

CR 93-15

CERTIFICATE
ORDER ADOPTING RULES

STATE OF WISCONSIN)

)SS

MINING INVESTMENT
AND LOCAL IMPACT
FUND BOARD)

I, Lloyd Kincaid, Chairman of the Mining Investment and Local Impact Fund Board and custodian of the official records, certify that the annexed rules, relating to administration of the notice of intent payments, were duly approved and adopted by this board on March 15, 1993.

I further certify that this copy has been compared by me with the original on file in this board 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 S. Webster Street in the
city of Madison, this 12 day of
July, 1993.



Lloyd Kincaid, Chairman
Mining Investment and
Local Impact Fund Board

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4:30 pm
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7-1-93

**ORDER OF THE MINING INVESTMENT AND LOCAL IMPACT FUND BOARD
IN RESPONSE TO 1991 WISCONSIN ACT 259**

The Wisconsin Mining Investment and Local Impact Fund Board hereby adopts an order to **renumber** Tax 13.08 (3)(j); **amend** Tax 13.08 (2) (intro.), (c), (f), (3)(a), (4)(a), (7)(a), and 13.10 (7); to **repeal and recreate** Tax 13.06 (3); and to **create** Tax 13.03 (4m), (14g), and (14r), 13.08 (3)(j), and 13.05 (4), relating to notice of intent payments.

ANALYSIS BY THE MINING INVESTMENT AND LOCAL IMPACT FUND BOARD

Rule-making authority:

ss. 70.395 (2)(hg) and (hr) and 227.11 (2), Stats.

Statutes interpreted:

Sections 1-3: ss. 70.395 (2)(dc) and (fm) Stats. (sec. 5 and 6 of Act 259)

Section 4: ss. 70.395 (2)(fm) and (hw), Stats. (sec. 6 of Act 259)

Section 5-6: ss. 70.395 (2)(d)5.c., (fm), and (hw) Stats.

Section 7: ss. 70.395 (2)(hw) and s. 70.396 (2), Stats. (sec. 9 of Act 259)

Section 8: s. 70.395 (2)(hw), Stats. (sec. 8 of Act 259)

Creation and amendment of rules is necessitated by recent passage of 1991 Wisconsin Act 259, which creates a new type of payment from the Investment and Local Impact Fund. These rules are necessary to ensure proper administration of notice of intent payments made to the Department of Revenue for deposit into the Investment and Local Impact Fund.

The notice of intent distributions are very similar in purpose to the permit period payments (which are no longer authorized). Tax 13.08 (2) indicates uses for permit period payments which are reconcilable to allowable uses for notice of intent distributions, because both relate to a municipality's consideration of potential mining impacts.

Thus, it may be acceptable to retain the language in Tax 13.08 (2)(a) through (k) as long as the language in sub. (2) and par. (c) and (f) is modified to clearly define these as expenditure rules for notice of intent distributions.

**CHAPTER TAX 13
INVESTMENT AND LOCAL IMPACT FUND**

SECTION 1. Tax 13.03 (4m), (14g), and (14r) are **created** to read:

Tax 13.03 (4m) "Eligible recipient" means a county, city, village, town, tribal government, or local impact committee authorized under s. 144.839 (3), Stats., actively involved or eligible to be involved in the good faith negotiation of a local agreement under s. 144.839, Stats., with the person filing the notice of intent under s. 144.831 (1), Stats.

(14g) "Notice of intent distribution" means an amount equal to \$150,000 maximum disbursed by the board to eligible municipalities, Native American communities, and local impact committees, on an as-needed basis pursuant to s. 70.395 (2)(fm), Stats.

(14r) "Notice of intent payment" means an amount equal to \$150,000 maximum to be paid in 3 increments of \$50,000 each until a refund is made or negotiations for a local agreement lapse, deposited into the impact fund pursuant to s. 70.395 (2)(dc), Stats.

SECTION 2. Tax 13.05 (4) is **created** to read:

Tax 13.05 (4) NOTICE OF INTENT PAYMENT. (a) Each person filing a notice of intent to collect data with the department of natural resources under s. 144.831 (1), Stats., shall make a notice of intent payment to the department of revenue for deposit in the impact fund, equal to an amount sufficient to make all of the notice of intent distributions under s. Tax 13.06 (3), up to a maximum amount of \$150,000. This payment shall be used by the board exclusively to make notice of intent distributions until a refund is made or negotiations for a local agreement lapse. The notice of intent payment shall be made in increments of \$50,000 each until a refund is made or negotiations for a local agreement lapse.

1. Within 7 days after the filing of the notice of intent to collect data, a person shall pay the first increment of the notice of intent payment, an amount equal to \$50,000, to the department of revenue for deposit into the impact fund.

2. A person making a payment under subd. 1. shall pay an additional \$50,000 to the department of revenue for deposit into the impact fund upon notification by the board that the board has distributed 50 percent of the payment made under subd. 1.

3. A person making a payment under subd. 2. shall pay an additional \$50,000 for deposit into the impact fund upon notification by the board that the board has distributed all of the payment under subd. 1. and 50 percent of the payment under subd. 2.

(b) Information provided to the board. Any person filing a notice of intent to collect data with the department of natural resources shall within 7 days after that filing submit to the board the following:

1. A copy of the notice of intent to collect data.
2. A map showing the location of the ore body and proposed mining site.
3. A list of counties, cities, villages, towns, Native American communities, and local impact committees that may be eligible to be actively involved in the negotiation of a local agreement with that person, pursuant to s. 144.839, Stats. Those listed may be eligible to receive a notice of intent distribution.

