 3 components, the winning ticket incentive, the sales goals incentive, and the short-term incentive described as follows:

(a) *Winning ticket incentive.* The expected performance of the winning ticket incentive component of the RPP is the selling of winning lottery tickets. To qualify for the winning ticket incentive, a retailer shall satisfy the eligibility requirements ~~as stated in~~ sub. (3). An incentive shall be paid to a retailer for selling any winning lottery ticket where the stated prize value of the winning lottery ticket is \$600 or greater. The incentive shall be paid as follows:

1. For winning lottery tickets, 2% of the stated prize value shall be paid on each prize, up to a maximum of \$100,000 per winning lottery ticket.

2. For lottery television program tickets, \$30 shall be paid on each winning lottery ticket.

(b) *Sales goals incentive.* The sales goals incentive component of the RPP shall pay a retailer an incentive based on an increase in the amount of sales over the appropriate quarterly sales history as defined under sub. (2)(a) or the appropriate fiscal year in the case of jackpot terminal-generated games under subd. 3. The incentive shall be tracked, measured and paid based on one of 3 product types. For each product type, a retailer shall satisfy eligibility requirements ~~as stated in~~ sub. (3) and qualify for the product type under sub. (5). For the three product types, instant ticket sales, non-jackpot terminal-generated sales and jackpot terminal-generated sales, the retailer shall receive incentives calculated as follows:

1. For the instant ticket sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate

funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

2. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

3. For the jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the previous fiscal year to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

Note: For the fiscal year which ends on June 30th, 2000, "fiscal year 2000," the Wisconsin lottery shall use the appropriate historical data from the fiscal year which ended on June 30th, 1999, "fiscal year 1999," to determine a one-half fiscal year goal for the jackpot terminal-generated game product type under subd. 3.

(c) *Short term incentive*. The short-term incentive ³ is defined under sub. (2)(h) and shall pay a retailer an incentive based on the achievement of expected performance. Performance expectations shall be related to the increasing of sales of lottery products and may be different for each short-term incentive offered to retailers. The administrator may not offer more than 4 short-term incentives in one fiscal year. A short-term incentive may not continue from one fiscal year into another fiscal year. The administrator shall determine whether short-term incentives are offered. The expected performance, and all other information important to the development of a specific short-term incentive, shall be indicated in a document ^{rule?} that shall represent the features and procedures of the short-term campaign. The features and procedures document shall be published to the retailers no later than 21 calendar days prior to the start date of the incentive and shall include the following:

1. A statement of the requirements for a retailer to qualify for the program. The requirements for qualification for short-term incentives shall be as consistent as possible with other aspects of the RPP.
2. A statement of the expected performance of a retailer who participates in the short-term incentive.
3. A statement of the start and end dates of the program and the expected time period that the plan will run, not to exceed 13 weeks.
4. A statement of how much funding may be made available for payment under the plan, not to exceed \$100,000 per short-term incentive.
5. A detailed explanation of how the incentive is calculated, to be consistent with other aspects of the RPP where appropriate.

6. A detailed explanation of how incentive payment² will be made, where payment shall be made no later than the last Thursday of the month following the last day of the sales quarter in which the short-term incentive ends.

7. Any other features or procedures determined by the administrator to be appropriate.

(5) QUALIFICATION FOR PRODUCT TYPES. (a) To qualify for the jackpot terminal-generated sales product type, a retail location shall have no less than 52 weeks of sales history in the previous fiscal year.

(b) To qualify for instant ticket sales or non-jackpot terminal-generated sales product type, a retail location shall meet the qualification criteria for that product type. Each product type shall be reviewed separately to determine if an appropriate quarterly sales history as defined under sub. (2)(a) is available to satisfy the criteria. The criteria are as follows:

1. For a retail location, if there is appropriate quarterly sales history as defined under sub. (2)(a), which is based on comparable history quarter sales data as defined under sub. (2)(b), the retailer shall be considered qualified for that product type.

2. If no comparable history quarter as defined under sub. (2)(b) exists for a retail location, the administrator shall substitute sales history from the immediately previous quarter as defined under sub. (2)(d).

3. If no appropriate quarterly sales history as defined under sub. (2)(a) can be determined, either by using data from a comparable history quarter or from an immediately previous quarter, the retail location may not be considered qualified for the program. The administrator shall review qualification under each product type no less often than quarterly so that retail locations that become qualified may be included for incentive payments as soon as possible.

(6) PAYMENT OF INCENTIVES. The RPP incentives shall be paid in the following manner:

(a) The winning ticket incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(b) The sales goals incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned, except for the jackpot terminal-generated games which shall be paid no later than the last Thursday of the month following the last day of the fiscal year in which the incentive is earned. The sales goals incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(c) The short-term incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(7) FUNDING AUTHORITY. The administrator shall monitor the expenditures of the RPP ~~no less often than~~ quarterly, to ensure that the funding authority is not exceeded. Prior to the payment of incentives under sub. (4)(b), the administrator may

implement a pre-payment adjustment to ensure that funding authority for the RPP is not exceeded, by reducing the payment of incentives earned from an unexpectedly large jackpot or from an unexpectedly large increase in instant ticket or non-jackpot ticket sales. Any pre-payment adjustment in any product type shall be implemented as indicated under sub. (4)(b), to limit the incentive paid so that the payments do not exceed the funding available or negatively impact the payment of earned incentives in the other components of the RPP.

