

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 13.03 (7) and (14), 13.05 (1), 13.05 (4) (a) 1., 2., and 3., 13.06 1 (a) 1. and 2., (b), (c), (d) 1. and 3., (2), (4), and (5), 13.07 (1), (2) (c) 9. a., b., and c., 13.075, 13.08 (1), (2), (3), (4), (5), and (7), and 13.13; **amend** Tax 13.03 (9), (14g), and (14r), 13.07 (intro) and (2) (c) 9., and 13.11 (5) (a); **renumber** 13.08 (8) and (9); and **renumber and amend** Tax 13.05 (4) (a) (intro.), 13.06 (1) (intro.), and 13.08 (6) (intro.); **relating to** the Investment and Local Impact Board.

The scope statement for this rule, SS 065-14, was approved by the Governor on July 1, 2014, published in Register No. 703B on July 31, 2014, and approved by the Chair of the Investment and Local Impact Fund Board on August 27, 2014.

Analysis by the Department of Revenue

Statutes interpreted: ss. 70.395 and 70.396, Stats.

Statutory authority: s. ss. 70.395 (2) (c), (hg), (hr), and (i), Stats.

Explanation of agency authority: Under s. 70.395 (2) (c), Stats., the board shall, according to procedures established by rule:

1. Certify to the department of administration the amount of funds to be distributed under pars. (d) to (g) and to be paid under (j).
2. Determine the amount which is not distributed under subd. 1. Which shall be invested under s. 25.17 (1) (jc).

Section 70.395 (2) (c) 1., Stats. authorizes the board to promulgate parts of Tax 13.05, 13.06, 13.07, and 13.08. Most of the statutorily authorized procedures are promulgated in Tax 13.07 (2). The proposed rule seeks to repeal the portions of these sections which repeat statutory provisions and lack statutory authority for promulgation.

Section 70.395 (2) (c) 2., Stats. authorizes the board to promulgate Tax 13.05 (1) (b) 3. and 4.

Section 70.395 (2) (hg), Stats. reads:

The board shall, by rule, establish fiscal guidelines and accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub (3) and ss. 293.65 (5) and 295.61 (9).

Tax 13.10 and 13.11 implement the board's policies regarding fiscal guidelines and accounting procedures clearly authorized by s. 70.395 (2) (hg), Stats.

Section 70.395 (2) (hr), Stats. reads:

The board shall, by rule, establish procedures to recoup payments made, and to withhold payments to be made, under pars. . (d), (f), (fm) and (g), sub (3) and ss. 293.65 (5) and 295.61 (9) for noncompliance with this section or rules adopted under this section.

Tax 13.12 implements the board's policies regarding recoupment and withholding of payments clearly authorized by s. 70.395 (2) (hr), Stats.

Section 70.395 (2) (i), Stats. reads, in part:

The board may require financial audits of all recipients of payments made under pars. (d) to (g). The board shall require that all funds received under pars. (d) to (g) be placed in a segregated account.

Section 70.395 (2) (i) authorizes the board to promulgate Tax 13.09 relating to audits of fund recipients.

Related statute or rule: The net proceeds occupation tax on mining of metallic minerals is created by s. 70.375. There are no other applicable rules.

Plain language analysis: The proposed rule makes the following changes:

- Repeals ss. Tax 13.03 (7) and (14) and amends s. Tax 13.03 (9) to eliminate definitions of terms no longer used in the rule language.
- Amends ss. Tax 13.03 (14g) and (14r) to address statutory change in 2013 Act 1.
- Repeals s. Tax 13.05 (1) to repeal rule language that is repetitive of 70.395(1e) and eliminate references to the Badger Fund which was repealed in 1997.
- Amend s. Tax 13.05 (3) (a) to update cross-reference to statutory provision.
- Amends s. Tax 13.05 (4) (a) (intro.) to update cross-reference to statutory provision.
- Repeal s. Tax 13.05 (4) (a) 1., 2., and 3. to eliminate rule language that is repetitive of s. 70.395 (2) (dc), Stats.
- Amends s. Tax 13.06 (1) (intro.) to update cross-reference to statutory provision.
- Repeal s. Tax 13.06 (1) (a) 1. and 2., (b), (c), and (d) 1. and 3. to eliminate rule language that is repetitive of ss. 70.375(6) and 70.395 (2) (d), Stats.
- Repeals ss. Tax 13.06 (2), (4), and (5) to eliminate rule language that is repetitive of s. 70.395 (2) (d) or lacks statutory authority.
- Amends s. Tax 13.07 (intro.) to update cross-reference to statutory provisions.
- Repeals s. Tax 13.07 (1) to eliminate rule language that is repetitive of s. 70.395 (2) (f), Stats.
- Amends s. Tax 13.07 (2) (c) 9. to reference statutory provision
- Repeal s. Tax 13.07 (2) (c) 9. a., b., and c. to eliminate rule language that is repetitive of s. 70.395 (2) (h), Stats.
- Repeals s. Tax 13.075 to eliminate rule language that is repetitive of ss. 293.33 and 295.443, Stats.
- Amends s. Tax 13.08 (6) (intro.) that lacks statutory authority.
- Repeal s. Tax 13.08 (1), (2), (3), (4), (5), and (7) to eliminate rule language that is repetitive of ss. 70.395 (g), 70.396, 293.33, and 295.443, Stats.
- Amend s. Tax 13.11 (5) (a) to update cross-reference to statutory provisions.
- Repeals s. Tax 13.13 to eliminate rule language that lacks statutory authority to the extent that it may be more restrictive than s. 70.395 (3), Stats.