(c) Information provided to eligible recipients. Within 7 days after the receipt of the notice of intent payment, the board shall give written notice to the counties, cities, villages, towns, Native American communities, and local impact committees that may be eligible to receive notice of intent distributions and shall distribute guidelines for uses of the distributions to each.

(d) Refunds of undistributed monies. Six months after the date of the signing of the local agreement under s. 144.839, Stats., the board shall refund to the person making the notice of intent payment any money paid under this subsection but undistributed by the board to eligible recipients.

SECTION 3. Tax 13.06 (3) is repealed and recreated to read:

Tax 13.06 (3) NOTICE OF INTENT DISTRIBUTIONS. (a) Procedure. Eligible recipients may receive a notice of intent distribution from the board for reasonable local agreement negotiation-related expenses according to the following procedure:

1. An eligible recipient shall notify the board and the person making payment under s. Tax 13.05 (4) in writing that it is intending to begin negotiations or is preparing to negotiate a local agreement.

2. On an as-needed basis, an eligible recipient shall provide documentation to the board of the costs that have been incurred or expenses to be incurred. To document the expenses, the eligible recipient shall submit a copy of each bill received, contracts negotiated, or proposals and budgets for future expenses to the board and to the person making payment under s. Tax 13.05 (4).

3. The board shall make payment from monies received under s. Tax 13.05 (4) to the eligible notice of intent distribution recipient within 3 weeks for the amount of the reasonable expenditures that have occurred or to be incurred.

(b) Prior costs. Unless agreed to in writing between an eligible recipient and the person making payment under s. Tax 13.05 (4), the person shall be liable for costs relating to the negotiation of a local agreement incurred prior to the making of the deposit under s. 70.395(2)(dc), Stats., and for costs incurred prior to the written notice given by the eligible recipient under subd. 1. if such notice and deposit are made or required to be made.

SECTION 4. Tax 13.08 (2) (intro.), (c), (f), and (3)(a) are amended to read:

Tax 13.08 (2) ~~PERMIT PERIOD~~ NOTICE OF INTENT PAYMENTS. Once a ~~mining permit application notice of intent to collect data~~ is filed pursuant to ~~s. 144.85 s. 144.831 (1),~~ Stats., and ~~prior to mine construction,~~ funds disbursed up until 6 months after the signing of the local agreement according to s. 144.839, Stats., in accordance with s. 70.395 (2)(d)5-a. s. 70.395 (2)(fm), Stats., may be spent for purposes directly in response to the filing of the mining permit application, negotiation of a local agreement, although the expenditure may be after the 6 month period, limited to:

(c) Reviewing and commenting on the mining reclamation plans, permit applications, or the environmental impact statement, the notice of intent to collect data, or any other submittal to state agencies under the mining permit application and environmental review process.

(f) Legal counsel and technical consultants in the areas of transportation, utilities, economic, environmental, and social impacts, and municipal services in accordance with s. 70.395 (2)(g)6 and (hw) s. 70.395 (2)(fm), Stats.

Tax 13.08 (3)(a) Activities listed in sub. (2)(a) through (e) and (g) through (k).

SECTION 5. Tax 13.08(3)(j) is renumbered to (k).

SECTION 6. Tax 13.08 (3)(j) is created to read:

Legal counsel and technical consultants in accordance with s. 70.395 (2)(g)6. and (hw), Stats.

SECTION 7. Tax 13.08 (4)(a) and (7)(a) are amended to read:

Tax 13.08 (4)(a) Activities listed in subs. (1), (2)(a) through (e) and (g) through (k), and (3).

Tax 13.08 (7)(a) ~~A maximum of 10% of a county's first dollar payment~~ may be placed in a county mining investment fund for investment by the state investment board or placed in a financial institution located in the state. Funds may be withdrawn to alleviate impacts associated with the closing of the mine in the county or the curtailment of mining activity in the county. If a county deposits funds in the county mining investment fund, withdrawals are subject to the restrictions contained in s. 25.65, Stats. If a county deposits mining impact funds with a financial institution, withdrawals made within 10 years of deposit shall be subject to review and approval of the board. The county shall notify the board of withdrawals made 10 years after deposit. The county shall report annually to the board any deposits, withdrawal, and use of the funds in that year.

SECTION 8. Tax 13.10 (7) is amended to read:

Tax 13.10 (7) LEGAL FEES. Fund recipients may claim ~~up to \$60 per hour~~ reimbursement for legal counsel for mining-related purposes, pursuant to s. 70.395 (2)(hw), Stats. Recipients which use funds to pay their own attorney shall use the hourly rate which is consistent with other work the attorney does for that municipality recipient. ~~Recipients which choose to pay an attorney a rate above \$60 per hour shall pay the additional cost.~~

EFFECTIVE DATE

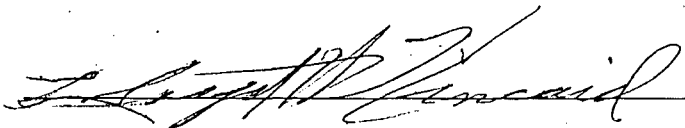
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro), Stats.

FINAL REGULATORY FLEXIBILITY ANALYSIS

This rule will have no effect on small businesses.

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date: 7/12/93

Lloyd Kincaid, Chairman
Mining Investment and Local Impact Fund Board