(8) RIGHT TO APPEAL. In the event the administrator terminates the eligibility or qualification of a retailer under RPP, or in the event the retailer disputes their payments from the RPP, the retailer is entitled to an appeal in accordance with the provisions set forth under WGC61.10. (S)
ch

(9) REPORT. The administrator shall document the total payments made to retailers under the RPP as defined under WGC61.02(5). The report shall include a breakdown of any incentives paid under the winning ticket incentive, the sales goals incentive and the short-term incentive. The report shall be available within 90 days of the completion of a fiscal year. (S)

Note: Section WGC61.085 interprets ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

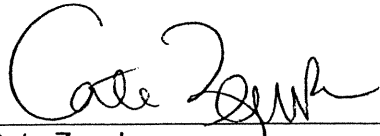
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: 4/10/00

By: 
Cate Zeuske
Secretary of Revenue

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # WGC 61.02, 61.04, 61.08, and 61.085

Subject

State Lottery Retailer Performance Program

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

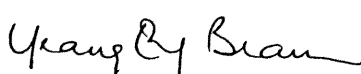
20.566 (8) (b) and (r)

Assumptions Used in Arriving at Fiscal Estimate:

The proposed rule order relates to the adoption of the Retailer Performance Program by the Wisconsin lottery. This rule amends existing rules consistent with Legislative Council Clearinghouse standards. WGC 61.02(5) and (8) are created in order to provide definitions relating to the Wisconsin lottery Retailer Performance Program. WGC 61.04(1)(d), 61.08(11)(c) and 21(c) are amended and WGC 61.085 is created to address the implementation and maintenance of the Retailer Performance Program. The proposed rule clarifies the Department's interpretation of recently enacted statutes.

It is expected that the Retailer Performance Program will increase lottery sales revenue; however, retailer compensation costs will likely increase as well. It is expected that every \$1 of additional revenue generated by the incentive program will result in a \$0.25 expense for retailer compensation related to the incentive program and other administrative expenses. However, sufficient data on the outcome of retailer performance programs in Wisconsin and other states do not exist. Thus, the net increase in lottery revenue based upon the potential increase in sales revenue and the corresponding rise in retailer compensation costs is unknown.

Long-Range Fiscal Implications:

| | | |
|--|---|-----------------|
| Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue John T. Stott, (608) 266-9706 | Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700  | Date 3/20/00 |
|--|---|-----------------|

FISCAL ESTIMATE WORKSHEET

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Detailed Estimate of Annual Fiscal Effect

1999 Session

LRB #
INTRODUCTION #

Admin. Rule #
WGC 61.02,
61.04, 61.08, and
61.085

Subject
State Lottery Retailer Performance Program

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

| II. Annualized Costs: | Annualized Fiscal impact on State funds from: | |
|--|---|-----------------|
| | Increased Costs | Decreased Costs |
| A. State Costs by Category | | |
| State Operations - Salaries and Fringe | \$ | \$ - |
| (FTE Position Changes) | (FTE) | (- FTE) |
| State Operations-Other Costs | See Text | - |
| Local Assistance | | - |
| Aids to Individuals or Organizations | | - |
| TOTAL State Costs by Category | \$ | \$ - |
| B. State Costs by Source of Funds | | |
| GPR | \$ | \$ - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | See Text | - |
| III. State Revenues - Complete this only when proposal will (increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)) | | |
| | Increased Rev. | Decreased Rev. |
| GPR Taxes | \$ | \$ - |
| GPR Earned | | - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | See Text | - |
| TOTAL State Revenues | \$ See Text | \$ - |

NET ANNUALIZED FISCAL IMPACT

| | <u>STATE</u> | <u>LOCAL</u> |
|------------------------|--------------|--------------|
| NET CHANGE IN COSTS | \$ See Text | \$ |
| NET CHANGE IN REVENUES | \$ See Text | \$ |

| Agency/Prepared by: (Name & Phone No.) | Authorized Signature/Telephone No. | Date |
|--|---|---------|
| Wisconsin Department of Revenue John T. Stott, (608) 266-9706 | Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i> | 3/20/00 |

JUL 24 2000



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

Honorable Judy Robson
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 115 South State Capitol
PO Box 7882
Madison WI 53707-7882

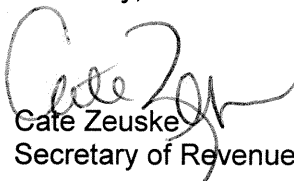
Honorable Glenn Grothman
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 15 North State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 00-078

Dear Senator Robson and Representative Grothman:

Enclosed are copies of Clearinghouse Rule 00-078 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,


Cate Zeuske
Secretary of Revenue

CZ:jjja

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE

CLEARINGHOUSE RULE NUMBER 00-078

SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to develop administrative code for the Lottery Retailer Performance Program (RPP). The Department was required, under 1999 Wis. Act 9, to submit a proposed rule for the Lottery retailer performance program to the Legislative Council staff, to replace emergency rules currently in place. The text of this proposed rule order is very similar to the emergency rule as submitted, and includes minor changes as indicated by the Legislative Council Rules Clearinghouse.

Public Hearing

A public hearing was held, pursuant to s. 227.16(2)(e), Stats. No one appeared at the hearing, and no written comments were received. Therefore, no additional changes were made based on the public hearing.

Legislative Council Staff Recommendations

The Legislative Council staff reviewed the proposed rule and had recommendations for improvement of form, style and placement, as well as improvement of references, clarity, grammar and punctuation. All of the improvements were technical and none made substantive changes to the proposal. All but the following two recommendations have been implemented:

- Regarding comment 5.d, a definition of "administrator" was added, but the definition of "executive director" must be retained until other rules in ch. WGC 61 are changed to remove that term. These changes will be made at a later date.
- Regarding comment 5.g, the definition of "gross sales" is retained because that phrase is used in sub. (2)(f). The word "gross" was inadvertently omitted in the phrase "retailers who increase gross sales". This omission has been corrected.