Summary of, and comparison with, existing or proposed federal regulation: The investment and local impact board is not regulated by federal statutes or regulations.

Comparison with rules in adjacent states: The department has not found a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: The proposed rule will repeal unnecessary and confusing provisions and amend complex procedures related to the investment and local impact board's distribution of funds to local communities affected by metalliferous mining in this state. The provisions are repetitive of statutes, which were amended in 2013 Act 1. Tax 13 no longer accurately reflects the statute, and it is unnecessarily complex. The objective of the proposed rule is to clarify the procedures used by the board, reduce confusion and remove inaccuracies by repealing language that is found in the statute, and return the rule's contents to the subjects over which the board and the department of revenue were granted rule-making authority.

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: This rule order does not have a fiscal effect on the private sector.

Effect on small business: This rule order does not affect small business.

Agency contact person: Please contact Jen Chadwick at (608) 266-8253 or jennifer.chadwick@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 December 22, 2016. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

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SECTION 1. Tax 13.03 (7) is repealed.

SECTION 2. Tax 13.03 (9) is amended to read:

Tax 13.03 (9) "Mining" ~~or "mined"~~ has the meaning under s. 70.375 (1) (b), Stats.

SECTION 3. Tax 13.03 (14) is repealed.

SECTION 4. Tax 13.03 (14g) is amended to read:

Tax 13.03 (14g) "Notice of intent distribution" means an amount equal to ~~\$150,000~~ \$225,000 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.

SECTION 5. Tax 13.03 (14r) is amended to read:

Tax 13.03 (14r) "Notice of intent payment" means an amount equal to ~~\$150,000~~ \$225,000 maximum to be paid in 3 increments of ~~\$50,000~~ \$75,000 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 6. Tax 13.05 (1) is repealed.

SECTION 7. Tax 13.05 (3) (a) is amended to read:

Tax 13.05 (3) (a) A person who engages in construction shall pay a construction fee to the department of revenue equal to an amount sufficient to make all the construction period payments that year under s. ~~Tax 13.06 (2)~~ 70.395 (2) (d), Stats. This fee shall be used exclusively by the board to make construction period payments.

SECTION 8. Tax 13.05 (4) (a) (intro.) is renumbered 13.05 (4) (a) and amended to read:

Tax 13.05 (4) (a) *Procedure.* Each person filing a notice of intent to collect data with the department of natural resources under s. 293.31 (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.~~ 70.395 (2) (dc), Stats.

SECTION 9. Tax 13.05 (4) (a) 1., 2., and 3. are repealed.

SECTION 10. Tax 13.06 (1) (intro.) is renumbered 13.06 (1) and amended to read:

Tax 13.06 (1) **FIRST DOLLAR PAYMENTS.** Certain counties, cities, villages, towns, and Native American communities shall receive a first dollar payment under s. 70.395 (2) (d), Stats. Only county expenditures of first dollar payments are restricted under s. ~~Tax 13.08 (7)~~ 70.396, Stats. Cities, villages, towns, and Native American communities are not restricted to mining-related expenditures of first dollar payments. Each December, the board shall certify to the department of administration the specific payments to be made on the first Monday in January of the next year, ~~as follows:~~

SECTION 11. Tax 13.06 (1) (a) 1. and 2., (b), (c), (d) 1. and 3. are repealed.

SECTION 12. Tax 13.06 (2), (4), and (5) are repealed.

SECTION 13. Tax 13.07 (intro.) is amended to read:

Tax 13.07 (intro.) **Discretionary payments.** In accordance with s. 70.395 (2) (f), (fm), and (g), Stats., any municipality may apply to the board for a discretionary payment from the impact fund.

SECTION 14. Tax 13.07 (1) is repealed.

SECTION 15. Tax 13.07 (2) (c) 9. is amended to read:

Tax 13.07 (2) (c) 9. ~~The extent to which the location of each applicant, with respect to mineral development, meets 3 distribution priorities:~~ Priority for distribution of payments shall be determined in accordance with s. 70.395 (2) (h), Stats.

SECTION 16. Tax 13.07 (2) (c) 9. a., b., and c. are repealed.

SECTION 17. Tax 13.075 is repealed.

SECTION 18. Tax 13.08 (1), (2), (3), (4), and (5) are repealed.

SECTION 19. Tax 13.08 (6) (intro.) is amended to read:

Tax 13.08 (6) (intro.) ~~OTHER MINING-RELATED COSTS.~~ Municipalities may seek approval from the board for other mining-related projects ~~not outlined in this section.~~ Applications seeking expenditure approval shall contain:

SECTION 20. Tax 13.08 (7) is repealed.

SECTION 21. Tax 13.11 (5) (a) is amended to read:

Tax 13.11 (5) (a) All municipalities which receive a payment or grant under this chapter shall file an expenditure report by March 1 of the year following the year the funds are received. The expenditure report shall be on forms prepared and furnished by the board. A county's expenditure report shall include information regarding the use of any funds distributed by the county under s. ~~Tax 13.08 (7) (a)~~ 70.396 (2), Stats.

SECTION 22. Tax 13.13 is repealed.

SECTION 23. 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.