

CR 10-129

ORDER OF THE DEPARTMENT OF REVENUE REPEALING AND REPEALING AND RECREATING RULES

The Wisconsin Department of Revenue adopts an order to: **repeal** Chapter Tax 20 Appendix and Chapter Tax 53 and **repeal and recreate** Chapter Tax 20; **relating to** the lottery and gaming and school levy tax credits and plat review fees.

Analysis by the Department of Revenue

Statutes interpreted: ss. 66.0435 (3), 79.10 (4), (5), (6m), (7m) (b) and (cm), (9) (bm), (10), and (11), 79.11 (3) (b), 79.175, and 79.18, Stats.

Statutory authority: ss. 73.03 (66) and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 73.03 (66), Stats., requires the department to promulgate rules to ensure that the payments under s. 79.10 (4), Stats., made from the appropriation account under s. 20.835 (3) (qb), Stats., are used exclusively for school levy tax credits granted to state residents. Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis: This rule does the following:

- Provides definitions related to the lottery and gaming credit and establishes procedures to assist in the management of the lottery and gaming credit program at the state, county, town, village, and city level.
- Provides restrictions for the distribution of the school levy tax credit - lottery fund.
- Removes obsolete provisions relating to plat review fees.

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: The department issues hundreds of millions of dollars in school levy tax and lottery and gaming credits each year, including hundreds of thousands of dollars in lottery and gaming late claim credits. The documentation required to issue and audit these distributions must be uniform, accurate, and complete to ensure the department has the information necessary to successfully manage these credit programs. This rule order has also been created to provide further guidance to municipalities and counties to ensure qualifying properties within their districts are receiving the credits available to them.

Analysis and supporting documents used to determine effect on small business: The provisions of the rule order concerning the school levy tax credit are as required under s. 73.03 (66), Stats. The rule itself does not impose any significant financial or other compliance burden on small business.

The provisions of the rule order concerning the lottery and gaming credit affect individuals applying for and receiving the credit, and counties and municipalities that manage the lottery and gaming credit program. There is not an effect on small business.

Anticipated costs incurred by private sector: This rule does not have a significant fiscal effect on the private sector.

Effect on small business: This rule does not have a significant effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule.

SECTION 1. Chapter Tax 20 is repealed and recreated to read:

PROPERTY TAX CREDITS

Subchapter I – School Levy Tax Credit, Lottery Fund

Tax 20.01 Purpose. The purpose of this subchapter is to, as required under s. 73.03 (66), Stats., provide restrictions for the distribution of the school levy tax credit, lottery fund, under s. 79.10 (4), Stats.

Tax 20.02 Definitions. In this subchapter:

- (1) "Department" means the department of revenue.
- (2) "Domicile" has the meaning given in s. 71.01 (1n), Stats.
- (3) "Municipality" means a town, village, or city.
- (4) "Resident individual" means either of the following:
 - (a) A natural person whose domicile is in this state.
 - (b) A natural person who lives in this state for more than six months of the year.

Tax 20.03 Distribution of credit. A payment to a municipality under s. 79.10 (4), Stats., made from the appropriation under s. 20.835 (3) (qb), Stats., may not, as determined by the department, exceed the amount of the school levy credit paid to resident individuals in that municipality.

Subchapter II – Lottery and Gaming Credit

Tax 20.04 Purpose. The purpose of this subchapter is to provide definitions related to the lottery and gaming credit and establish procedures to assist in the management of the lottery and gaming credit program at the state, county, town, village, and city level.

Note: Department of Revenue forms mentioned throughout this subchapter are located on the department's web site at www.revenue.wi.gov.

Tax 20.05 Definitions. In this subchapter:

(1) "Application" means the form used to claim the lottery and gaming credit.

(2) "Approved property" means taxable real estate or an item of personal property that contains the primary residence of an owner whose application for a lottery and gaming credit has been timely filed under s. Tax 20.07 or 20.11, and has not been disqualified by the department.

