

## Chapter Tax 13

## INVESTMENT AND LOCAL IMPACT FUND

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**Tax 13.01 Purpose.** The purpose of this chapter is to establish standards and procedures for the issuance of funds generated by a net proceeds occupation tax to municipalities for costs associated with social, educational, environmental and economic impacts of metalliferous mineral mining incurred prior to, during and after extraction of metalliferous minerals.

**History:** Cr. Register, September, 1979, No. 285, eff. 10-1-79.

**Tax 13.02 Scope.** The provisions of this chapter shall govern the distribution and use of net proceeds occupation tax monies in accordance with ss. 70.395 and 70.396, Stats.

**History:** Cr. Register, September, 1979, No. 285, eff. 10-1-79.

**Tax 13.03 Definitions.** (1) "Base period" means the calendar year that a county first receives the \$750,000 maximum guaranteed payment.

(2) "Board" means mining investment and local impact fund board.

(3) "Customer price index" means the average consumer price index over each 12-month period (all item-U.S. city average) as determined by the bureau of labor statistics, U.S. department of labor.

(4) "Department" means the department of administration.

(5) "Fund" means investment and local impact fund.

(6) "Mining" or "mined" means all or part of the process involved in mining metalliferous minerals for commercial purposes, including extraction, agglomeration and beneficiation.

(7) "Mining site" means the subsurface and surface areas disturbed by a mining operation, including the areas from which the minerals or refuse or both have been removed, the surface area covered by refuse, all lands disturbed by the construction or improvement of haulageways and any surface areas in which structures, equipment, materials or any other things used in the mining operation are situated.

(8) "Municipality" means any county, city, village, town or school district. Pursuant to s. 20.002 (13), Stats., this definition also includes any federally recognized tribal governing body.

(9) "Non-shared costs" means the amount of the school district's principal and interest payments on the long-term indebtedness and annual capital outlay for the current school year, which is not shared under s. 121.07 (6) (a), Stats., or other nonshared costs and which is attributable to enrollment increases resulting from the development of metalliferous mineral mining operations.

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(10) "Person" means a sole proprietorship, partnership, association or corporation and includes a lessee engaged in mining metalliferous minerals.

**History:** Cr. Register, September, 1979, No. 285, eff. 10-1-79.

**Tax 13.04 Severability.** Should any section, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

**History:** Cr. Register, September, 1979, No. 285, eff. 10-1-79.

**Tax 13.05 Certification and distribution.** (1) In this section, "Certification" means filing with the department a written confirmation of specific transfers, payments, or investments to be made by the department.

(2) Fifteen days after collection of the net proceeds occupational tax, the department, upon certification of the department of revenue, shall transfer the amount collected as follows:

- (a) Forty % to the general fund.
- (b) Sixty % to the investment and local impact fund.

(3) Each May, the board shall give written public notice of its intent to distribute funds. This notice shall identify a) the municipalities eligible to receive payments under Tax 13.06 (2) Wis. Adm. Code, b) the amount of each of these payments, and c) the total funds available for distribution in the manner described in Tax 13.06 (3) Wis. Adm. Code.

(4) Each December, the board shall certify to the department the specific payments to be made according to Tax 13.06 (2) and (3) Wis. Adm. Code. The department shall make these certified payments on the first Monday in January of the following year.

(5) Each May, the board shall also determine the amount of funds to be invested with the state investment board. The board may designate a portion of these funds as emergency reserve monies, to be used by the board in the manner described in Tax 13.06 (3) (c) 7 Wis. Adm. Code. Factors entering into these annual investment decisions shall include the following:

- (a) Record of net proceeds occupational tax revenues deposited into the fund.
- (b) Record of board payments to municipalities.
- (c) Record of board investments with the state investment board.
- (d) Mining-related costs anticipated by municipalities.

(6) By May 31, the board shall certify to the department the amount of its investment. The department shall thereupon make the certified investment no later than June 30.

**History:** Cr. Register, September, 1979, No. 285, eff. 10-1-79.

**Tax 13.06 Apportionment.** (1) Any and all funds provided to municipalities by the board must be used for costs associated with metalliferous mining-related impacts. These funds shall not be used for costs of mine reclamation for which the person mining the metalliferous minerals is liable under s. 144.91 (2), Stats.

