

STATEMENT OF SCOPE

Department of Revenue

Rule No.: Chapters Tax 7 & 8

Relating to: Contract production agreements for fermented malt beverages and intoxicating liquor manufacturing

Rule Type: Emergency and Permanent

This scope statement was approved by the Governor on May 18, 2023.

1. Finding/nature of emergency (Emergency Rule only):

The department previously held that contract production and alternating proprietorship agreements relating to intoxicating liquor were not allowed under sec. 125.52 (3), Wis. Stats. However, through a petition for a declaratory ruling under sec. 227.41, Wis. Stats., the department issued a ruling stating that sec. 125.52 (3), Wis. Stats. does not explicitly prohibit production agreements for the rectification and manufacture of intoxicating liquor, such as alternating proprietorships and contract production, between two properly permitted rectifiers. To preserve public peace, health, safety, and welfare, and to ensure tax compliance and regulatory fairness in the marketplace, an emergency and permanent rule is necessary.

2. Detailed description of the objective of the proposed rule:

The objective of the rule is to clarify permissive and non-permissive activities conducted by producers of fermented malt beverages and intoxicating liquors, and to implement procedures for entering contracts and obtaining permits for contract production and alternating proprietorship arrangements, and to clarify responsibilities for compliance for parties in such arrangements.

3. Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing policies for contract production of fermented malt beverages are described in sec. Tax 7.23, Wis. Adm. Code. A new policy will be proposed in Chapter Tax 8 allowing for similar contract production of intoxicating liquor as described in the recent declaratory ruling. It is anticipated that policies and procedures relating to contract production arrangements will be similar for fermented malt beverage and intoxicating liquors.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

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..."

(b) "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 ..."

Section 125.03 (1) (a), Stats., provides statutory rule-making authority as follows:

(a) The department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.

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

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

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates it will take approximately 200 hours to develop the rule.

5. List with description of all entities that may be affected by the proposed rule:

Breweries, wineries, distilleries, and rectifiers in and outside of Wisconsin.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal regulations and administrative provisions allow alternating proprietorships and contract manufacturing of fermented malt beverages and intoxicating liquor.

For alternating proprietorships, the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) requires all entities sharing a premises to be properly permitted. The host and tenant producers each hold title to their own ingredients and pay tax on their own products when removed from the bonded area.

For contract production purposes, only the production brewer of the alcohol beverages is required to hold a permit and the production brewer holds title to the ingredients and pays the tax on the product produced under the agreement. In contrast, sec. [Tax 7.23](#), Wis. Adm. Code, requires both the production and recipe brewers to hold state issued permits. The recipe brewer is also responsible for reporting and paying tax on the beer produced under the agreement.

The department will consider industry best practice and federal regulations in promulgation of this rule.

(see federal TTB Industry Circulars [2005-2](#), [2008-4](#), [2018-3](#) for more information)

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Economic impact of this provision is expected to be beneficial to small businesses. Specifically, small manufacturers and rectifiers of intoxicating liquor will benefit by having economic opportunities to enter into a contract with another manufacture to produce their intoxicating liquor.

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