

☞ 07hr_CRule_06-107_SC-CUR_pt01



Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Commerce, Utilities and Rail (SC-CUR)

COMMITTEE NOTICES ...

- Committee Reports ... CR
- Executive Sessions ... ES
- Public Hearings ... PH
- Record of Comm. Proceedings ... RCP

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... Appt
- Clearinghouse Rules ... CRule
- Hearing Records ... bills and resolutions
(ab = Assembly Bill) (ar = Assembly Resolution) (ajr = Assembly Joint Resolution)
(sb = Senate Bill) (sr = Senate Resolution) (sfr = Senate Joint Resolution)
- Miscellaneous ... Misc



SENATOR JEFF PLALE
SEVENTH SENATE DISTRICT

STATE CAPITOL
P.O. BOX 7882
MADISON, WI 53707-7882

(608) 266-7505
(800) 361-5487
SEN.PLALE@LEGIS.STATE.WI.US

To: Members of the Senate Committee on Commerce, Utilities and Rail

From: Katy Venskus, Clerk

Date: January 24, 2007

RE: Clearinghouse Rule 06-107 relating to: cigarette and tobacco products bad debt deductions.

The attached rule has been referred to this committee- if you have questions/concerns/objections to this rule, please contact me at 6-7505, **NO LATER THAN FEBRUARY 5, 2007 at 5pm.**

Thanks,
Katy

Wuch - OK

2/5/07 - Committee
Deadline
2/16/07 - 30 days
expire





State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK ROAD • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Jim Doyle
Governor

Michael L. Morgan
Secretary of Revenue

January 17, 2007

Honorable Fred Risser
President State Senate
Room 220 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Michael Huebsch
Speaker State Assembly
Room 211 West State Capitol
PO Box 8952
Madison WI 53708-8952

Re: Clearinghouse Rule 06-107

Dear Senator Risser and Representative Huebsch:

This is to notify you, in accordance with s. 227.19(2), Stats., that the proposed rule order relating to cigarette and tobacco products bad debt deductions is in final draft form. The proposed rule order and Notice of Hearing were published in the November 30, 2006, issue of the Wisconsin Administrative Register. A public hearing was held on December 15, 2006.

Copies of the proposed rule order and Report required under s. 227.19(2) and (3), Stats., are enclosed. A brief summary of the proposed rule order follows:

Summary of Proposed Rule Order

Statutory authority: s. 227.11 (2) (a), Stats.

Statutes interpreted: ss. 139.362 and 139.801, Stats.

Plain language analysis: This proposed rule clarifies the following as to when and how a person who pays cigarette taxes or a distributor who pays tobacco taxes is to claim the deduction allowed under ss. 139.362 and 139.801, Stats. for cigarette and tobacco products tax attributable to bad debt:

January 17, 2007

Page 2

- The deduction shall be claimed on the monthly tax report for the month in which the debt is written off as uncollectible and is eligible to be deducted as a bad debt under s. 166 of the Internal Revenue Code. A claimant shall complete Form CT-117, *Cigarette Distributor Bad Debt Deduction for Uncollectible Wisconsin Cigarette Tax*, or Form TT-117, *Tobacco Products Distributor Bad Debt Deduction for Uncollectible Wisconsin Tobacco Products Tax*, for all amounts claimed.

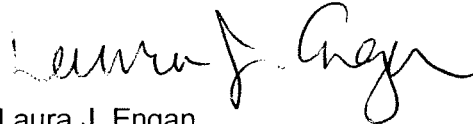
- Payments and credits applied to a debt before it is written off as uncollectible shall be apportioned to the amount of such debt attributable to cigarette or tobacco products tax using the ratio of the total cigarette or tobacco tax to be paid per the invoice to the total amount to be paid per the invoice. The amount so apportioned shall reduce the amount of debt attributable to cigarette or tobacco tax to arrive at the amount of the deduction.

