

## Chapter Tax 61

## RETAILERS

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**Note:** Chapter LOT 5 was created as an emergency rule effective June 17, 1988. Chapter LOT 5 was renumbered chapter WGC 61 and corrections made under s. 13.93 (2m) (b) 1. and 6., Stats., Register, March, 1995, No. 471. Chapter WGC 61 was renumbered chapter Tax 61 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 2000, No. 538.

**Tax 61.01 Purpose.** The purpose of this chapter is to provide the executive director with the procedure and criteria for selecting retailers to sell lottery tickets, to establish the retailer's duties and obligations under the contract, to provide the executive director with the procedure and criteria to terminate or suspend the retailer's contract, and to provide the applicant and retailer an appeal procedure if a contract is denied or a contract is terminated or suspended.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89.

**Tax 61.02 Definitions.** In this chapter:

(1) "Administrator" means the administrator of the department's lottery division or any designees.

(2) "Commencement of a game" means the date, designated by the executive director, on which lottery tickets for a particular instant scratch lottery game shall go on sale to the general public.

(3) "Executive director" includes the executive director's designees.

(4) "Lottery ticket" or "lottery share" means an instant scratch, an on-line or a break-open ticket issued by the Wisconsin lottery.

(5) "Low tier prize" means a lottery prize of \$25.00 or less, unless otherwise specified in the retailer's handbook.

(6) "Retailer performance program" or "RPP" means a program that is designed to provide additional compensation, above the compensation provided under s. 565.10 (14) (b) 1. or 2., Stats., to retailers who meet certain performance goals identified by the Wisconsin lottery.

(7) "Selling location" means each cash register at a lottery retail outlet where a lottery ticket is sold.

(8) "Settlement date" means the date, designated by the executive director, by which the retailer is to return unsold instant scratch tickets for a particular game.

(9) "Winning lottery ticket" or "winning lottery share" means any of the following:

(a) For instant scratch tickets under s. 565.01 (6m) (a) 1., Stats., the terms mean any ticket that has been validated by the Wisconsin lottery as a ticket that entitles a player to a prize.

(b) For on-line tickets under s. 565.01 (6m) (a) 2., Stats., the terms mean any ticket that has been identified by a secure method by the Wisconsin lottery as a ticket that entitles a player to a prize.

(10) "Wisconsin lottery" means the commission, appointees, staff, and employees who administer the state lottery.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; correction in (7) made under s. 13.93 (2m) (b) 6., Stats., Register, March, 1995, No. 471; renum. (1) to (7) to be (2) to (8), (7), (8) and (10), cr. (1), (6) and (9), Register, October, 2000, No. 538, eff. 11-1-00.

**Tax 61.03 Procedure for selecting and renewing contracting retailers.** (1) Any person may apply for a con-

tract to sell lottery tickets by submitting to the Wisconsin lottery a completed application for a lottery retail sales contract. Applications are available upon request by writing the Wisconsin Lottery, 1802 West Beltline Highway, P.O. Box 8941, Madison, WI 53708-8941. A nonrefundable check for \$75.00 made payable to the Wisconsin lottery shall accompany each application for a contract. A nonrefundable electronic fund transfer or check for \$25.00 made payable to the Wisconsin lottery shall accompany each application for a contract renewal.

(2) The executive director shall examine the completed application, and based on criteria under s. 565.10 (2) to (5), Stats., and s. Tax 61.04 (1), shall either grant or deny the application. The executive director shall either grant or deny the applicant a contract within 35 business days after receipt by the Wisconsin lottery of the completed application and application fee under sub. (1) or after the completion of a credit check under s. Tax 61.04 (1) (a), whichever is later.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; corrections in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1995, No. 471.

**Tax 61.04 Criteria for selecting retailers.** (1) In addition to the criteria under s. 565.10 (1) to (5), Stats., the executive director shall determine if the applicant meets all of the following:

(a) The applicant or the applicant's business shall satisfactorily pass a credit check by the executive director.

(b) An inspection of the applicant's retail premises shows all of the following:

1. The applicant's premises are physically secure.

2. The applicant's premises have a secure place to store lottery tickets.

(c) Except for applicants applying for a temporary or seasonal contract and applicants whose businesses are located in state and federal buildings, the applicant's premises shall be open to the public at least 48 hours, excluding holidays, of each week.

(d) The applicant is expected to sell a minimum of \$400 worth of instant scratch tickets each month, under s. 565.01 (6m) (a) 1., Stats., which shall be represented in any retailer contract or addenda. The administrator may deny a contract to an applicant whose anticipated monthly sales will not meet a minimum of \$400 worth of instant scratch tickets each month or whose historical monthly sales are less than \$400 worth of instant scratch tickets each month.

(e) The applicant may not be an employee or member of the commission or reside in the same household with a member or employee of the commission.