Regulatory Flexibility Analysis

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

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
RENUMBERING, AMENDING AND CREATING RULES**

The Wisconsin Department of Revenue hereby proposes an order to: renumber WGC 61.02(1) to (7); amend WGC 61.04(1)(d) and WGC 61.08(11)(c) and (21)(c); and create WGC 61.02(1), (6) and (9) and WGC 61.085, relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Analysis by the Department of Revenue

Statutory authority: ss. 227.11(2)(a) and 565.10(14)(b)3m., Stats.

Statutes interpreted: ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9.

SECTION 1. WGC 61.02(1), (2), (3), (4), (5), (6) and (7) are renumbered WGC 61.02(2), (3), (4), (5), (7), (8) and (10), consistent with Legislative Council Rules Clearinghouse standards to insert, in alphabetical order, the definitions in Section 2.

SECTION 2. WGC 61.02(1), (6) and (9) are created, to provide additional definitions relating to the Wisconsin lottery.

SECTIONS 3, 4 AND 5. WGC 61.04(1)(d) and 61.08(11)(c) and (21)(c) are amended and WGC 61.085 is created, to address the implementation and maintenance of the retailer performance program, or "RPP." The RPP is a program intended to provide eligible Lottery retailers an opportunity to earn additional compensation for the achievement of improved sales performance. Retailers will need to qualify for each component of the program before they will receive additional compensation from that component. Additionally, retailers will need to sell \$400 worth of tickets (instead of the current 500 ticket requirement) as part of the eligibility requirements. The RPP was implemented effective January 1, 2000.

SECTION 1. WGC 61.02(1), (2), (3), (4), (5), (6) and (7) are renumbered WGC 61.02(2), (3), (4), (5), (7), (8) and (10).

SECTION 2. WGC 61.02(1), (6), and (9) are created to read:

WGC 61.02(1) "Administrator" means the administrator of the department's lottery division or any designees.

(6) "Retailer performance program" or "RPP" means a program that is designed to provide additional compensation, above the compensation provided under s.

565.10(14)(b)1. or 2., Stats., to retailers who meet certain performance goals identified by the Wisconsin lottery.

(9) "Winning lottery ticket" or "winning lottery share" means any of the following:

(a) For instant scratch tickets under s. 565.01(6m)(a)1., Stats., the terms mean any ticket that has been validated by the Wisconsin lottery as a ticket that entitles a player to a prize.

(b) For on-line tickets under s. 565.01(6m)(a)2., Stats., the terms mean any ticket that has been identified by a secure method by the Wisconsin lottery as a ticket that entitles a player to a prize.

SECTION 3. WGC 61.04(1)(d) is amended to read:

WGC 61.04(1)(d) The applicant is expected to sell a minimum of ~~500 tickets a month~~ \$400 worth of instant scratch tickets each month, under s. 565.01(6m)(a)1., Stats., which shall be represented in any retailer contract or addenda. The executive director-administrator may deny a contract to an applicant whose anticipated monthly sales will not meet a minimum of ~~500 tickets~~ \$400 worth of instant scratch tickets each month or whose historical monthly sales are less than ~~500 tickets~~ \$400 worth of instant scratch tickets each month.

SECTION 4. WGC 61.08(11)(c) and (21)(c) are amended to read:

WGC 61.08(11)(c) The retailer shall sell at least ~~500 tickets a month.~~ \$400 worth of instant scratch tickets each month, under s. WGC 61.04 (1)(d).

(21)(c) The retailer failed to sell a monthly minimum of ~~500 lottery tickets~~ \$400 worth of instant scratch tickets each month, under s. WGC 61.04 (1)(d);

SECTION 5. WGC 61.085 is created to read:

WGC 61.085 Retailer performance program. (1) PURPOSE.

(a) The retailer performance program or RPP is intended to provide additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats.,

to retailers who meet certain performance goals identified by the department of revenue. This additional compensation is authorized under ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

(b) This program is applicable to lottery retailer sales transactions beginning on January 1, 2000.

(2) DEFINITIONS. In this section:

(a) "Appropriate quarterly sales history" means the historical sales data that is used to calculate performance of a retail location within the RPP. The appropriate quarterly sales history data may be from either the comparable history quarter as defined under par. (b) or the immediately previous quarter as defined under par. (d).

(b) "Comparable history quarter" means the full sales quarter that is one year prior to the current sales quarter in which the RPP is being administered.

(c) "Gross sales" means the sales data as indicated by Wisconsin lottery accounts receivable documentation of weekly invoicing of the purchase of Wisconsin lottery products by retailers.

(d) "Immediately previous quarter" means the full sales quarter immediately prior to the current sales quarter in which the RPP is being administered.

(e) "Retail location" means the place of business at which lottery products such as instant tickets or terminal generated tickets are sold, as selected under s. WGC 61.04.

(f) "Sales goals incentive" means the component of the RPP that pays incentives to retailers who increase gross sales in a specified sales quarter or specified fiscal year, or both, when the sales quarter or fiscal year is compared to an appropriate quarterly sales history as defined under par. (a).

(g) "Sales quarter" means a quarter of the Wisconsin lottery fiscal year that is 13 weeks in length. Beginning in fiscal year 2001, the administrator shall determine the start and end dates of all sales quarters of a fiscal year no later than one month prior to

the beginning of that fiscal year, and upon request shall provide the calendar dates that define each quarter of a fiscal year. A quarter shall start and end on dates that are consistent with the standard billing cycle that the lottery uses to collect revenue from retailer accounts.

(h) "Short-term incentive" means the component of the RPP that pays incentives to retailers who satisfy a performance expectation as established in short-term incentive features and procedures documentation.

