

## Clearinghouse Rule 07-109

### PROPOSED ORDER OF THE DEPARTMENT OF REVENUE AMENDING AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **amend** Tax 8.63 (1) and **create** Tax 8.63 (1m) and (7); **relating to** liquor wholesaler warehouse facilities.

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#### *Analysis by the Department of Revenue*

**Statute interpreted:** s. 125.54 (7), Stats.

**Statutory authority:** s. 125.54 (7) (d), Stats.

**Explanation of agency authority:** Section 125.54 (7) (d), Stats., provides that the department shall promulgate rules to administer and enforce the requirements of s. 125.54 (7), Stats. It also provides that the department shall establish by rule minimum requirements for warehouse facilities on premises described in permits issued under s. 125.54, Stats.

**Related statute or rule:** s. 125.54 (7), Stats.

**Plain language analysis:** This proposed rule order changes the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

In addition to the changes to the requirements concerning liquor wholesaler warehouse facilities and liquor wholesalers, the rule creates a provision requiring the department to prepare and maintain a list of all liquor wholesale permittees and shall post the names from this list on the Internet. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

**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:** Tax 8.63 was created to satisfy the requirements of s. 125.54 (7), Stats., which, in part, provides that the department establish minimum requirements for warehouse facilities on premises described in wholesalers' permits. One of the requirements established by Tax 8.63 is that a liquor warehouse facility be a minimum of 4,000 square feet of floor space.

Since the provisions of Tax 8.63 became effective, the department has become aware of bona fide liquor wholesalers whose facilities are less than the required 4,000 feet of floor space. In response, the department has created this proposed rule order to lessen the required amount of floor space and provide an exception so that a bona fide liquor wholesaler will not have an

application for issuance or renewal of a permit denied solely because it does not meet the square footage requirement.

**Analysis and supporting documents used to determine effect on small business:**

As the proposed changes to Tax 8.63 ease the requirements for warehouse facilities, the department has concluded that this proposed rule order does not have a significant effect on small business.

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

**Effect on small business:** This proposed rule order 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](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this proposed rule order.

**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 order 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  
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SECTION 1. Tax 8.63 (1) is amended to read:

**(1) MINIMUM REQUIREMENTS FOR WAREHOUSE FACILITIES.** The premises described in a permit issued under s. 125.54, Stats., shall be a minimum of ~~4,000~~ 1,000 square feet of floor space and shall be located in a free-standing building that is not part of or connected to a premises covered by a retail license or permit issued under s. 125.51, Stats.

SECTION 2. Tax 8.63 (1m) is created to read:

**(1m) EXCEPTION TO MINIMUM REQUIREMENTS.** The secretary of revenue may waive the requirement that a premises described in a permit issued under s. 125.54, Stats., be a minimum of 1,000 square feet of floor space when the secretary determines the waiver fair and equitable, if the applicant or permittee does both of the following:

(a) Submits a written request for a waiver along with the application for issuance or renewal of a permit.

(b) Clearly indicates how the requirements described in sub. (1) and s. 125.54 (7), Stats., otherwise will be or have been met.

SECTION 3. Tax 8.63 (7) is created to read:

**(7) INTERNET POSTING OF PERMITTEE INFORMATION.** The department shall prepare and maintain a list of all permittees under s. 125.54, Stats., and shall post the names of permittees from this list on the Internet at a site that is created and maintained by the department. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

**Note to Revisor:** Replace the first note at the end of Tax 8.63 (7) with the following:

**Note:** This section interprets s. 125.54 (7), Stats.

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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.

DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roger M. Ervin  
Secretary of Revenue