

CR 91-24

CERTIFICATE

**RECEIVED**

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF REVENUE )

AUG 1 1991  
*2:10 pm*  
Revisor of Statutes  
Bureau

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to excise tax, was duly approved and adopted by this department on July 31, 1991.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 31<sup>st</sup> day of July, 1991.

  
\_\_\_\_\_  
Mark D. Bugher  
Secretary of Revenue

MDB:MPW:1c  
CKLEG/760

10-1-91

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AUG 1 1991

Revisor of Statutes  
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ORDER OF THE DEPARTMENT OF REVENUE  
CREATING RULES

The Wisconsin Department of Revenue adopts an order to create Tax 4.54, 4.55, and 9.68, relating to motor fuel, special fuel, general aviation fuel, and cigarette taxes.

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Analysis by the Department of Revenue

Statutory authority: ss. 78.79, 139.08(2) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 78.10(6), 78.11, 78.48(6) and (9), 78.57(6) and (9) and 139.34(4), Stats.

SECTION 1. Tax 4.54 is created to clarify when security is required, the amount of security, types of security, and return of security with respect to the issuance of motor fuel, special fuel, and general aviation fuel licenses. The department may require any person liable for these taxes to post security in an amount not to exceed limits set by statute.

SECTION 2. Tax 4.55 is created to clarify that a change in ownership of a business requires the application for a new fuel tax license as provided by statute and gives examples where a new license is or is not required.

SECTION 3. Tax 9.68 is created to clarify that a change in ownership of a business requires the application for a new cigarette permit as provided by statute and gives examples where a new permit is or is not required.

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SECTION 1. Tax 4.54 is created to read:

Tax 4.54 SECURITY REQUIREMENTS. (ss. 78.11, 78.48(9) and 78.57(9), Stats.)

(1) GENERAL. Under ss. 78.11, 78.48(9) and 78.57(9), Stats., the department may require motor fuel, special fuel and general aviation fuel taxpayers to deposit security with the department. This security may be required before or after the fuel tax license is issued. The amount of security determination will be made by the department. The amount of the security may not exceed \$100,000 for motor fuel and \$25,000 for special fuel and general aviation fuel. If any person fails or refuses to place the security, the department may refuse to issue the license or revoke the license.

(2) FACTORS FOR DEPARTMENT'S CONSIDERATION. (a) In determining whether security will be required and the amount of security to be required, the department shall consider all relevant factors, including:

1. Evidence of adequate financial responsibility. The evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential fuel tax liability.

2. The person's prior record of filing tax returns and paying taxes of any kind with the department.

3. Type of entity making the sales of motor fuel, special fuel and general aviation fuel.

Example: A sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets.

(b) Although the individual factors listed in par. (a) shall be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department of revenue. Protection of the fuel tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines security in excess of \$100 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) TYPES OF SECURITY. Acceptable types of security include, but are not limited to:

(a) Noninterest-bearing:

1. Cash, certified check or money order.

2. Surety bonds issued by authorized underwriters.

(b) Interest-bearing: Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on the certificates shall be paid to the depositor.

(4) DETERMINATION OF AMOUNT. (a) If security is required, the amount shall be equal to the depositor's average quarterly Wisconsin fuel tax liability increased to the next highest even \$100 amount, unless the department determines under sub. (2) that for good cause a higher amount is appropriate. The estimate of the depositor's average quarterly fuel tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances:

1. The depositor's previous fuel tax liability.
2. The depositor's predecessor's fuel tax liability.
3. The estimated tax liability shown on the application for a license.
4. Other factors, such as the department's estimate of tax liability based on its experience with other similar activities.

(b) If at the time of the security review the person has an outstanding fuel tax delinquency, the delinquent amount shall be added to the estimated average quarterly fuel tax liability and the sum of the two shall be the amount of security required.

(5) RETURN OF DEPOSIT. (a) Any security deposited shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of ch. 78, Stats.