(i) "Winning ticket incentive" means the component of the RPP that pays incentives to retailers who sell winning lottery tickets.

(3) ELIGIBILITY. Any retailer may participate in the RPP if it meets all of the following eligibility requirements:

(a) The retailer honors the current retailer contract, including any applicable addenda, and sells a minimum amount of instant tickets as indicated under s. WGC 61.08(11)(c).

(b) The retailer is not a nonprofit organization as defined in s. 565.10(14)(a), Stats.

(c) The retailer satisfies any qualifying requirements specific to each component of the RPP. If a retailer fails to satisfy the requirements specific to a component of the RPP, the retailer may not be considered qualified for that component of the RPP. A retailer qualifies for each component separately, and qualifying for one component of the RPP does not affect qualifying for another component.

(4) DESIGN. The retailer performance program shall consist of 3 components, the winning ticket incentive, the sales goals incentive, and the short-term incentive described as follows:

(a) *Winning ticket incentive.* The expected performance of the winning ticket incentive component of the RPP is the selling of winning lottery tickets. To qualify for the

winning ticket incentive, a retailer shall satisfy the eligibility requirements in sub. (3). An incentive shall be paid to a retailer for selling any winning lottery ticket where the stated prize value of the winning lottery ticket is \$600 or greater. The incentive shall be paid as follows:

1. For winning lottery tickets, 2% of the stated prize value shall be paid on each prize, up to a maximum of \$100,000 per winning lottery ticket.
2. For lottery television program tickets, \$30 shall be paid on each winning lottery ticket.

(b) *Sales goals incentive.* The sales goals incentive component of the RPP shall pay a retailer an incentive based on an increase in the amount of sales over the appropriate quarterly sales history or the appropriate fiscal year in the case of jackpot terminal-generated games under subd. 3. The incentive shall be tracked, measured and paid based on one of 3 product types. For each product type, a retailer shall satisfy eligibility requirements in sub. (3) and qualify for the product type under sub. (5). For the 3 product types, instant ticket sales, non-jackpot terminal-generated sales and jackpot terminal-generated sales, the retailer shall receive incentives calculated as follows:

1. For the instant ticket sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive 10% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all

retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator.

2. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive 10% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator.

3. For the jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the previous fiscal year to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive 10% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator.

Note: For the fiscal year ending June 30, 2000, "fiscal year 2000," the Wisconsin lottery shall use the appropriate historical data from the fiscal year which ended on June 30, 1999, "fiscal year 1999," to determine a one-half fiscal year goal for the jackpot terminal-generated game product type under subd. 3.

(c) *Short-term incentive.* The short-term incentive shall pay a retailer an incentive based on the achievement of expected performance. Short-term incentives shall be

designed to support a certain product or product type or to strengthen sales during certain times of the fiscal year. Performance expectations shall be related to the increasing of sales of lottery products and may be different for each short-term incentive offered to retailers. The administrator may not offer more than 4 short-term incentives in one fiscal year. A short-term incentive may not continue from one fiscal year into another fiscal year. The administrator shall determine whether short-term incentives are offered. The expected performance, and all other information important to the development of a specific short-term incentive, shall be indicated in a document that shall represent the features and procedures of the short-term campaign. The features and procedures document shall be published to the retailers no later than 21 calendar days prior to the start date of the incentive and shall include the following:

1. A statement of the requirements for a retailer to qualify for the program. The requirements for qualification for short-term incentives shall be as consistent as possible with other aspects of the RPP.
2. A statement of the expected performance of a retailer who participates in the short-term incentive.
3. A statement of the start and end dates of the program and the expected time period that the plan will run, not to exceed 13 weeks.
4. A statement of how much funding may be made available for payment under the plan, not to exceed \$100,000 per short-term incentive.
5. A detailed explanation of how the incentive is calculated, to be consistent with other aspects of the RPP where appropriate.
6. A detailed explanation of how incentive payments will be made, and that payments shall be made no later than the last Thursday of the month following the last day of the sales quarter in which the short-term incentive ends.

7. Any other features or procedures determined by the administrator to be appropriate.

(5) QUALIFICATION FOR PRODUCT TYPES. (a) To qualify for the jackpot terminal-generated sales product type, a retail location shall have no less than 52 weeks of sales history in the previous fiscal year.

(b) To qualify for instant ticket sales or non-jackpot terminal-generated sales product type, a retail location shall meet the qualification criteria for that product type. Each product type shall be reviewed separately to determine if an appropriate quarterly sales history as defined under sub. (2)(a) is available to satisfy the criteria. The criteria are as follows:

1. For a retail location, if there is appropriate quarterly sales history as defined under sub. (2)(a), which is based on comparable history quarter sales data as defined under sub. (2)(b), the retailer shall be considered qualified for that product type.

2. If no comparable history quarter exists for a retail location, the administrator shall substitute sales history from the immediately previous quarter.

3. If no appropriate quarterly sales history can be determined, either by using data from a comparable history quarter or from an immediately previous quarter, the retail location may not be considered qualified for the program. The administrator shall review qualification under each product type no less often than quarterly so that retail locations that become qualified may be included for incentive payments as soon as possible.

(6) PAYMENT OF INCENTIVES. The RPP incentives shall be paid in the following manner:

(a) The winning ticket incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more

frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(b) The sales goals incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned, except for the jackpot terminal-generated games which shall be paid no later than the last Thursday of the month following the last day of the fiscal year in which the incentive is earned. The sales goals incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(c) The short-term incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(7) FUNDING AUTHORITY. The administrator shall monitor the expenditures of the RPP at least quarterly, to ensure that the funding authority is not exceeded. Prior to the payment of incentives under sub. (4)(b), the administrator may implement a pre-payment adjustment to ensure that funding authority for the RPP is not exceeded, by reducing the payment of incentives earned from an unexpectedly large jackpot or from an unexpectedly large increase in instant ticket or non-jackpot ticket sales. Any pre-payment adjustment in any product type shall be implemented as indicated under sub. (4)(b), to limit the incentive paid so that the payments do not exceed the funding

available or negatively impact the payment of earned incentives in the other components of the RPP.