(2) If the applicant is a state agency or a local unit of government, the criteria under s. 565.10 (2) and (3) (a), Stats., and sub. (1) (e) shall apply to the entity's officers and directors.

(3) If the executive director finds that there are so many qualified applicants in a given geographic area of the state that, if all those applicants would be granted contracts to sell lottery tickets, there would be an undue concentration of such retailers in that area, the executive director will perform market evaluations on the retail establishments seeking a contract. Contracts shall only

be granted to those retailers achieving the highest marketing evaluation score until the undue concentration is eliminated. The executive director shall, however, grant a sufficient number of contracts in a given area to serve public convenience.

(4) An applicant or group of applicants, who has a physical or mental disability which constitutes or results in a substantial handicap to the applicant's employment, may be awarded a contract exclusively to sell lottery tickets if each such applicant or group of applicants each meet all of the following:

(a) Each applicant shall include with the retailer application a letter from the Wisconsin division of vocational rehabilitation verifying that the applicant's disability is a substantial handicap to employment;

(b) Each applicant meets all other criteria under subs. (1) through (3); and

(c) The commission approves the applicant's or the group's contract.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89; corrections made under s. 13.93 (2m) (b) 6, Stats., Register, March, 1995, No. 471; am. (1) (d), Register, October, 2000, No. 538, eff. 11-1-00.

**Tax 61.05 Fidelity bond.** (1) The commission may require from each retailer a fidelity bond in the amount determined by the executive director and based upon the applicant's projected lottery ticket sales.

(2) The bond shall be payable upon the order of the Wisconsin lottery and may be obtained through an insurance agency or a bond and surety company. No individual bond may be less than \$500.00.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

**Tax 61.06 Certificate of authority.** (1) When a retailer is awarded a contract or a contract renewal, the retailer shall pay \$25.00 to the Wisconsin lottery for a nonassignable and nontransferable certificate of authority. A certificate of authority is required for each location from which the retailer will sell lottery tickets.

(2) The retailer will be issued a year-round certificate of authority if the retailer intends to sell lottery tickets all 12 months of the year. If the retailer intends to sell lottery tickets less than 12 months a year, the retailer may be issued a seasonal certificate of authority. If the retailer intends to sell lottery tickets throughout the year but only at selected times and places, such as at weekly events or at fairs and festivals, the retailer may be issued a temporary certificate of authority.

(3) If the certificate is lost, mutilated or destroyed, the retailer shall within 15 calendar days request in writing and submit a completed application for a duplicate certificate. The retailer shall pay \$25.00 to the Wisconsin lottery for a duplicate certificate of authority.

(4) A mutilated certificate shall be surrendered to the executive director upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the executive director within 15 calendar days of its recovery.

(5) Payment under subs. (1) and (3) shall be by check or electronic fund transfer.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

**Tax 61.07 Contract denial appeal procedure.** (1) If the applicant was denied a contract, the executive director shall notify the applicant, in writing, of the denial along with a brief statement why the applicant was denied a contract. The applicant shall also be notified that a request for a reconsideration must be made by the applicant within 30 calendar days and that the request contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the denial, the applicant may request a reconsideration by filing with the executive director, a written statement setting forth the applicant's legal, factual, or equitable arguments and submitting any supporting

documents. The request for reconsideration shall be deemed filed on the date received by the executive director.

(3) Within 20 calendar days of receipt of the filing for reconsideration, the executive director may in writing request the applicant to submit any additional facts, legal and equitable arguments, or documents which the executive director deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile a file containing all the material submitted by the applicant and any relevant material the executive director may have, including but not limited to, the completed application and credit check report. Legal counsel shall then review the file, research if necessary, the applicable laws and rules, and prepare an analysis and recommendation for the executive director's consideration.

(5) The executive director, after considering all the facts and arguments submitted by the applicant, and legal counsel's recommendation, shall independently evaluate whether to grant or deny the applicant a contract. Within 45 calendar days of the executive director's receipt of the filing for reconsideration or any supplemental information and documentation requested, the executive director shall notify the applicant, in writing, of the determination. If the applicant is denied a contract, the notice shall include a written statement setting forth the reasons for the denial and notifying the applicant of the right to a hearing on the denial under s. 227.42, Stats. The applicant shall be notified that a request for a hearing must be made by the applicant within 20 calendar days and that the request contain the information in sub. (6).

(6) Within 20 calendar days of the mailing of the final determination by executive director, the applicant may in writing request a hearing under s. 227.42, Stats. A request for a hearing shall be deemed filed on the date it is received by the executive director. A request shall contain all of the following:

(a) The applicant's name and address;

(b) The reasons why the applicant requests a hearing;

(c) The facts which the applicant intends to prove at the hearing;

(d) A description of the mistake the applicant believes was made, if the applicant claims that the denial of contract is based on a mistake in fact or in law; and

(e) Any supporting documents not previously submitted to the executive director.