- If the deduction is claimed for a month when the cigarette or tobacco products tax rate is different from the rate in effect when the cigarettes or tobacco products were sold, the tax rate in effect when the cigarettes or tobacco products were sold shall be used to determine the deduction.

- A deduction shall not be allowed for cigarette and tobacco products tax attributable to bad debt incurred on illegal sales of cigarettes or tobacco products.

- A recovery of a bad debt for which a deduction was claimed shall be included in the monthly tax report for the month in which the recovery occurs, and the tax shall be paid with the report.

Sincerely,



Laura J. Engan
Deputy Secretary of Revenue

LJE:DSK

e:rules\970 Committees – President Speaker

Enclosure

cc: Assistant Revisor

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **create Tax 9.70; relating to cigarette and tobacco products tax bad debt deductions.**

Analysis by the Department of Revenue

Statutes interpreted: ss. 139.362 and 139.801, Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority: 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(s) or rule(s): There are no other applicable statutes or rules.

Plain language analysis: This proposed rule clarifies the following as to when and how a person who pays cigarette taxes or a distributor who pays tobacco taxes is to claim the deduction allowed under ss. 139.362 and 139.801, Stats. for cigarette and tobacco products tax attributable to bad debt:

- The deduction shall be claimed on the monthly tax report for the month in which the debt is written off as uncollectible and is eligible to be deducted as a bad debt under s. 166 of the Internal Revenue Code. A claimant shall complete Form CT-117, *Cigarette Distributor Bad Debt Deduction for Uncollectible Wisconsin Cigarette Tax*, or Form TT-117, *Tobacco Products Distributor Bad Debt Deduction for Uncollectible Wisconsin Tobacco Products Tax*, for all amounts claimed.
- Payments and credits applied to a debt before it is written off as uncollectible shall be apportioned to the amount of such debt attributable to cigarette or tobacco products tax using the ratio of the total cigarette or tobacco tax to be paid per the invoice to the total amount to be paid per the invoice. The amount so apportioned shall reduce the amount of debt attributable to cigarette or tobacco tax to arrive at the amount of the deduction.
- If the deduction is claimed for a month when the cigarette or tobacco products tax rate is different from the rate in effect when the cigarettes or tobacco products were sold, the tax rate in effect when the cigarettes or tobacco products were sold shall be used to determine the deduction.
- A deduction shall not be allowed for cigarette and tobacco products tax attributable to bad debt incurred on illegal sales of cigarettes or tobacco products.
- A recovery of a bad debt for which a deduction was claimed shall be included in the monthly tax report for the month in which the recovery occurs, and the tax shall be paid with the report.

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 similar rules in Illinois, Iowa, Michigan, and Minnesota:

- Illinois – No similar rule exists.
- Iowa – No similar rule exists.
- Michigan – Michigan has a provision for a tobacco products tax bad debt deduction. The amount deducted must be charged off as uncollectible on the books of the licensee and must be eligible to be claimed as a bad debt deduction for federal income tax purposes. A recovery of any amount that has been deducted must be paid back by the licensee. Only the portion of the bad debt attributable to tobacco products tax is deductible.
- Minnesota – Minnesota has a provision for a credit for cigarette taxes attributable to a bad debt. The taxes must have been included in a transaction the consideration for which was a debt owed to the taxpayer and which became uncollectible, but only in proportion to the portion of debt that became uncollectible. The debt must qualify as a bad debt for federal income tax purposes. A recovery of the cigarette taxes claimed as a refund must be paid back by the taxpayer.

Summary of factual data and analytical methodologies: 2005 Wisconsin Act 25 created ss. 139.362 and 139.801, Stats., which allow a deduction for cigarette and tobacco products tax attributable to bad debt. In reviewing the statutory language providing for the deduction, the department concluded that it would need to provide clarification as to when and how the deduction may be claimed. Starting with language from s. Tax 4.12, which clarifies when and how a supplier required to be licensed by the department may recover the motor vehicle fuel tax from the department when a purchaser is unable to pay the tax to the supplier, the department developed this proposed rule.