(8) RIGHT TO APPEAL. In the event the administrator terminates the eligibility or qualification of a retailer under the RPP, or in the event the retailer disputes their payments from the RPP, the retailer is entitled to an appeal in accordance with the provisions set forth under s. WGC 61.10.

(9) REPORT. The administrator shall document the total payments made to retailers under the RPP. The report shall include a breakdown of any incentives paid under the winning ticket incentive, the sales goals incentive and the short-term incentive. The report shall be available within 90 days of the completion of a fiscal year.

Note: Section WGC 61.085 interprets ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

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

DEPARTMENT OF REVENUE

Dated: July 20, 2000

By: 

Cate Zeuske
Secretary of Revenue

EMERGENCY RULE

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

| |
|--|
| LRB # |
| INTRODUCTION # |
| Admin. Rule # WGC 61.02, 61.04, 61.08, and 61.085 |

Subject
 State Lottery Retailer Performance Program

Fiscal Effect

- State:** No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation
- | | | |
|--|--|--|
| <input type="checkbox"/> Increase Existing Appropriation | <input checked="" type="checkbox"/> Increase Existing Revenues | <input checked="" type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues | |
| <input type="checkbox"/> Create New Appropriation | | |

Local: No Local Government Costs

- | | | |
|--|--|--|
| 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
|--|--|--|

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.566 (8) (b) and (r)

Assumptions Used in Arriving at Fiscal Estimate:

The proposed emergency rule order relates to the adoption of the Retailer Performance Program by the Wisconsin lottery. This rule amends existing rules consistent with Legislative Council Clearinghouse standards. WGC 61.02(5) and (8) are created in order to provide definitions relating to the Wisconsin lottery Retailer Performance Program. WGC 61.04(1)(d), 61.08(11)(c) and 21(c) are amended and WGC 61.085 is created to address the implementation and maintenance of the Retailer Performance Program. The proposed emergency rule clarifies the Department's interpretation of recently enacted statutes.

It is expected that the Retailer Performance Program will increase lottery sales revenue; however, retailer compensation costs will likely increase as well. It is expected that every \$1 of additional revenue generated by the incentive program will result in a \$0.25 expense for retailer compensation related to the incentive program and other administrative expenses. However, sufficient data on the outcome of retailer performance programs in Wisconsin and other states do not exist. Thus, the net increase in lottery revenue based upon the potential increase in sales revenue and the corresponding rise in retailer compensation costs is unknown.

Long-Range Fiscal Implications:

| | | |
|--|---|-------------|
| Agency/Prepared by: (Name & Phone No.) | Authorized Signature/Telephone No. | Date |
| Wisconsin Department of Revenue John T. Stott, (608) 266-9706 | Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i> | 2/24/00 |

FISCAL ESTIMATE WORKSHEET

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Detailed Estimate of Annual Fiscal Effect

1999 Session

| | |
|-----------------------|--|
| LRB # | Admin. Rule # WGC 61.02, 61.04, 61.08, and 61.085 |
| INTRODUCTION # | |

Subject
 State Lottery Retailer Performance Program

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

| II. Annualized Costs: | Annualized Fiscal impact on State funds from: | |
|---|---|------------------------|
| A. State Costs by Category | Increased Costs | Decreased Costs |
| State Operations - Salaries and Fringe (FTE Position Changes) | \$ (FTE) | \$ - (- FTE) |
| State Operations-Other Costs | See Text | - |
| Local Assistance | | - |
| Aids to Individuals or Organizations | | - |
| TOTAL State Costs by Category | \$ | \$ - |
| B. State Costs by Source of Funds | Increased Costs | Decreased Costs |
| GPR | \$ | \$ - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | See Text | - |
| III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Rev. | Decreased Rev. |
| GPR Taxes | \$ | \$ - |
| GPR Earned | | - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | See Text | - |
| TOTAL State Revenues | \$ See Text | \$ - |

NET ANNUALIZED FISCAL IMPACT

| | <u>STATE</u> | <u>LOCAL</u> |
|------------------------|--------------|--------------|
| NET CHANGE IN COSTS | \$ See Text | \$ |
| NET CHANGE IN REVENUES | \$ See Text | \$ |

| | | |
|--|---|-----------------|
| Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue John T. Stott, (608) 266-9706 | Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i> | Date 2/24/00 |
|--|---|-----------------|

FEB 29 2000



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

Date: February 25, 2000

Honorable Judy Robson
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 15 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Glenn Grothman
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 15 North State Capitol
PO Box 8952
Madison WI 53708

Dear Senator Robson and Representative Grothman:

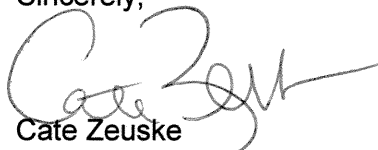
I am forwarding an advance copy of an emergency rule which the Department of Revenue intends to adopt effective on the later of February 25th, 2000, or the day of publication in the official state newspaper. It will remain in effect for 150 days, when a permanent rule should be in place.

The rule pertains to the Retailer Performance Program of the Wisconsin Lottery.

The emergency rule is necessary to ensure that the authority for the proposed program is in place on or after February 25th, 2000. Payment activity under the program will begin at that time, in conjunction with efforts of the Lottery staff and retailers who sell lottery products.

