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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-158

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### **1. Statutory Authority**

In the analysis for the proposed rule, the department could consider removing the statutory authority citations to ss. 227.11 (2) and 125.03 (1) (a), Stats., which provide general authority for the department to promulgate rules. The listing of statutory authority already cites the more specifically applicable statute, s. 111.335 (4) (f) 6., Stats., which requires a state licensing agency to promulgate rules to implement a predetermination procedure for applicant eligibility.

#### **2. Form, Style and Placement in Administrative Code**

a. In the explanation of agency authority in the department’s analysis for the proposed rule, the listing of the authority in 2017 Wisconsin Act 278 to promulgate rules using the procedure under s. 227.24, Stats., should be removed. That statutory section relates to emergency rulemaking, which does not apply to this proposed rule.

b. Rules relating to requirements for permits issued under ch. 125, Stats., are found in ch. Tax 7 (relating to fermented malt beverages) and ch. Tax 8 (relating to intoxicating liquors), and rules relating to requirements for permits issued under ch. 139, Stats., are found in ch. Tax 9 (relating to cigarettes). The department could consider placing the proposed rule in each of those chapters, rather than in ch. Tax 1 (general administration). If placed directly in those chapters, the language in sub. (1) would refer to a permit under ch. 125, Stats., when the rule is placed in ch. Tax 7 or 8, and the language in sub. (1) would refer to a permit under ch. 139, Stats., when the rule is placed in ch. Tax 9.

c. The proposed rule describes the procedure to obtain a predetermination, under s. 111.335 (4) (f), Stats., of eligibility for a permit issued by the department under ch. 125 or 139, Stats. The department could consider hewing more closely to the statutory language in order to avoid confusion where the statutory language differs from that in the administrative code, as follows:

- (1) In s. Tax 1.18 (2) (b) 2., revise the phrase “The date and description, including the nature and circumstances, of the crime” to “The date of conviction for any crime described in subd. 1. and a description of the nature and circumstances of the crime”. The latter language tracks the statutory language and removes any ambiguity as to whether the applicant should indicate the date of commission, or the date of conviction, for each crime.
- (2) In s. Tax 1.18 (2) (d), revise the phrase “the costs to review the application and conduct an investigation on the individual” to “the cost of making the determination” to match the statutory language. Alternatively, the department could specify in the proposed rule that in order to make the determination, the department must review the application and conduct an investigation on the individual. This will more closely align the fee charged by the department to the costs allowed by the statute.
- (3) In s. Tax 1.18 (3), revise the phrase “will provide a written response to each predetermination request” to “shall make a predetermination and send the predetermination in writing” or “shall make a determination and send the determination in writing” in order to comply with the statutory mandate. Using the phrase “provide a written response” could be interpreted as requiring only a written acknowledgement of the application.

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

In s. Tax 1.18 (2) (a), a note should be inserted to indicate how the referenced form may be obtained. [s. 1.09 (3), Manual.]

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

a. In s. Tax 1.18 (2) (a), revise the phrase “to the Department of Revenue” to the phrase “to the department”. Section Tax 1.001 (1) already defines “department” to mean the Wisconsin Department of Revenue.

b. In s. Tax 1.18 (2) (b), consider inserting an additional subdivision to require all other information that is requested in the application form.

c. In s. Tax 1.18 (2) (c), consider revising the provision from the statements that “There is no requirement for an individual to first obtain a predetermination from the department. An individual may submit an application for a permit.” to the statement that “An individual may submit an application for a permit without obtaining a predetermination from the department under this section.”.

d. The department should specify what standards will apply in making a predetermination. For example, ss. 125.04 (5) (a) 1. and (b), 125.12, and 139.34 (1) (c), Stats., identify particular conviction records that would disqualify a person from holding a permit under those chapters. If those standards will apply for a predetermination under the proposed rule, those standards should be incorporated.