(3) "Certification date" means January 1 of the year the tax is levied. For manufactured and mobile homes placed in a manufactured or mobile home community after January 1, the certification date is determined under s. 66.0435 (3) (c) 2., Stats.

(4) "Credit" means the lottery and gaming credit under ss. 66.0435 (3) (c) 8. and 79.10, Stats.

(5) "Department" means the department of revenue.

(6) "Dwelling" means a structure or that part of a multidwelling or multipurpose structure occupied as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from outside the building or through a common hall. "Dwelling" does not include a structure which is exempt from property taxes under s. 70.111 (19) or 70.112 (5), Stats., in the year of the credit.

(7) "Manufactured home" has the meaning given in s. 66.0435 (1) (cm), Stats.

(8) "Maximum credit value" or "MCV" means the value of property calculated by the department as provided in s. 79.10 (11) (c), Stats., for purposes of computing the lottery and gaming credit.

(9) "Mobile home" has the meaning given in s. 66.0435 (1) (d), Stats.

(10) "Monthly municipal permit fee" means the fee calculated under s. 66.0435 (3) (c), Stats., collected by the local taxing authority or community operator, as defined in s. 66.0435 (1) (c), Stats., from each occupied space or lot in a manufactured or mobile home community located in the licensing authority's boundaries.

(11) "Municipality" means any town, village or city.

(12) "Owner" means:

(a) A person named as an owner on the title instrument for that person's primary residence which is recorded in the records of the register of deeds for the county in which that person's primary residence is located.

(b) A person related as husband or wife to a person under par. (a), (d), (f), (g), or (h).

(c) A partner of a partnership under s. 178.03 (1), Stats., or shareholder of a tax-option corporation as defined in s. 71.34 (2), Stats., or a shareholder of a small business corporation as defined in s. 1361 (b) of the Internal Revenue Code, if that partnership or corporation owns property that is the primary residence of the partner or shareholder.

(d) A buyer in possession under a land contract of property which is the primary residence of the buyer, provided that the land contract or the instrument evidencing the existence of a land contract is notarized no later than 6 months after the certification date.

(e) A trustee, as defined in s. 701.01 (8), Stats., of a trust in property, as defined in s. 701.01 (7), Stats., where a beneficiary of that trust, as defined in s. 701.01 (1), Stats., uses the property as his or her primary residence.

(f) A member, as defined in s. 185.01 (5), Stats., of a cooperation as defined in s. 185.01 (2), Stats., that owns property that is the primary residence of the member.

(g) A person holding a property interest for life under s. 700.02 (3), Stats., in property on which that person's primary residence is located, provided that the life interest is notarized no later than 6 months after the certification date.

(h) An owner of a manufactured or mobile home.

(i) A lawfully authorized agent of an owner described under pars. (a) to (h) acting on behalf of that owner.

(13) "Primary residence" means the dwelling where an individual lives most of the time and to which, when temporarily away, the individual returns, except that no individual may have more than one primary residence at any time. "Primary residence" includes a dwelling located in this state lived in by an individual for more than 6 months during a year in which the individual lived only part of the year in this state.

Note: Eligibility for the lottery credit will not be denied to an owner who is a temporary resident of a facility such as a health care facility if it is the intent of the owner to return to his or her primary residence.

(14) "School tax rate" means the rate computed by the department as the total amount levied by the school district in which the property is located divided by the full value of the school district excluding tax incremental district value increments.

(15) "Taxation district" has the meaning given in s. 74.01 (6), Stats.

(16) "Taxing jurisdiction" has the meaning given in s. 74.01 (7), Stats.

Tax 20.06 Computing the lottery and gaming credit. (1) For owners of taxable property, the credit is computed as the estimated fair market value, not to exceed the maximum credit value, of the approved property multiplied by the school tax rate for the school district in which the approved property is located.