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

Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:JJA
Enclosure



State of Wisconsin • DEPARTMENT OF REVENUE

FEB 29 2000

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

Date: February 25, 2000

MEMBERS OF THE WISCONSIN LEGISLATURE

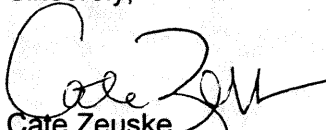
Dear Senators and Representatives:

Enclosed is an Order of the Department of Revenue Adopting An Emergency Rule, relating to the Retailer Performance Program of the Wisconsin Lottery. A copy of this emergency rule is being sent to you pursuant to the requirements specified in s. 227.24(3), Stats. A certified copy of the order has been filed in the Office of the Secretary of State and the Office of the Revisor of Statutes, as required by s. 227.20, Stats.

This emergency rule will become effective on the later of February 25th, 2000, or the day after publication in the official state newspaper. It will remain in effect for 150 days, when a permanent rule should be in place.

Copies of this letter and the emergency rule order are also hereby being transmitted to the Chief Clerks of the Senate and the Assembly, with the request that the order, or a notice of it, be published in the Journal of each house to make the rule amendments known to persons who will be affected by them.

Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:JJA:___

Enclosure

cc: Donald J. Schneider, Senate Chief Clerk
Charles Sanders, Assembly Chief Clerk

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

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss.565.02(4)(g) and 565.10(14)(b)3m., Stats., relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Analysis by the Department of Revenue

Statutory authority: ss.227.11(2)(a) and 565.10(14)(b)3m., Stats.

Statutes interpreted: ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9), consistent with Legislative Council Rules Clearinghouse standards to insert, in alphabetical order, the definitions in Section 2.

SECTION 2. WGC 61.02(5) and (8) are created, to provide additional definitions relating to the Wisconsin lottery.

SECTIONS 3, 4 AND 5. WGC 61.04(1)(d) and 61.08(11)(c) and (21)(c) are amended and WGC 61.085 is created, to address the implementation and maintenance of the retailer performance program.

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:

Sections 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9, provide for the implementation of a retailer performance program, effective January 1, 2000. The program may be implemented only by the promulgation of rules.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. The retailer performance program is being implemented retroactively to January 1, 2000, pursuant to Section 9443(1) of 1999 Wisconsin Act 9. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9).

SECTION 2. WGC 61.02(5) and (8) are created to read:

WGC 61.02(5) "Retailer performance program" or "RPP" means a program that is designed to provide additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to retailers who meet certain performance goals identified by the Wisconsin lottery.

(8) "Winning lottery ticket" or "winning lottery share" means either of the following:

(a) For instant scratch tickets under s.565.01(6m)(a)1.,Stats., the terms mean any ticket that has been validated by the Wisconsin lottery as a ticket that entitles a player to a prize.

(b) For on-line tickets under s.565.01(6m)(a)2., Stats., the terms mean any ticket that has been identified by a secure method by the Wisconsin lottery as a ticket that entitles a player to a prize.

SECTION 3. WGC 61.04(1)(d) is amended to read:

WGC 61.04(1)(d) The applicant is expected to sell a minimum of ~~500 tickets a month~~\$400 worth of instant scratch tickets each month, under s.565.01(6m)(a)1., Stats., which shall be represented in any retailer contract or addenda. The ~~executive director administrator~~ may deny a contract to an applicant whose anticipated monthly sales will not meet a minimum of ~~500 tickets~~\$400 worth of instant scratch tickets each month or whose historical monthly sales are less than ~~500 tickets~~ \$400 worth of instant scratch tickets each month.

SECTION 4. WGC 61.08(11)(c) and (21)(c) are amended to read:

WGC 61.08(11)(c) The retailer shall sell at least ~~500 tickets a month~~ \$400 worth of instant scratch tickets each month, under WGC61.04(1)(d).

(21)(c) The retailer failed to sell a monthly minimum of ~~500 lottery tickets~~ \$400 worth of instant scratch tickets each month, under WGC61.04(1)(d);

SECTION 5. WGC 61.085 is created to read:

WGC 61.085 Retailer performance program. (1) PURPOSE. The retailer performance program or "RPP" is intended to provide additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to retailers who meet certain performance goals identified by the department. This additional compensation is authorized under ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

(a) This program is applicable to lottery retailer sales transactions beginning on January 1st, 2000.

(2) DEFINITIONS. In this section:

(a) "Appropriate quarterly sales history" means the historical sales data that is used to calculate performance of a retail location within the RPP. The appropriate quarterly sales history data may be from either the comparable history quarter as defined under par. (b) or the immediately previous quarter as defined under par. (d).

(b) "Comparable history quarter" means the full sales quarter that is one year prior to the current sales quarter in which the RPP is being administered.

(c) "Gross sales" means the sales data as indicated by Wisconsin lottery accounts receivable documentation of weekly invoicing of the purchase of Wisconsin lottery products by retailers.

(d) "Immediately previous quarter" means the full sales quarter immediately prior to the current sales quarter in which the RPP is being administered.

(e) "Retail location" means the place of business at which lottery products such as instant tickets or terminal generated tickets are sold, as selected under WGC61.04.

(f) "Sales goals incentive" means the component of the RPP that pays incentive to retailers who increase sales in a specified sales quarter or specified fiscal year, or both, when the sales quarter or fiscal year is compared to an appropriate quarterly sales history as defined under par. (a).

(g) "Sales quarter" means a quarter of the Wisconsin lottery fiscal year that is 13 weeks in length. Beginning in fiscal year 2001, the administrator shall determine the start and end dates of all sales quarters of a fiscal year no later than one month prior to the beginning of that fiscal year, and upon request shall provide the calendar dates that define each quarter of a fiscal year. A quarter shall start and end on dates that are consistent with the standard billing cycle that the lottery uses to collect revenue from retailer accounts.