(b) The 24 month compliance requirement described in par. (a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24 month period described in par. (a), the department shall review the taxpayer's compliance record. If

the taxpayer has complied with ch. 78, Stats., the department shall within 60 days after the expiration of the 24 month period certify the deposit for refund.

(d) Compliance with ch. 78 means that:

1. Fuel tax reports are timely filed.
2. All payments are made when due.
3. No penalties due to negligence or fraud are assessed for filing periods within the 24 month compliance period.
4. No assessment of additional tax, interest or other charges for filing periods within the 24 month compliance period is unpaid at the end of the 24 month compliance period.
5. No delinquencies of fuel tax, interest or other charges imposed under ch. 78 exist with the department of revenue.

(e) If a taxpayer does not meet the compliance requirements set forth in par. (d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest incident of noncompliance.

SECTION 2. Tax 4.55 is created to read:

Tax 4.55 OWNERSHIP AND NAME CHANGES. (ss. 78.10(6), 78.48(6) and 78.57(6), Stats.) (1) GENERAL. Under ss. 78.10(6), 78.48(6) and 78.57(6), Stats., a fuel tax license is not transferable to another person or to another place of business. This section clarifies when a change in ownership or name of a business requires a new fuel tax license.

(2) OWNERSHIP CHANGES. (a) When there is a change in ownership of a business, the new owner shall apply for a new license using form MF-100, except as provided in par. (c). The new owner shall notify the department no later than 10 days prior to the change. Security may be required as provided in s. Tax 4.54.

(b) A new license shall be obtained when there is a change in type of ownership such as between a sole proprietorship, partnership, corporation or other form of ownership, except as provided in par. (c).

Example: A new license is required if: 1) A sole proprietorship or partnership incorporates.

- 2) A sole proprietorship is sold to a different sole proprietor.
- 3) A sole proprietorship becomes a partnership.
- 4) A partner in a partnership leaves the partnership or a partner is added to the partnership.
- 5) The federal employer identification number of a business changes.

(c) A change in the ownership of a corporation does not require a new license unless either of the following occurs:

1. A corporation is merged with another corporation, the merged corporation ceases to exist, and the surviving corporation does not have a valid license.

2. The federal employer identification number of a corporation changes.

(3) NAME CHANGE. (a) A licensee shall notify the department of a name change at least 10 days prior to the change and the licensee shall retain the same license number.

(b) A rider, verifying the name change, such as one filed by a licensee's insurance company at the request of the licensee, shall be submitted to the department. If no security is on file or a rider is not filed with the department, new security shall be deposited under the new name, as required under s. Tax 4.54, and any old security shall be returned to the licensee.

Note: Copies of Form MF-100 may be obtained by writing or calling Wisconsin Department of Revenue, Excise Tax Bureau, P. O. Box 8905, Madison, WI 53708, (608) 266-6701.

SECTION 3. Tax 9.68 is created to read:

Tax 9.68 OWNERSHIP AND NAME CHANGES. (s. 139.34(4), Stats.)

(1) GENERAL. Under s. 139.34(4), Stats., a cigarette permit is not transferable to another person. This section clarifies when a new cigarette permit is required, as the result of an ownership or name change, or both.

(2) OWNERSHIP CHANGES. (a) When there is a change in ownership of a business, the new owner shall apply for a new permit using form CTP-129, except as provided in par. (c). The new owner shall notify the department not later than 10 days prior to the change.

(b) A new permit shall be obtained by using form CTP-129 when there is a change in type of ownership such as between a sole proprietorship, partnership, corporation or other form of ownership, except as provided in par. (c).

Example: A new permit is required if: 1) A sole proprietorship or partnership incorporates.

- 2) A sole proprietorship is sold to a different sole proprietor.
- 3) A sole proprietorship becomes a partnership.
- 4) A partner in a partnership leaves the partnership or a partner is added to the partnership.
- 5) The federal employer identification number of a business changes.

(c) A new permit is not required for a change in the ownership of a corporation unless either of the following occurs:

1. A corporation is merged with another corporation, the merged corporation ceases to exist, and the surviving corporation does not have a valid permit.