(2) For owners of manufactured and mobile homes subject to a monthly municipal permit fee, the credit is computed as the fair market value minus the tax exempt household furnishings of the manufactured or mobile home, as established by the assessor under s. 66.0435 (3) (c), Stats., for January 1, not to exceed the maximum credit value, multiplied by the school tax rate for the school district in which the manufactured or mobile home is located.

(3) The amount of property tax or monthly municipal permit fee due after subtracting the lottery and gaming credit may not be less than zero.

Tax 20.07 How to claim the credit. (1) TAXABLE PROPERTY. (a) An owner of taxable property who qualifies for the lottery and gaming credit may claim the credit on an application form prescribed by the department. The application form shall require the claimant to attest to, as of the certification date, owning the property described on the application form and using it as a primary residence. The completed application form shall be filed with the county treasurer except that in a city that collects taxes under s. 74.87, Stats., the application form shall be filed with the city treasurer. A claim made under this paragraph is valid until no longer eligible, at which time the claim shall be withdrawn by the claimant as required under sub. (3), except as provided under s. Tax 20.12 (2).

Note: The various application forms used to claim the lottery and gaming credit are available on the department's web site at www.revenue.wi.gov.

(b) If more than one owner qualifies for and claims a credit on taxable property, each owner shall claim the credit under par. (a) on a separate application form. The number of credits claimed on a property may not exceed the number of dwellings on the property. Total credits for each dwelling are limited by s. Tax 20.06 (3).

Note: Examples of owners whose primary residence is on the same property as another owner include co-owners of agricultural land on which each owner has a primary residence or co-owners of a duplex in which each dwelling is occupied by one of the owners.

(c) An owner who qualifies for the credit against taxes but whose tax bill does not reflect the credit may claim the credit until January 31 following the issuance of the tax bill by filing the application form under par. (a) with the treasurer collecting the taxes. If the application form is approved, the treasurer shall proceed under s. Tax 20.08 (1) (e). Requests made after January 31 shall be filed with the department no later than October 1 following the issuance of the person's property tax bill, on the appropriate late claim application form, for processing under s. Tax 20.11 (2). The department will notify the applicable treasurer of those late claims approved by the department. The treasurer shall then enter the property on the next tax role as property that qualifies for a lottery and gaming credit. The owner should also file an application under par. (a), with the applicable treasurer, to apply for the credit for subsequent years. A claim made under this paragraph is valid until no longer eligible, at which time the claim shall be withdrawn by the claimant as required under sub. (3), except as provided under s. Tax 20.12 (2).

(d) 1. If a property transferred qualifies for the credit because a previous owner used the property as his or her primary residence on the certification date, the new owner of the property may apply for the credit on a form prescribed by the department, or by indicating on the real estate transfer return that the property will be used by the owner as their primary residence. Requests made under this paragraph shall be filed with the treasurer of the county in which the property is located or, if the property is located in a city that collects taxes under s. 74.87, Stats., with the treasurer of that city.

2. A claim made under par. (a) is valid until no longer eligible, at which time the claim shall be withdrawn by the claimant, except as provided under s. Tax 20.12 (2). If the claimant under this paragraph does not own or use the property as his or her primary residence on the certification date of any year subsequent to the year of the claim, the claimant shall withdraw the claim as required under sub. (3).

(e) Requests made after January 31 of the year following the year of the credit shall be filed with the department no later than October 1 following the issuance of the person's property tax bill for processing under s. Tax 20.11 (2) on the appropriate late claim application form. The submission of a late claim application form with the department does not certify the owner for future credits. The department will notify the applicable treasurer of those late claims approved by the department. The treasurer shall then enter the property on the next tax role as property that qualifies for a lottery and gaming credit. The owner shall also file an application under par. (a) with the applicable treasurer to apply for the credit for subsequent years. A claim made under this paragraph is valid until no longer eligible, at which time the claim shall be withdrawn by the claimant as required under sub. (3), except as provided under s. Tax 20.12 (2).

