



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-065

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. Section Tax 8.03 (2) should be rewritten to read:

(2) DEFINITION. For purposes of ss. 125.02 (23) and 125.06 (11m), Stats., and in this section, “wine collector” means an individual who has collected and held manufacturer-sealed bottles or containers of wine for at least 8 years and is registered with the department as a collector of wine.

b. In light of the changes in s. Tax 8.03 (2), above, is sub. (3) necessary? If necessary, what does the word “nonlicensed” refer to? What license or type of license is being referred to? Also, “person” should be “individual.”

c. In s. Tax 8.03 (4) (a), does “in the manner prescribed by the department” have any meaning? If not, it should be deleted. If the department will prepare a form, a reference to the form and how it may be obtained at no charge should be included in a note to the rule. In sub. (4) (d), substitute “have been met” for “are met.” Subsection (4) (c) refers to 26 USC 5691 with reference to the requirement that “a sale under this subsection must be in quantities of 20 gallons or less.” The major issue with referencing this USC provision is that it appears that it was repealed effective July 1, 2008. This USC provision in Lexis-Nexis has the following note on this section:

Repeal of section, effective on July 1, 2008. Act Aug. 10, 2005, [P.L. 109-59](#), Title XI, Subtitle B, Part 4, § 11125(b)(19)(A), [119 Stat. 1956](#) (effective on 7/1/2008, but not applicable to taxes imposed for periods before 7/1/2008, as provided by § 11125(c) of such Act, which appears as a note to Code Sec. 5002), provides: “Part V of subchapter J of chapter 51 [[26 USCS § 5691](#)] is hereby repealed.”.

The department should check on the current status of 26 USC 5691. Even if this provision were not repealed, s. 5691 (b) refers to, among other alcohol beverages, the sale of wine in quantities of “20 wine gallons or more.” The rule, in referencing the U. S. Code provision, states that “a sale under this subsection must be in quantities of **20 gallons or less.**” (Emphasis added.) So, in keeping with the federal language, sub. (4) (c) should read “in quantities less than 20 gallons.”

Also, the notes that appear after sub. (4) do not appear to be necessary. The department may want to incorporate the first note in the sub. (1) on the purpose of this section. The effective date language in the second note should, if necessary, be addressed in the effective date provision at the end of the rule.

d. In s. Tax 8.05 (1), after “cooperative wholesalers,” insert “under s. 125.545, Stats.” In sub. (2), the department may want to reference all of the definitions in s. 125.545 (1), Stats. If this provision is kept as is, “In this chapter, unless otherwise specified,” should be changed to “In this section,”. In any case, the title should just be “DEFINITION” or, if all of the statutory definitions are referenced, “DEFINITIONS.” In sub. (3) (b), change “liquor/wine” to “liquor-wine” and substitute “under the” for “pursuant to the authority and.” In sub (4) (a), “is authorized to” should be replaced by “may.” Subsection (4) (b) 1. should be divided into two subdivisions as follows:

- “1. Reasonable membership requirements...for the sale of wine to small wineries.
2. A statement that any new members meeting such requirements be admitted into the cooperative.”

In sub. (4) (c), delete as unnecessary “but not limited to” in two places. Also, for clarity and in accordance with the applicable statutory provision, the department may want to add, at the end of par. (c), “The trade goods may not include any alcohol beverages.” In par. (e), insert “the department with” after “provide” and insert “permit” before “renewal notice.” In the second sentence, why would the renewal notice be sent “at the time the wholesaler permit reaches its expiration date”? Should it be sent at some specified time before the renewal date to ensure compliance? In the third sentence, for clarity, insert “biennial” before “report.” Also, par. (e) would be more readable if sentences one and three were separated into a new par. (e) 1. and the second sentence placed in a new par. (e) 2. The notes after sub. (4) do not appear to be necessary. See comment c., above.