(h) "Short-term incentive" means the component of the RPP that pays incentive to retailers who satisfy a performance expectation as established in short-term incentive features and procedures documentation. Short-term incentives shall have features and procedures documentation as indicated under sub. (4)(c). Short-term incentives shall be designed to support a certain product or product type or to strengthen sales during certain times of the fiscal year.

(i) "Winning ticket incentive" means the component of the RPP that pays an incentive to retailers who sell winning lottery tickets.

(3) ELIGIBILITY. Any retailer may participate in the RPP provided it meets all of the following eligibility requirements:

(a) The retailer shall honor the current retailer contract, including any applicable addenda, and shall sell a minimum amount of instant tickets as indicated under WGC61.08(11)(c).

(b) The retailer may not be a not-for-profit or nonprofit organization as defined in s. 565.10(14)(a), Stats.

(c) The retailer shall satisfy any qualifying requirements specific to each component of the RPP. If a retailer fails to satisfy the requirements specific to a component of the RPP, the retailer may not be considered qualified for that component of the RPP. A retailer shall qualify for each component separately, and qualifying for one component of the RPP may not affect qualifying for another component.

(4) DESIGN. The retailer performance program shall consist of 3 components, the winning ticket incentive, the sales goals incentive, and the short-term incentive described as follows:

(a) *Winning ticket incentive.* The expected performance of the winning ticket incentive component of the RPP is the selling of winning lottery tickets. To qualify for the winning ticket incentive, a retailer shall satisfy the eligibility requirements as stated in sub. (3). An incentive shall be paid to a retailer for selling any winning lottery ticket where the stated prize value of the winning lottery ticket is \$600 or greater. The incentive shall be paid as follows:

1. For winning lottery tickets, 2% of the stated prize value shall be paid on each prize, up to a maximum of \$100,000 per winning lottery ticket.

2. For lottery television program tickets, \$30 shall be paid on each winning lottery ticket.

(b) *Sales goals incentive.* The sales goals incentive component of the RPP shall pay a retailer an incentive based on an increase in the amount of sales over the appropriate quarterly sales history as defined under sub. (2)(a) or the appropriate fiscal year in the case of jackpot terminal-generated games under subd. 3. The incentive shall be tracked, measured and paid based on one of 3 product types. For each product type,

a retailer shall satisfy eligibility requirements as stated in sub. (3) and qualify for the product type under sub. (5). For the three product types, instant ticket sales, non-jackpot terminal-generated sales and jackpot terminal-generated sales, the retailer shall receive incentives calculated as follows:

1. For the instant ticket sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

2. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

3. For the jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the previous fiscal year to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

Note: For the fiscal year which ends on June 30th, 2000, "fiscal year 2000," the Wisconsin lottery shall use the appropriate historical data from the fiscal year which ended on June 30th, 1999, "fiscal year 1999," to determine a one-half fiscal year goal for the jackpot terminal-generated game product type under subd. 3.

(c) *Short term incentive.* The short-term incentive is defined under sub. (2)(h) and shall pay a retailer an incentive based on the achievement of expected performance. Performance expectations shall be related to the increasing of sales of lottery products and may be different for each short-term incentive offered to retailers. The administrator may not offer more than 4 short-term incentives in one fiscal year. A short-term incentive may not continue from one fiscal year into another fiscal year. The administrator shall determine whether short-term incentives are offered. The expected performance, and all other information important to the development of a specific short-term incentive, shall be indicated in a document that shall represent the features and procedures of the short-term campaign. The features and procedures document shall be published to the retailers no later than 21 calendar days prior to the start date of the incentive and shall include the following:

1. A statement of the requirements for a retailer to qualify for the program. The requirements for qualification for short-term incentives shall be as consistent as possible with other aspects of the RPP.

2. A statement of the expected performance of a retailer who participates in the short-term incentive.

3. A statement of the start and end dates of the program and the expected time period that the plan will run, not to exceed 13 weeks.

4. A statement of how much funding may be made available for payment under the plan, not to exceed \$100,000 per short-term incentive.

5. A detailed explanation of how the incentive is calculated, to be consistent with other aspects of the RPP where appropriate.

6. A detailed explanation of how incentive payment will be made, where payment shall be made no later than the last Thursday of the month following the last day of the sales quarter in which the short-term incentive ends.

7. Any other features or procedures determined by the administrator to be appropriate.

(5) QUALIFICATION FOR PRODUCT TYPES. (a) To qualify for the jackpot terminal-generated sales product type, a retail location shall have no less than 52 weeks of sales history in the previous fiscal year.

(b) To qualify for instant ticket sales or non-jackpot terminal-generated sales product type, a retail location shall meet the qualification criteria for that product type. Each product type shall be reviewed separately to determine if an appropriate quarterly sales history as defined under sub. (2)(a) is available to satisfy the criteria. The criteria are as follows:

1. For a retail location, if there is appropriate quarterly sales history as defined under sub. (2)(a), which is based on comparable history quarter sales data as defined under sub. (2)(b), the retailer shall be considered qualified for that product type.

2. If no comparable history quarter as defined under sub. (2)(b) exists for a retail location, the administrator shall substitute sales history from the immediately previous quarter as defined under sub. (2)(d).

3. If no appropriate quarterly sales history as defined under sub. (2)(a) can be determined, either by using data from a comparable history quarter or from an immediately previous quarter, the retail location may not be considered qualified for the program. The administrator shall review qualification under each product type no less often than quarterly so that retail locations that become qualified may be included for incentive payments as soon as possible.