(2) MANUFACTURED AND MOBILE HOMES. (a) The owner of a manufactured or mobile home, subject to a monthly municipal permit fee, who qualifies for the credit as of January 1, may claim the credit on an application form prescribed by the department. The application form shall require the claimant to attest to, as of the certification date, owning the manufactured or mobile home described on the application and using it as a primary residence. The completed application form must be filed with the taxation district treasurer no later than February 10 of the year the owner is eligible for the credit. A claim made under this paragraph is valid until no longer eligible, at which time the claim shall be withdrawn by the claimant as required under sub. (3), except as provided under s. Tax 20.12 (2).

(b) The taxation district treasurer shall compute the amount of the lottery and gaming credit under s. Tax 20.06 (2). One-twelfth of the credit computed under this paragraph shall be subtracted from each monthly municipal permit fee otherwise due for the parking site occupied by the owner under par. (a) on January 1.

(c) The amount of the lottery and gaming credit received for months in which a fee is not due for the parking site of an owner under par. (a) shall be recorded by the taxation district treasurer and returned to the department by January 20 of the following year. The taxation district treasurer may charge back to the school district the corresponding credits previously settled for under s. Tax 20.10.

(3) WITHDRAWING A CLAIM. Within 30 days of the date on which the claimant no longer owns the taxable real or personal property or the manufactured or mobile home subject to a monthly municipal permit fee on which a claim was based, or no longer uses the property as a primary residence, the claimant shall inform the treasurer

administering the credit under this section that the claimant is no longer eligible to claim a credit for the property. Failure to do so may subject the owner to penalties under s. Tax 20.12 (2).

Tax 20.08 Responsibilities of county treasurer and taxation district treasurer. (1) CERTIFICATION OF LOTTERY AND GAMING CREDIT. (a) The treasurer administering the credit under s. Tax 20.07 (1) (a) shall prepare application forms for properties likely to qualify for the lottery and gaming credit or upon request. Prepared application forms shall include the property identification number and the physical address of the property address or other description of the property. The prepared application for the lottery and gaming credit shall be distributed to the owner of the property for their certification as to whether the property qualifies for the credit.

(b) The treasurer administering the credit under s. Tax 20.07 (1) (a) shall accept application forms for the lottery and gaming credit for taxable property through the October 31 prior to issuance of the tax bill. The treasurer shall accept facsimiles of application forms or other documents evidencing a claim that include all the information contained in the application form prescribed by the department if such facsimiles or other documents are received by the treasurer by October 31. The treasurer may not accept application forms postmarked earlier than the certification date.

(c) If a treasurer receives an application without an owner's signature, the claim for the credit may not be granted. The treasurer shall attempt to contact the owner and advise of the need to sign the application.

(d) If a treasurer has reason to question a signed application form, the treasurer shall approve the claim but shall mark the property for audit by the department. The treasurer shall advise the department of all properties marked for audit on the March 1 report under sub. (4) (c).

(e) The treasurer administering the credit under s. Tax 20.07 (1) (a) shall remove the credit from a property as of the next January 1 after the filing of a real estate transfer return, unless one of the following applies:

1. The real estate transfer return indicates that the property will be used as the primary residence of the new owner.
2. An application form is filed by the new owner.

(f) An owner who qualifies for the lottery and gaming credit but whose tax bill does not reflect the credit, may claim the credit until January 31 following the issuance of the tax bill by filing the application form under s. Tax 20.07 (1) (a) with the treasurer responsible for collecting the January payment of the owner's property taxes. The treasurer shall compute the credit, subtract the calculated credit from the amount of taxes due to the extent allowed under s. Tax 20.06 (3), for the approved property of the owner, and make an appropriate entry in the tax roll. If the tax has been paid in full, the treasurer shall provide a refund for the amount of the credit, not to exceed the amount of tax paid. The treasurer shall, on or before settlement under s. 74.25 or 74.30, Stats., convey to the county treasurer the property identification number, property address or other description of the property, credit amount, and the name and mailing address for each claim accepted under this paragraph.