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(2) In accordance with s. 70.395 (2), Stats., certain counties, cities, towns, and villages shall receive guaranteed payments from the fund.

(a) Counties. Each county in which metalliferous minerals are extracted shall receive 20% of the tax collected under ss. 70.38 to 70.39, Stats., from persons extracting metalliferous minerals in the county. The maximum guaranteed payment which may be received by a county in any one year is \$750,000, except as provided under Tax 13.06 (2) (f) Wis. Adm. Code.

(b) Cities, towns, and villages. Each city, town, or village in which metalliferous minerals are extracted shall receive 10% of the tax collected under ss. 70.38 to 70.39, Stats., from persons extracting metalliferous minerals in the city, town, or village. The maximum guaranteed payment which may be received by a city, town, or village in any one year is \$75,000.

(c) Where the tax under s. 70.37 to 70.39, Stats., is in respect to a mining site which is located in more than one county or city, town, or village, the apportionment shall be as outlined in s. 70.395 (2) (d) 3, Stats.

(d) If the appropriations under s. 20.566 (2) (c) and (q), Stats., in any one year are insufficient to pay the full amount under Tax 13.06 (2) (a), (b), and (c) Wis. Adm. Code, payments shall be prorated among the counties and municipalities entitled thereto.

(e) Guaranteed payments may be applied towards the following purposes:

1. Protective services, such as police and fire services associated with the construction and operation of the mining facility.
2. Highways, as defined in s. 990.01 (12), Stats., repaired or constructed as a consequence of the construction and operation of the mining facility.
3. Studies and projects for local development.
4. Monitoring the effects of the mining operation on the environment.
5. Extraordinary community facilities and services provided as a result of mining activity.
6. Legal counsel and technical consultants to represent and assist municipalities on matters relating to metalliferous mineral mining.
7. The preparation of area-wide community service plans which identify social, economic, educational and environmental impacts associated with mining and which set forth a plan for minimizing the impacts.
8. Local impact committee operations.
9. Other expenses associated with the construction and operation of the mining facility.
10. Expenses attributable to a permanent or temporary closing of a mine including the cost of providing retraining and other educational programs designed to assist displaced workers in finding new employment opportunities and the cost of operating any job placement referral programs connected with the curtailment of mining operations in any area of this state.

11. A maximum of 10% of a county's annual guaranteed 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 funds in that year.

12. A maximum of \$25,000 of a county's annual guaranteed payment may be distributed to any town, city, or village in the county for alleviation of mining-related costs.

(f) If any county receives \$750,000 maximum guaranteed payment in any year, then in subsequent years the maximum guaranteed payment with respect to all counties that may be eligible shall be \$750,000 plus \$750,000 multiplied by the percentage difference between the consumer price index for the previous taxable year and the consumer price index for the base period.

(g) Any municipality receiving a guaranteed payment shall file an expenditure report with the board by March 1 of the year following the year that the funds are received. This 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 Tax 13.06 (2) (e) 12 Wis. Adm. Code.

(h) A guaranteed payment to any county may be reduced if the board determines that the payment would create a tax island or public service expenditure island or that the funds are being used for nonmining-related purposes. In this section, "tax island" means a condition of wealth created in a county which has received so much in guaranteed payments, that it now raises less revenue locally, than it did prior to the existing mining operation. "Public service expenditure island" means a condition of wealth created in a county which has received so much in guaranteed payments, that it can reduce its level of locally raised revenue, yet use its locally raised revenue to spend more, per capita, on public services which are not mining-related. "Nonmining-related purpose" means any public purpose which does not represent a cost directly attributable to a mining operation.

1. In determining whether or not a county's guaranteed payment should be reduced, the board shall consider the following factors:

a. Manner in which a county used the previous year's guaranteed payment. In its review of each county's annual expenditure report, the board shall compare the information provided with the county's financial report submitted annually to the department of revenue. Such comparison shall be made in order to identify any increase in per capita expenditures for nonmining-related purposes and to evaluate such increase against any changes in the county's property tax rate or level of nonlocal resources received. This analysis should alert the board to any potential creation of a public service expenditure island in a county receiving guaranteed payments. If the board finds that any county—whether or not it represents a public service expenditure island—has applied some

or all of its previous year's guaranteed payment to nonmining-related purposes, the subsequent payment to that county may be reduced by the amount of funds inappropriately used.