(6) PAYMENT OF INCENTIVES. The RPP incentives shall be paid in the following manner:

(a) The winning ticket incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(b) The sales goals incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned, except for the jackpot terminal-generated games which shall be paid no later than the last Thursday of the month following the last day of the fiscal year in which the incentive is earned. The sales goals incentive may be paid more frequently if the administrator

determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(c) The short-term incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(7) FUNDING AUTHORITY. The administrator shall monitor the expenditures of the RPP no less often than quarterly, to ensure that the funding authority is not exceeded. Prior to the payment of incentives under sub. (4)(b), the administrator may implement a pre-payment adjustment to ensure that funding authority for the RPP is not exceeded, by reducing the payment of incentives earned from an unexpectedly large jackpot or from an unexpectedly large increase in instant ticket or non-jackpot ticket sales. Any pre-payment adjustment in any product type shall be implemented as indicated under sub. (4)(b), to limit the incentive paid so that the payments do not exceed the funding available or negatively impact the payment of earned incentives in the other components of the RPP.

(8) RIGHT TO APPEAL. In the event the administrator terminates the eligibility or qualification of a retailer under RPP, or in the event the retailer disputes their payments from the RPP, the retailer is entitled to an appeal in accordance with the provisions set forth under WGC61.10.

(9) REPORT. The administrator shall document the total payments made to retailers under the RPP as defined under WGC61.02(5). The report shall include a

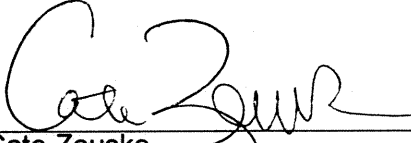
breakdown of any incentives paid under the winning ticket incentive, the sales goals incentive and the short-term incentive. The report shall be available within 90 days of the completion of a fiscal year.

Note: Section WGC61.085 interprets ss. 565.02(4)(g) and 565.10(14)(b)3m., 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: Feb 24, 2000

By: 
Cate Zeuske
Secretary of Revenue

FISCAL ESTIMATE FORM

EMERGENCY RULE

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

| |
|---|
| LRB # |
| INTRODUCTION # |
| Admin. Rule # WGC 61.02, 61.04, 61.08, and 61.085 |

Subject
 State Lottery Retailer Performance Program

Fiscal Effect

- State:** No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation
- | | | |
|--|--|--|
| <input type="checkbox"/> Increase Existing Appropriation | <input checked="" type="checkbox"/> Increase Existing Revenues | <input checked="" type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues | |
| <input type="checkbox"/> Create New Appropriation | | |

Local: No Local Government Costs

- | | | |
|--|---|--|
| 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
| 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | |

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.566 (8) (b) and (r)

Assumptions Used in Arriving at Fiscal Estimate:

The proposed emergency rule order relates to the adoption of the Retailer Performance Program by the Wisconsin lottery. This rule amends existing rules consistent with Legislative Council Clearinghouse standards. WGC 61.02(5) and (8) are created in order to provide definitions relating to the Wisconsin lottery Retailer Performance Program. WGC 61.04(1)(d), 61.08(11)(c) and 21(c) are amended and WGC 61.085 is created to address the implementation and maintenance of the Retailer Performance Program. The proposed emergency rule clarifies the Department's interpretation of recently enacted statutes.

It is expected that the Retailer Performance Program will increase lottery sales revenue; however, retailer compensation costs will likely increase as well. It is expected that every \$1 of additional revenue generated by the incentive program will result in a \$0.25 expense for retailer compensation related to the incentive program and other administrative expenses. However, sufficient data on the outcome of retailer performance programs in Wisconsin and other states do not exist. Thus, the net increase in lottery revenue based upon the potential increase in sales revenue and the corresponding rise in retailer compensation costs is unknown.

Long-Range Fiscal Implications:

| | | |
|--|---|-------------|
| Agency/Prepared by: (Name & Phone No.) | Authorized Signature/Telephone No. | Date |
| Wisconsin Department of Revenue John T. Stott, (608) 266-9706 | Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i> | 2/24/00 |

FISCAL ESTIMATE WORKSHEET

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Detailed Estimate of Annual Fiscal Effect

1999 Session

LRB #

INTRODUCTION #

Admin. Rule #
WGC 61.02,
61.04, 61.08, and
61.085

Subject
State Lottery Retailer Performance Program

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

| II. Annualized Costs: | Annualized Fiscal impact on State funds from: | |
|--|---|-----------------------|
| | Increased Costs | Decreased Costs |
| A. State Costs by Category | | |
| State Operations - Salaries and Fringe (FTE Position Changes) | \$ - | \$ - |
| State Operations-Other Costs | (FTE) | (- FTE) |
| Local Assistance | See Text | - |
| Aids to Individuals or Organizations | | - |
| TOTAL State Costs by Category | \$ - | \$ - |
| B. State Costs by Source of Funds | | |
| GPR | Increased Costs | Decreased Costs |
| FED | \$ - | \$ - |
| PRO/PRS | | - |
| SEG/SEG-S | See Text | - |
| III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Rev. | Decreased Rev. |
| GPR Taxes | \$ - | \$ - |
| GPR Earned | | - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | See Text | - |
| TOTAL State Revenues | \$ See Text | \$ - |

NET ANNUALIZED FISCAL IMPACT

| | <u>STATE</u> | <u>LOCAL</u> |
|------------------------|--------------|--------------|
| NET CHANGE IN COSTS | \$ See Text | \$ |
| NET CHANGE IN REVENUES | \$ See Text | \$ |

| | | |
|--|---|-----------------|
| Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue John T. Stott, (608) 266-9706 | Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i> | Date 2/24/00 |
|--|---|-----------------|