(g) The treasurer administering the credit under s. Tax 20.07 (1) (a) shall, by July 1 in each year ending in a four or nine, submit to the department a copy of the procedures used to conduct their verification of the eligibility of credits claimed within their territory under the requirements of s. 79.10 (10) (f), Stats. The procedures shall include methods used by the treasurer to identify properties receiving the credit based on a certification received by a previous owner and notification of property owners that potentially qualify for the credit that are not currently receiving the credit. A summary of the results from the latest verification of eligibility conducted by the treasurer shall be submitted with the procedures.

Example: A treasurer is required to submit the information specified in par. (g) by July 1 of 2014 and July 1 of 2019.

(2) TAX ROLL ENTRIES. The tax roll shall indicate the amount of lottery and gaming credits extended to approved properties.

(3) PROPERTY TAX BILLS. (a) The treasurer under s. Tax 20.07 (1) (a) shall cause the lottery and gaming credit to appear on tax bills for approved properties for which an application has been received under sub. (1) (b). Except as provided in par. (b), the total amount of the lottery and gaming credit shall be deducted from the net property tax included in the first installment. If the lottery and gaming credit exceeds the amount of net property taxes included in the first installment, the excess shall be deducted from subsequent installments, but no installment may be reduced below zero.

Examples: 1) A 2010 property tax bill shows the following amounts:

Property Taxes	\$5,250	Lottery and Gaming Credit	\$75
Special Assessments	250	First Dollar Credit	65
Special Charges	<u>95</u>	School Levy Credit	<u>235</u>
Total Amount Due Before Credits	\$5,595	Total Credits	\$375

Total Due: $5,595 - 375 = 5,220$

The total due is paid using a two installment method. The special assessments of \$250 and special charges of \$95 are required to be paid with the first installment.

The first installment is \$2,745, determined as follows:

Step 1 $[5,250 - (65 + 235)] \div 2 = 2,475$

Step 2 $(2,475 - 75) + (250 + 95) = 2,745$

The second installment is \$2,475.

2) A 2010 property tax bill shows the following amounts:

Property Taxes	\$500	Lottery and Gaming Credit	\$75
Special Assessments	100	First Dollar Credit	40
Special Charges	<u>50</u>	School Levy Credit	<u>110</u>
Total Amount Due Before Credits	\$650	Total Credits	\$225

Total Due: $650 - 225 = 425$

The total due is paid using a five installment method. The special assessments of \$100 and special charges of \$50 are required to be paid with the first installment.

The first installment is \$150, determined as follows:

$$\text{Step 1 } [500 - (40 + 110)] \div 5 = 70$$

$$\text{Step 2 } (70 - 70) + (100 + 50) = 150$$

After applying the \$5 of unused lottery and gaming credit, the second installment is \$65. The final three installments are each \$70.

(b) On tax bills for approved properties issued by a city that collects general property taxes under s. 74.87, Stats., the lottery and gaming credit shall be prorated over installment payments, but no installment may be reduced below zero.

(4) INFORMATION PROVIDED TO THE DEPARTMENT. (a) *March credit reimbursement report.* 1. On or before March 1, the county treasurer shall report to the department the total number and amount of credits claimed under s. Tax 20.07 (1), including late claims made under s. Tax 20.07 (1) (c) in each taxation district in the county except that for taxation districts in a city that collects taxes under s. 74.87, Stats., the city treasurer shall report to the department. The report shall be on a form prescribed by the department and shall be submitted by or under the direction of the treasurer.

2. On or before March 1, each taxation district treasurer shall report to the department the total number and amount of credits claimed through the preceding February 10 for manufactured and mobile homes subject to a monthly municipal permit fee. The report shall be on a form prescribed by the department and shall be submitted by or under the direction of the treasurer.