Analysis and supporting documents used to determine effect on small business: The proposed rule provides clarification that will help determine the allowable amount of the deduction for cigarette and tobacco products tax attributable to bad debt under ss. 139.362 and 139.801, Stats., and when the deduction may be claimed. As the proposed rule does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

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

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

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dkleven@dor.state.wi.us, 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 one week after 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.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

SECTION 1. Tax 9.70 is created to read:

Tax 9.70 Cigarette and tobacco products tax bad debt deductions. (1) PURPOSE.

This section clarifies when and how a person who pays cigarette taxes or a distributor who pays tobacco taxes may claim a deduction under ss. 139.362 and 139.801, Stats., for cigarette and tobacco products tax attributable to bad debt.

(2) DEFINITIONS. In this section:

- (a) "Bad debt" has the meaning given in ss. 139.362(1) and 139.801(1), Stats.
- (b) "Cigarette" has the meaning given in s. 139.30(1m), Stats.
- (c) "Distributor" has the meaning given in s. 139.75(4), Stats.
- (d) "Tobacco products" has the meaning given in s. 139.75(12), Stats.

(3) BAD DEBTS. (a) *Deduction from measure of tax.* Using form CT-117, titled "Cigarette Distributor Bad Debt Deduction for Uncollectible Wisconsin Cigarette Tax," or form TT-117, titled "Tobacco Products Distributor Bad Debt Deduction for Uncollectible Wisconsin Tobacco Products Tax," a person who pays cigarette taxes or a distributor who pays tobacco taxes may claim a deduction on the monthly tax report for the cigarette and tobacco products tax attributable to bad debt that is written off as uncollectible in their books and records and that is eligible to be deducted as bad debt under s. 166 of the internal revenue code.

(b) *When to report the deduction.* The deduction under par. (a) shall be claimed on the monthly tax report that is submitted for the month in which the amount of the deduction is written off as uncollectible and in which such amount is eligible to be deducted as a bad debt under s. 166 of the internal revenue code.

Example: A distributor writes off a debt attributable to tobacco products tax on September 10, 2005. At the time the debt is written off it is eligible to be deducted as a bad debt under s. 166 of the internal revenue code. The distributor may claim a bad debt deduction by attaching a completed form TT-117 to the monthly tobacco products tax report filed for the month of September 2005.

(c) *Recovery of bad debt.* If a person who pays cigarette taxes or a distributor who pays tobacco taxes subsequently collects in whole or in part any bad debt for which a deduction is claimed under par. (a), they shall include the amount collected in the monthly tax report filed for the month in which the amount is collected and shall pay the tax with the report.

(d) *Payments and credits.* Payments and credits applied to a debt before it is written off as uncollectible shall be apportioned to the amount of such debt attributable to cigarette or tobacco products tax on the basis of the ratio of the cigarette or tobacco products tax to be paid per the invoice to the total amount to be paid per the invoice. The amount so apportioned shall reduce the amount of debt attributable to cigarette or tobacco products tax to arrive at the deduction under par. (a).

Examples: 1) At a time when the cigarette tax rate is 3.85¢ per stick, Person A sells cigarettes to Customer B. The amount of the invoice is \$10,000, consisting of cigarette tax of \$1,540, cost of cigarettes of \$6,000 and sundries of \$2,460. Customer B defaults and discontinues operations, leaving a balance due to Person A of \$2,100, which includes interest of \$200 not included in the original invoice amount. The deductible tax is \$292.60, computed as follows:

Tax per invoice		\$1,540.00
Invoice amount	\$10,000.00	
Unpaid invoice amount –	<u>-1,900.00</u>	
Paid invoice amount	\$8,100.00	
Portion constituting tax*	<u> x.154</u>	

Tax paid	- <u>\$1,247.40</u>
Tax that may be deducted	\$292.60

*\$1,540 tax ÷ \$10,000 invoice amount = .154.

