

Clearinghouse Rule 19-158

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **create** Tax 1.18 **relating to** requests for predeterminations regarding license eligibility due to conviction records.

The scope statement for this rule, SS 123-18, was approved by the Governor on December 7, 2018, published in Register No. 756A3 on December 17, 2018, and approved by the Secretary of Revenue on January 2, 2019.

Analysis by the Department of Revenue

Statutes interpreted: ss. 125.19, 125.27 (1), 125.27 (2), 125.27 (3), 125.27 (4), 125.275, 125.28, 125.29, 125.295, 125.30, 125.51 (5), 125.52, 125.53, 125.535, 125.54, 125.545, 125.55, 125.56, 125.58, 125.60, 125.61, 125.62, 125.63, 125.65, 139.34, 139.37, 139.79, 139.81, and 111.335 (4) (f), Stats.

Statutory authority: ss. 227.11 (2), 125.03 (1) (a), and 111.335 (4) (f) 6., Stats.

Explanation of agency authority: 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 111.335 (4) (f) 6., Stats., provides statutory rule-making authority as follows:

A state licensing agency described in subd. 1. shall promulgate rules to implement this paragraph, except that the department of safety and professional services may promulgate rules defining uniform procedures for making such determinations to be used by the department, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board.

2017 Wisconsin Act 278 provides statutory rule-making authority as follows:

(1) Using the procedure under section 227.24 of the statutes, any state licensing agency, as defined in section 111.335 (1m) (c) of the statutes, may promulgate rules that are necessary to implement the changes in this act.

Related statute or rule: Section 111.335 (4) (f), Stats., provides for an individual to request predeterminations from an agency regarding eligibility of obtaining a license due to their conviction record.

Plain language analysis: The objective of the rule is to implement 2017 Wisconsin Act 278 in order to implement uniform procedures for making predeterminations of whether an individual would be disqualified from obtaining a license due to his or her conviction records prior to that individual submitting a full application for licensure.

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: 2017 Wisconsin Act 278 provides for an individual to obtain a predetermination on whether they would be disqualified from obtaining a license due to conviction records prior to submitting a full application for licensure. The department has created this proposed rule order to reflect this statutory change. No other data was used in the preparation of this proposed rule order or this analysis.

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 proposed rule does not have a fiscal effect on the private sector.

Effect on small business: This proposed rule 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 proposed rule.

Where to submit comments and submission deadline: Comments may be submitted to the contact person shown below no later than the date of the public hearing. 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 1.18 is created to read:

Tax 1.18 Permit Predetermination. (1) SCOPE. This section describes the procedures for an individual to obtain a predetermination of whether he or she is eligible to apply for and obtain a permit under Chapter 125 and 139 due to his or her conviction record.

(2) APPLICATION FOR PREDETERMINATION. (a) An individual shall submit Form AB-790, Application for Permit Predetermination, to the Department of Revenue, in the manner prescribed by the department.

(b) The department will not process the application if the application does not contain all of the requested information on the application form, including:

1. A statement confirming whether he or she has been convicted of a crime.
2. The date and description, including the nature and circumstances, of the crime.
3. A signature of the applicant attesting to the accuracy and truthfulness of the information contained in the application.
4. Acknowledgment that the department has authority to conduct an investigation on the individual.

(c) There is no requirement for an individual to first obtain a predetermination from the department. An individual may submit an application for a permit.

(d) The department may request payment of a fee to be submitted with Form AB-790 before processing the application. The fee may not exceed the costs to review the application and conduct an investigation of the individual.

(3) DETERMINATION IS BINDING ON THE DEPARTMENT. The department will provide a written response to each predetermination request within 30 days of receiving the application. The predetermination by the department is binding on the department unless there is information relevant to the determination that was not available to the department at the time that the predetermination was made. The predetermination may not be appealed.

SECTION 15. 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.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Peter W. Barca
Secretary of Revenue