(b) *Returning unused manufactured or mobile home credit.* On or before January 20, the taxation district treasurer shall report to the department, on a form prescribed by the department, the amount of unused manufactured and mobile home credits under s. Tax 20.07 (2) (c). Payment for the amount of unused credits under s. Tax 20.07 (2) (c) shall accompany the report.

(c) *Claimant report.* On or before March 1 of each year, treasurers under sub. (1) (a) shall provide the department a post-certification data file of all claims made in that year, including late claims made under sub. (1) (f). The data file shall be in a computer-readable format, and shall indicate for each individual claim the property identification number, physical property address or other description of the property, credit amount, recommendation for audit, and the name and mailing address for purposes of mailing the tax bill. The total number of credits claimed and the total amount of credit shown on this data file shall equal the number and amount of credits reported on the March Credit Reimbursement Report.

Example: On March 1, 2011 the treasurer provides the department a report of all claims made for the 2010 credit. The report includes all claims from 2009 that remain valid for the 2010 credit, new claims made in 2010, as well as late claims made in 2011 for the 2010 credit.

(d) *Corrections report.* On or before October 1, the treasurer under sub. (1) shall report to the department all corrections or adjustments made to the lottery and gaming credit claims of the previous year under s. Tax 20.11.

(5) RECORD RETENTION. (a) Except for credits extended under s. 79.10 (10) (e), Stats., each claim for a lottery and gaming credit shall be supported by a signed application or a facsimile thereof, which shall be available for inspection by the department in the office of the treasurer administering the credit under s. Tax 20.07 (1) (a) for the period the claim remains valid plus an additional 5 calendar years after the credit has been withdrawn under s. Tax 20.07 (3) or removed under s. Tax 20.12.

(b) All computer programs and records used to extend credits shall be available for inspection by the department in the office of the treasurer administering the credit for the next 5 calendar years from the year the credit was extended.

Tax 20.09 Payment of lottery and gaming credits. (1) Except as provided in sub. (2), on the 4th Monday in March the department of administration shall pay to the county treasurer the amounts claimed under s. Tax 20.08 (4) (a) 1. and 2. by each taxation district within the county.

(2) Payment under sub. (1) shall be made directly to a municipality, if one of the following applies:

(a) The municipality, annually on or before March 1, submits to the department of administration a letter requesting direct payment of the school levy tax credit, lottery and gaming credit, and first dollar credit. The letter shall contain a statement that the municipality qualifies for direct payment under s. 79.10 (7m) (cm) 1 a., Stats., and has received proper approval from the municipality's governing body.

(b) The municipality, on or before March 1, submits to the department of administration a letter of notification requesting, until further notice, direct payment of the school levy tax credit, lottery and gaming credit, and first dollar credit. The letter shall contain a statement that the municipality qualifies for direct payment under s. 79.10 (7m) (cm) 2a., Stats. Notification provided in the manner prescribed in this paragraph remains valid until the municipality notifies the department of administration that the municipality no longer wishes to receive or no longer qualifies to receive direct payment. The department may request written confirmation from a municipality that the municipality qualifies for direct payment under s. 79.10 (7m) (cm) 2., Stats. If a municipality fails to provide written confirmation as requested by the department under this paragraph, payment under sub. (1) shall be made to the county in which the municipality is located.

Tax 20.10 Settlement for lottery and gaming credits. (1) Except for lottery and gaming credit amounts received for claims under s. Tax 20.07 (2), the municipal treasurer shall settle for amounts received directly by the municipality under s. Tax 20.09 with each taxing jurisdiction within the taxation district not later than April 15. The municipal treasurer shall also distribute the amounts received for claims under s. Tax 20.07 (2) by the municipal treasurer to the appropriate school district by April 15.

(2) The county treasurer shall settle for the amounts received directly under s. Tax 20.09 with each taxation district and each taxing jurisdiction within the taxation district not later than August 20.

Tax 20.11 Corrections. (1) (a) If the department determines that the credits in a particular taxation district were not determined or calculated correctly, the department shall order an adjustment under par. (d) for each property for which the credit was incorrect.

