

## PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING RULES

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 7.11 and 8.63 (7) **relating to** excise tax.

The scope statement for this rule, SS 037-20, was approved by the Governor on May 7, 2020, published in Register No. 773A2 on May 11, 2020, and approved by the Secretary of Revenue on June 4, 2020.

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### *Analysis by the Department of Revenue*

#### **Statutes interpreted:**

Tax 7.11 – s. 139.10, Stats.

Tax 8.63 – s. 125.54 (7), Stats.

**Statutory authority:** ss. 125.54 (7) (d) and 227.11 (2), Stats.

**Explanation of agency authority:** Section 125.54 (7) (d), Stats., provides statutory rule-making authority as follows:

(d) "The department shall promulgate rules to administer and enforce the requirements under this subsection."

Section 139.08 (2), Stats., provides statutory rule-making authority as follows:

(2) "The secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter."

Section 227.11 (2), Stats., provides statutory rule-making authority as follows:

(a) "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..."

(c) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

**Related statute or rule:** Section Tax 7.001 (2) (a) 3. describes authority to require electronic filing for fermented malt beverage tax return and refund claims. Section Tax 7.01 describes records that must be kept by persons in the fermented malt beverage industry. Section 139.11 (4) (b) 2., Stats., requires the internet posting of liquor permit holders and dictates what permit information must be published, including the frequency.

**Plain language analysis:** As required under sec. 227.29, Stats., the department performed a complete review of the Wisconsin's Administrative Code as it relates to income, franchise, withholding, excise, sales, and use taxes to determine if the rules are unauthorized, obsolete, unnecessary, duplicative, superseded, in conflict, economically burdensome, or outdated. The report submitted to the legislature's Joint Committee for Review of Administrative Rules on March 26, 2019, identified the following excise tax sections as needing updates:

### a. Tax 7.11

Repeal sec. Tax 7.11. This rule describes the conditions and provisions for refunds of excise tax paid on beer sold to the armed forces. Specifically, the rule describes copies of invoices and affidavits that must be signed, retained by the armed forces, or filed with the department. These procedures are outdated as all refund claims are electronically filed and electronic records are kept by the department. Existing procedures are described in the instructions to Form BT-612, *Refund Claim of Tax on Fermented Malt Beverages Sold to the Armed Forces of the United States*, available on the department's website. Existing authority and requirements are as follows:

- Section 139.10 (1), Stats., provides authority for the refund
- Section Tax 7.001 (2) (a) 3. describes authority for electronic filing
- Section Tax 7.01 describes recordkeeping requirements.

### b. Tax 8.63 (7)

Repeal sec. Tax 8.63 (7). This rule provides that the department shall post the name of liquor wholesale permittees on the internet, along with certain other information. The rule does not reflect current law or is otherwise duplicative of current law.

Current law, sec. 139.11 (4) (b) 2., Stats., requires the department to publish more detailed information about the permittee on the internet, and to update the internet listing more frequently. Keeping sec. Tax 8.63 (7) in the Administrative Code is redundant because an update to the rule would duplicate the statute.

**Summary of, and comparison with, existing or proposed federal regulation:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

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

**Summary of factual data and analytical methodologies:** No data analysis was used to make decisions about or to draft this proposed rule order.

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

**Anticipated costs incurred by private sector:** This proposed rule does not have a fiscal effect on the private sector, as no changes to existing policies are being made.

**Effect on small business:** This proposed rule does not affect small business, as no changes to existing policies are being made.

**Agency contact person:** Please contact Jen Olson at (608) 266-8253 or [jennifer.olson@wisconsin.gov](mailto:jennifer.olson@wisconsin.gov), if you have any questions regarding this proposed rule.

**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 is conducted. 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 7.11 is repealed.

**SECTION 2.** Tax 8.63 (7) is repealed.

**SECTION 3.** EFFECTIVE DATE; GENERAL. 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.

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DEPARTMENT OF REVENUE

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

By: \_\_\_\_\_  
Peter W. Barca  
Secretary of Revenue

E:Rules/176 – Tax 7 and 8 Update – SS 037-20/Tax 7 and 8 Update Proposed Order