

## Clearinghouse Rule 16-064

### **PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING; CONSOLIDATING, RENUMBERING, AND AMENDING; AND AMENDING RULES**

The Wisconsin Department of Revenue (DOR) proposes an order to: **repeal** Tax 12.50 (3) (a) and (a) (Note) and subch. I and subch. II (title) of ch. Tax 20; **consolidate, renumber, and amend** Tax 12.50 (3) (intro.) and (b); and **amend** Tax 12.50 (title), (1), and (2) and ch. Tax 20 (title); **relating to** property tax administration.

The scope statement for this rule, SS 116-13, was approved by the Governor on August 21, 2013, published in Register No. 693 on September 30, 2013, and approved by the Secretary of Revenue on October 15, 2013.

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#### ***Analysis by DOR***

**Statutes interpreted:** sec. 70.111 (18), Stats.

**Statutory authority:** ss. 227.11 (2) (a), 73.03 (1), and 73.03 (66), Stats.

**Explanation of agency authority:** sec. 227.11 (2) (a), Wis. Stats.: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute . . .

Sec. 73.03 (1), Wis. Stats.: [It shall be the duty of the department of revenue, and it shall have power and authority:] To have and exercise general supervision over the administration of the assessment and tax laws of the state, over assessors, boards of review, supervisors of equalization, and assessors of incomes, and over the county boards in the performance of their duties in making the taxation district assessment, to the end that all assessments of property be made relatively just and equal at full value and that all assessments of income may be legally and accurately made in substantial compliance with law.

Sec. 73.03 (66), Wis. Stats.: [It shall be the duty of the department of revenue, and it shall have power and authority:] To promulgate rules to ensure that the payments under s. 79.10 (4) made from the appropriation account under s. 20.835 (3) (qb) are used exclusively for school levy tax credits granted to state residents.

2013 Wisconsin Act 20 repealed sec. 73.03 (66), Wis. Stats. Therefore, DOR no longer has the statutory authority for ss. Tax 20.01 to 20.03.

**Related statute or rule:** There are no other applicable statutes or rules.

**Plain language analysis:** The proposed rule will amend s. Tax 12.50 to reflect changes made to sec. 70.111 (18), Wis. Stats., by 2013 Wisconsin Act 20 and repeal ss. Tax 20.01 to 20.03 because 2013 Wisconsin Act 20 repealed DOR's rule-making authority under sec. 73.03 (66), Wis. Stats.

**Summary of, and comparison with, existing or proposed federal regulation:** Sec. 70.111 (18), Wis. Stats., as amended by 2013 Wisconsin Act 20, relies on the federal definition of biomass found in section 45K (c) (3) of the Internal Revenue Code, which reads:

The term "biomass" means any organic material other than—  
(A) oil and natural gas (or any product thereof), and  
(B) coal (including lignite) or any product thereof.

26 USC § 45K provides a federal income tax credit for producing fuel from a nonconventional source, including gas produced from biomass. Additionally, H.R. 860, Biogas Investment Tax Credit Act of 2013, was introduced by U.S. Rep. Kind this year. This bill would include biogas property for an energy credit towards federal taxes for any taxable year equal to ten percent of the amount of investment in each energy property placed in service during such taxable year.

Biogas and synthetic gas digesters are also regulated by federal air, solid waste, and water regulations, but these federal regulations have little impact on DOR's application of state tax laws.

There are no federal regulations addressing the school levy tax credit or the activities for which the credit is available.

**Comparison with rules in adjacent states:** DOR is not aware of a similar rule in an adjacent state.

**Summary of factual data and analytical methodologies:** Changes to Tax 12.50 will reflect the legislature's policy decision to include biogas and synthetic gas energy systems under the renewable energy system property tax exemption.

The alternative is to leave the rule out of sync with the statute.

2013 Wisconsin Act 20 repealed the appropriation found in sec. 20.835 (3) (qb), Wis. Stats., and the associated rule-making authority in sec. 73.03 (66), Wis. Stats. The legislature has clearly identified a policy that the department should no longer appropriate lottery funds to the school levy tax credit. Repealing the rule associated with this legislative change is the only alternative, particularly in light of the legislature's repeal of the department's rule-making authority in sec. 73.03 (66), Wis. Stats.

**Analysis and supporting documents used to determine effect on small business:** This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

**Anticipated costs incurred by private sector:** DOR does not anticipate any costs will be incurred by the private sector.

**Effect on small business:** DOR does not anticipate any effect on small business.

**Agency contact person:** Scott Shields at (608) 266-8223 or [scott.shields@wisconsin.gov](mailto:scott.shields@wisconsin.gov), if you have any questions regarding this rule order.

**Place where comments are to be submitted and deadline for submission:** Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Scott Shields  
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Mail Stop 6-97  
2135 Rimrock Road  
P.O. Box 8971  
Madison, WI 53708-8971

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**SECTION 1.** Tax 12.50 (title), (1), and (2) are amended to read:

Tax 12.50 (title) **Exempt biogas, synthetic gas, solar, and wind energy systems.**

(1) APPLICABILITY. The general property tax exemption applies whether the biogas, synthetic gas, solar, and wind energy systems are deemed personal property or are so affixed to the realty as to be classified as real estate.

(2) CLAIMS FOR EXEMPTION, PROCEDURE. ~~Upon certification by the department of commerce the~~ The owner of ~~the a~~ biogas, synthetic gas, solar, and or wind energy system shall submit a claim for exemption on forms prescribed by the department of revenue to the assessor for the taxation district in which the system is located.

**SECTION 2.** Tax 12.50 (3) (intro.) and (b) are consolidated, renumbered Tax 12.50 (3) and amended to read:

Tax 12.50 (3) WHEN VALID. An exemption shall become effective when ~~both of the following conditions are met:~~ (b) The ~~the~~ claim for exemption ~~shall be~~ is submitted to the assessor no later than the March 1 immediately following the assessment date for which the exemption is claimed.

**SECTION 3.** Tax 12.50 (3) (a) and (a) (Note) are repealed.

**SECTION 4.** Chapter Tax 20 (title) is amended to read:

Chapter Tax 20 (title) **PROPERTY TAX CREDITS LOTTERY AND GAMING CREDIT**

**SECTION 5.** Subchapter I and subch. II (title) of ch. Tax 20 are repealed.

**SECTION 6.** Tax 20.04 and 20.04 (Note) are amended to read:

Tax 20.04 **Purpose.** The purpose of this ~~subchapter~~ chapter is to provide definitions related to the lottery and gaming credit and establish procedures to assist in the management of the lottery and gaming credit program at the state, county, town, village, and city level.

(Note) Department of Revenue forms mentioned through this ~~subchapter~~ chapter are located on the department's web site at [www.revenue.wi.gov](http://www.revenue.wi.gov).

**SECTION 7.** Tax 20.05 (intro.) is amended to read:

Tax 20.05 (intro.) Definitions. In this ~~subchapter~~ chapter:

**SECTION 8.** EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in sec. 227.22 (2) (intro.), Wis. Stats.

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DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Richard G. Chandler  
Secretary of Revenue