(b) The county treasurer shall determine all of the following for each property in a taxation district under par. (a) for which a credit was claimed:

1. The credit actually claimed.
2. The correct credit amount.
3. The difference between subds. 1. and 2.

(c) The treasurer shall sum the differences under par. (b) 3. for each taxation district and shall certify those amounts to the department by October 1.

(d) The differences under par. (b) 3. shall be entered on the following year's tax roll and shall show on tax bills for each property for which the difference under par. (b) 3. is not zero.

(e) The amount certified under par. (c) for each taxation district shall be added to, or deducted from, the total lottery and gaming credits of the following year paid to the taxation district in March of the following year.

(2) If the department determines in the year of any distribution under s. Tax 20.09 (1) that there was a lottery and gaming credit due, based on an eligible claim made after January 31 and no later than October 1 following the issuance of the person's property tax bill, the department shall issue a check to the taxpayer in the amount equal to the computed credit. The department shall convey to the county treasurer the property identification number, physical property address or other description of the property, and the name and mailing address for each omitted claim. The owner shall also file an application under s. Tax 20.07 (1) (a) to claim the credit for subsequent years.

Tax 20.12 Audit; penalties. (1) The department shall audit claims for the lottery and gaming credits. The department may audit the computer programs and records of county treasurers and treasurers of a taxation district that collects taxes under s. 74.87, Stats., and records of individual property owners that have received the credit within the previous 4 years.

(2) If the department determines that a credit was extended to a property or a manufactured or mobile home subject to a monthly municipal permit fee which does not qualify for the credit, the department shall proceed as follows:

(a) *Current year audits.* 1. If the determination is prior to the time the tax roll is prepared, the department shall instruct the treasurer under s. Tax 20.08 (1) to deny the credit, and the credit shall not appear on the tax bill for that property. The treasurer shall indicate on the tax roll that a claim for credit was denied.

2. If the determination is after the tax roll is prepared, the department shall instruct the appropriate taxation district to collect the credit as a lottery special charge on the next property tax bill issued for the property, if the property owner fails to remit the denied credit amount to the department by October 1. The lottery special charge shall include the full amount of the lottery credit plus applicable interest and penalty.

(b) *Audit covering previous 4 years.* If during the audit the department determines that the credit was extended to a property or a manufactured or mobile home subject to a monthly municipal permit fee that does not qualify for the credit for any of the previous 4 years, the department shall determine the total amount of credit extended in error. If a property owner fails to, by October 1, remit to the department the amount of credit extended in error, the department shall instruct the appropriate taxation district to collect the credit as a lottery special charge on the next property tax bill issued for the property.

(c) *Handling lottery and gaming credit special charge payments.* 1. If before November 1, the department receives full or partial payment for a lottery and gaming credit previously referred to the treasurer as a special charge, the department will notify the treasurer to remove or reduce the amount of the special charge for that property.

2. If after October 31 the department receives full or partial payment for a lottery and gaming credit previously referred to the treasurer as a special charge, the department will process the payment and refund any duplicate payment received by the department to the applicable property owner or treasurer.

3. A person who under this subsection collects lottery and gaming credit special charges payments from a property owner, collects those payments as trust funds and state property. Any person who intentionally fails or refuses to pay over those funds to the state at the time required under ch. 74, Stats., or who fraudulently withholds, appropriates, or uses any of those funds is guilty of theft under s. 943.20, Stats., punishable as specified in s. 943.20 (3), Stats., according to the amount of funds involved. This subdivision applies regardless of the person's interest in those funds.

(d) A person claiming to be adversely affected by a determination made by the department under this subsection may petition the department for a contested case hearing under s. 227.42, Stats.

SECTION 2. Chapter Tax 20 Appendix is repealed

SECTION 3. Chapter Tax 53 is repealed

The rules contained in this order 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 order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Richard G. Chandler
Secretary of Revenue