2. The federal employer identification number of a corporation changes.

(3) NAME CHANGE. (a) A permittee shall notify the department of a name change at least 10 days prior to the change and the permittee shall retain the same permit number.

(b) A rider, verifying the name change, such as one filed by a permittee's insurance company at the request of the permittee, shall be submitted and attached to the security documents on file with the department. If no security is on file or a rider is not filed with the department, new security shall be deposited as required under s. Tax 9.67, under the new name, and the old security shall be returned to the permittee.

Note: Copies of Form CTP-129 may be obtained by writing or calling Wisconsin Department of Revenue, Excise Tax Bureau, P. O. Box 8905, Madison, WI 53708, (608) 266-6701.

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

Final Regulatory Flexibility Analysis

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

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

*July 31, 1991*

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

WISCONSIN DEPARTMENT OF REVENUE

*[Signature]*  
Mark D. Bugher  
Secretary of Revenue

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ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**FISCAL ESTIMATE**

DOA-2048 (R11/90)

**Subject**

Tax Rules Relating to Motor Fuel and Cigarettes

**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       VTAE Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

The rule changes clarify the security requirements for cigarette and motor fuel taxes. The rule changes also clarify that a change in ownership requires a new tax license or permit. These changes should have no significant fiscal effect.

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**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)  
Wisconsin Department of Revenue  
Yeang-Eng Braun, 266-5773

Authorized Signature/Telephone No. 266-2700

*Margaret M. Deuss*

Date

1/31/91

**FISCAL ESTIMATE WORKSHEET**

1991 Session

Detailed Estimate of Annual Fiscal Effect  ORIGINAL  UPDATED  
 DOA-2047(R11/90)  CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
Tax Rules 4.54, 4.55,	9.68

Subject

Tax Rules Relating to Motor Fuel and Cigarettes

**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
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	\$	\$ -
<b>B. State Costs by Source of Funds</b>		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>III. State Revenues-</b> Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	\$	\$ -

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ None	\$ _____

Agency/Prepared by: (Name & Phone No.)  
 Wisconsin Department of Revenue  
 Yeang-Eng Braun, 266-5773

Authorized Signature/Telephone No. 266-2700  
*Margaret Y. Braun*

Date  
 1/31/91



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson  
Governor

Mark D. Bugher  
Secretary of Revenue

July 31, 1991

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Gary L. Poulson  
Assistant Revisor  
2nd Floor  
119 Martin Luther King, Jr. Blvd.  
Madison, Wisconsin 53703

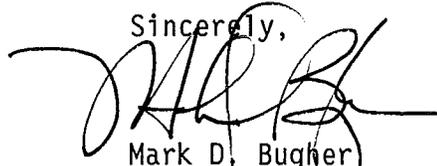
Re: Clearinghouse Rule 91-24

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to excise tax.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,



Mark D. Bugher  
Secretary of Revenue

MDB:MPW:1c  
CKLEG/759

Enclosure

cc: Douglas J. LaFollette, Secretary of State  
Prentice Hall, Inc.  
Commerce Clearinghouse, Inc.



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6468 ● FAX 608-266-5718

*Tommy G. Thompson*  
Governor

*Mark D. Bugar*  
Secretary of Revenue

July 31, 1991

Douglas LaFollette  
Secretary of State  
30 West Mifflin Street, 10th Floor  
Madison, Wisconsin 53703

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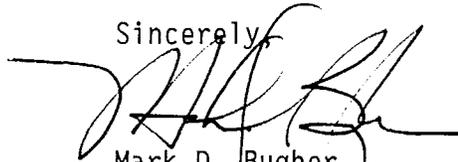
AUG 1 1991  
Revisor of Statutes  
Bureau

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 91-24.

These materials are filed with you pursuant to s. 227.20, Stats.

Sincerely,



Mark D. Bugar  
Secretary of Revenue

MDB:MPW:lc  
CKLEG/758

Enclosure

cc: Revisor of Statutes