b. Trend in a county's net full value rate. When a county first receives a guaranteed payment attributable to the current mining operation, the board shall determine the value of  $R_1$ , the county's net full value rate during the year when discovery of the mineral deposit responsible for the current mining operation was publicly announced. If, in the board's estimation, the county first incurred costs attributable to the current mining operation at a time other than the year of discovery announcement, the board may base its valuation of  $R_1$  on the year it deems to be most appropriate. Once  $R_1$  is determined, it shall be compared, on an annual basis, with  $R_2$ , the county's net full value rate in the year prior to that in which the comparison is being made. The comparison shall be in the form of a ratio,  $R_1/R_2$ . If ever this ratio equals more than 1, the board may consider its funds to be creating a tax island in the county and may reduce the subsequent guaranteed payment by the following factor:

$$\left( \frac{R_1 - 1}{R_2} \right) \left( \frac{\text{County's Adjusted Gross Income Per Capita}}{110\% \text{ of Statewide Average Adjusted Gross Income Per Capita.}} \right)$$

The income component of this factor shall be derived in accordance with s. 71.02 (2) (e), Stats. Multiplication of the factor by the guaranteed payment to which a county is entitled shall determine the level of reduction which may be applied.

c. Besides the receipt of guaranteed payments, other influences upon a county's fiscal condition. In assessing the need to reduce a county's guaranteed payment, the board may recognize additional factors, such as revisions to the state tax sharing program or new, nonmining industrial development, as potentially responsible for altering a county's fiscal condition.

2. If a county is otherwise entitled to receive the maximum guaranteed payment in any year in the amount of \$750,000, or a larger amount, then under no circumstances may the maximum guaranteed payment be reduced to an amount less than \$300,000.

3. By June 1 of the year following the year a guaranteed payment is made, the board shall notify the county of any reductions in the payment to be made the following year and the reasons for the reduction. The county has until the following July 1 to appeal any reduction to the board, in the manner described in Tax 13.06 (3) (c) 4 Wis. Adm. Code.

(3) Also in accordance with s. 70.395 (2), Stats., any municipality may apply to the board for a discretionary payment from the fund.

(a) A school district may apply to the board for payments from the fund in an amount equal to the school district's nonshared costs. If the board finds that the school district has incurred costs attributable to enrollment resulting from the development and operation of metalliferous mineral mining and if the board and the school board of the school district reach an agreement on a payment schedule, the board shall certify to the department for payment to the school district an amount equal to all or part of the nonshared costs of the school district in the year in which the initial agreement was reached. The board and the school district may, by mutual consent, modify the provisions of the

agreement at any time. The payment shall be considered a nondeductible receipt for the purposes of s. 121.07 (6), Stats.

(b) Discretionary payments shall be applied to the purposes described Tax 13.06 (2) (e) Wis. Adm. Code, except for subdivisions 11 and 12. In addition, discretionary payments may be used to provide educational services in a school district.

(c) The annual discretionary payment program includes the following procedures:

1. Application process. Municipalities shall submit written applications to the board by July 31, in order to receive funding consideration. A municipality may submit more than one application. Two or more municipalities may submit a joint application. Each application must be accompanied by a supporting resolution from the appropriate local governing body or bodies. An application may take one of 2 forms:

a. Project proposal. A municipality needing a specific amount of financial assistance to undertake the design, construction, and/or maintenance of a particular public service or facility may submit a project proposal to the board. The appropriate form will be furnished by the board upon request. Information to be provided on the form includes 1) a general description of the proposed project and its relationship to the applicant's strategy for addressing its mining-related impacts, 2) a detailed description of the proposed project elements and their estimated costs, and 3) an indication of what portion of total project costs is being requested of the board, what portion is being committed by the applicant, and what portion is coming from other sources.

b. Mining impact brief. A municipality experiencing or anticipating mining-related costs in several areas of public service may submit a mining impact brief to the board. There is no set format for a brief. Briefs should, however, include 1) a description of existing and/or anticipated mining impacts and the applicant's strategy for addressing them, or 2) an indication that the applicant is prepared to apply mining impact funds towards the identification of its mining impacts and the development of an appropriate strategy for dealing with them.