2) At a time when the tobacco products tax rate is 25% of the manufacturer's wholesale list price, Distributor A sells tobacco products to Customer B. The amount of the invoice is \$9,500, consisting of tobacco products tax of \$1,250, cost of tobacco products of \$5,000 and sundries of \$3,250. Customer B defaults and discontinues operations, leaving a balance due to Distributor A of \$3,000, which includes interest of \$200 not included in the original invoice amount. The deductible tax is \$365.60, computed as follows:

Tax per invoice		\$1250.00
Invoice amount	\$9,500.00	
Unpaid invoice amount –	<u>-2,800.00</u>	
Paid invoice amount	\$6,700.00	
Portion constituting tax*	<u> x.132</u>	
Tax paid		- <u>\$884.40</u>
Tax that may be deducted		\$365.60

*\$1,250 tax ÷ \$9,500 invoice amount = .132.

(e) *Tax rate change.* If the deduction under par. (a) is claimed for a month when the cigarette or tobacco products tax rate is different from the tax rate in effect when the cigarettes or tobacco products were sold, the tax rate in effect when the cigarettes or tobacco products were sold shall be used to determine the amount of the deduction.

(f) *Illegal sales.* No deduction under par. (a) shall be allowed for cigarette and tobacco products tax attributable to bad debt incurred on sales of cigarettes or tobacco products sold in violation of state or federal law.

Example: Sales of banned products sold in violation of the directory of certified manufacturers and brands, s. 995.12, Stats.

Note: Section Tax 9.70 interprets ss. 139.362 and 139.801, Stats.

Note: Sections 139.362 and 139.801, Stats., were created by 2005 Wis. Act 25, and took effect on September 1, 2005.

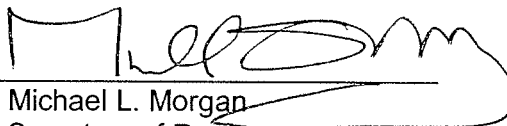
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: November 9, 2006

DEPARTMENT OF REVENUE

By: 
Michael L. Morgan
Secretary of Revenue

FISCAL ESTIMATE FORM

2005 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 05-
INTRODUCTION #
Admin. Rule # Tax 9.70

Subject Bad Debt Deduction Related to Cigarette and Tobacco Products Taxes

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The proposed rule applies to bad debt deduction related to cigarette and tobacco products taxes. Under 2005 Wisconsin Act 25, a person who pays cigarette taxes or a distributor who pays tobacco taxes may claim as a deduction against the cigarette and tobacco products excise taxes an amount equal to bad debts which are written off as uncollectible. "Bad debt" means an amount equal to the purchase price of cigarettes and tobacco products and does not include, among other factors, financing charges and interest on the wholesale price of cigarettes and tobacco products. A person or a distributor who claims a bad debt deduction shall submit the claim and additional supporting documents on forms as prescribed by the department.

The proposed rule clarifies the reporting requirements, apportionment rules, and appropriate tax rate to be used in the calculation of the deduction.

The proposed rule would not have a significant fiscal effect and additional expenses would be absorbed by the department's budget.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Jacek Cianciara (608) 266-8133	Rebecca Boldt (608) 266-6785	

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

2005 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 05
INTRODUCTION #

Admin. Rule #
Tax 9.70

Subject

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringe	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	\$	-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Jacek Cianciara 608 266-8133	Rebecca Boldt (608)-266-6785#	08-11-06

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 06-107
SECTION 227.19(2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

The rule is necessary to provide clarification that will help determine the allowable amount of the deduction for cigarette and tobacco products tax attributable to bad debt under ss. 139.362 and 139.801, Stats., and when the deduction may be claimed.

Public Hearing

A public hearing was held on December 15, 2006. No testimony was offered at the hearing.

Legislative Council Staff Recommendations

All Legislative Council staff recommendations have been incorporated in the proposed rule order.

Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.