2. Application review process. All applications shall be evaluated by the board. The following criteria shall be applied to the evaluation of each application:

a. Extent to which applicant has been, or may be, affected by metalliferous mining development. Consideration shall be given to such factors as 1) the severity of economic, social and environmental impacts described and 2) the degree to which these impacts are, in fact, attributable to mining.

b. Extent to which applicant is prepared to deal with its mining-related impacts. Consideration shall be given to the applicant's demonstrated ability and willingness to plan for its future. Planning tools which municipalities often apply in this regard include 1) local and regional development plans, addressing such topics as land use patterns, transportation services, housing needs, outdoor recreation facilities, and economic growth, 2) zoning ordinances and other land use controls, 3) coordination of planning activities with neighboring jurisdictions, and 4) participation in state and federal community assistance programs.

c. Extent to which applicant will effectively use any mining impact funds. Consideration shall be given to such factors as 1) the relationship of applicant's strategy to the impacts described, 2) the likelihood that this strategy will accomplish its stated purpose, and 3) the reasonableness of any proposed project expenses. The board may also use this criterion as the basis for ranking highly an applicant's request for planning monies. Addressing potential mining impacts in a local and regional planning effort is considered the first step that a municipality should take in developing an effective strategy to alleviate its mining-related costs.

2m. Geographic Criteria. Those applications demonstrating a relatively equal need for funds shall be further evaluated on the basis of the following three distribution priorities:

a. Distribution shall first be made to those municipalities with active metalliferous mining sites or with metalliferous mining sites that were active three years previous to December 31 of the current year, or to those municipalities in which a permit has been issued under s. 144.85, Stats., to commence mining.

b. Distribution shall next be made to those municipalities adjacent to the municipalities described in 2m. a. above.

c. Distribution shall next be made to all other municipalities.

3. Decision and notification process. The board shall make its funding decisions by October 1. The board shall thereupon notify all applicants, in writing, of the action taken on their respective application(s).

4. Appeals process. Any municipality wanting to appeal a funding decision by the board must submit a written appeal to the board within 30 days after notification. The written appeal should include any pertinent information which was not available to the board at the time of its decision. A representative of an appealing municipality may appear before the board, prior to board action on the appeal. The board will take action on an appeal case within 60 days after receipt of the written appeal. If, after action by the board, the municipality still feels aggrieved, further appeals shall be made to the appropriate circuit court.

5. Expenditure review process. Over the course of any year, the board's staff may make on-site visits and otherwise monitor the uses of discretionary payments by municipalities. Staff shall keep the board informed of its activities and findings in this regard. In addition, any municipality receiving a discretionary payment shall file a detailed expenditure report with the board by March 1 of the year following the year that the funds are received. This expenditure report shall be on forms prepared and furnished by the board. From the monitoring activities, the completed expenditure reports, and the auditing procedure outlined in Tax 13.07 Wis. Adm. Code, the board shall determine whether or not municipalities have applied their discretionary funds to the purposes authorized in Tax 13.06 (3) (b) Wis. Adm. Code.

6. Recoupment of Funds. If the board suspects that a municipality has not used all of a discretionary payment appropriately, the board shall hold a hearing on the matter. If the board determines from the hearing that funds were either unused or misused, the board may require recoupment of the unused or misused funds.

7. Use of Emergency Reserve Monies. A portion of the emergency reserve monies invested with the state investment board may be withdrawn and distributed by the board, at any time, to any municipality which demonstrates its need for financial assistance in alleviating a mining-related cost which is deemed by the board to be sudden and unforeseeable. The policies and procedures presented in Tax 13.06 (3) Wis. Adm. Code shall apply to the distribution and use of emergency reserve monies, except for the specified deadline dates.

History: Cr. Register, September, 1979, No. 285, eff. 10-1-79.

**Tax 13.07 Auditing.** All funds received from the board must be placed in a segregated fund account. A financial audit for the account shall be conducted as part of a municipality's annual audit. Where an annual audit is not performed, a financial audit of the account may be required.

History: Cr. Register, September, 1979, No. 285, eff. 10-1-79.

**Tax 13.08 Transition.** The Board may modify deadlines contained in these rules so as to ensure that the first issuances of funds will occur no later than the first Monday in January, 1980. The Board may also issue funds prior to the first Monday in January, 1980, if a hardship is demonstrated by a municipality making application for a discretionary payment.

History: Cr. Register, September, 1979, No. 285, eff. 10-1-79.