(7) Within 20 calendar days of receipt of a request for hearing, the executive director shall in writing grant or deny the request for a hearing. A hearing shall be granted if the criteria in s. 227.42 (1), Stats., are met, and the executive director shall reasonably notify the applicant of the time and place of the hearing. A hearing shall be denied if criteria in s. 227.42 (1), Stats., are not met, and the executive director shall in writing inform the applicant of the reason for denial.

(8) In the event that neither the applicant nor the applicant's representative appears at the time and place designated for the hearing, the executive director may take action based upon the record as submitted. By failing to appear, an applicant waives any further right to appeal before the Wisconsin lottery.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

**Tax 61.08 Retailer contract terms and conditions.** The retailer's contract shall include all of the following terms and conditions:

(1) **CONTRACT PERIOD AND SALES AUTHORIZATION.** The retailer's contract shall remain in effect for at least one year and shall expire on the date shown on the certificate of authority. The executive director may renew the contract. However, the retailer does not have a substantial interest in, or a vested legal or equitable right to a contract renewal.

(2) **CONTRACT NOT ASSIGNABLE OR TRANSFERABLE.** The retailer's contract may not be assigned or transferred from one person or location to another.

(3) **RETAILER IS NOT AN EMPLOYEE OR AGENT OF THE STATE.** The retailer is not an employee or agent of the state of Wisconsin, and is not entitled to any right, privilege, or benefit which would accrue to an employee or agent of the state of Wisconsin.

(4) **INDEMNIFICATION.** The retailer shall indemnify and hold harmless the state of Wisconsin, the Wisconsin lottery, and the Wisconsin lottery's employees and agents from and against all claims, suits, or actions arising from any willful or negligent act or omission of the retailer or its agents while performing under the terms of the retailer contract.

(5) **COMPLIANCE WITH STATE LAW AND RULES.** During the term of the retailer contract, the retailer shall comply with ch. 565, Stats., the commission's administrative rules, and any other applicable state law and administrative rules.

(6) **COMPLIANCE WITH RETAILER'S HANDBOOK.** During the term of the retailer contract, the retailer shall comply with instructions and procedures for each game as set forth in the retailer handbook.

(7) **CERTIFICATE OF AUTHORITY.** The certificate of authority is not assignable and not transferable and must be conspicuously displayed at the point of sale.

(8) **NOTIFICATION OF CHANGES IN THE RETAILER'S APPLICATION.**  
(a) The retailer shall in writing notify the executive director within 15 calendar days of every change of its organizational structure, including but not limited to changes from a sole proprietorship to a partnership or to a corporation.

(b) The retailer shall in writing notify the executive director at least 30 calendar days in advance of any change of the retailer's business address.

(c) The retailer shall in writing notify the executive director within 15 calendar days if the retailer, or any of the retailer's partners, officers, directors, or owners, as described under s. 565.10 (3), Stats., have been convicted or pleaded guilty or no contest to a felony, a gambling related offense, or fraud or misrepresentation in any connection.

(9) **RECORDS AND RECORDKEEPING.** (a) During the term of the retailer's contract and until the retailer gives a final accounting at the end of the contract term, the retailer shall maintain current, complete and accurate lottery accounting records and correspondence including but not limited to, the receipt, sale, handling, and returns for credit of all lottery tickets received by the retailer.

(10) **INSURANCE REQUIREMENT.** (a) During the term of the retailer's contract, the retailer shall do all of the following:

1. Maintain worker's compensation insurance, if required to do so under ch. 102, Stats.; and

2. Maintain public liability and property damage insurance against any claim which might occur in carrying out the retailer's contract. Minimum coverages are \$300,000 single limit liability or \$100,000 bodily injury per person and \$300,000 per occurrence and \$100,000 property damage.

(b) The insurance requirement under par. (a) 1. and 2. do not apply to a state agency or a local unit of government.

(c) The retailer, by signing and executing the contract, warrants and represents to the lottery that the retailer has in place and will maintain during the contract period the insurance set forth under par. (a) 1. and 2. and at the minimum levels set forth under par. (a) 2.

(d) During the term of the retailer's contract, the executive director reserves the right to request from the retailer verification that the retailer has complied with the insurance requirement under par. (a) 1. and 2.

(11) **SALE OF TICKETS.** (a) The retailer shall accept only cash for lottery tickets.

(b) The retailer may not intentionally sell a lottery ticket to persons under 18.

(c) The retailer shall sell at least \$400 worth of instant scratch tickets each month, under s. Tax 61.04 (1) (d).

(d) The retailer may not exchange lottery tickets with any other person including other retailers.

(e) The retailer may not sell any lottery tickets at a price different from the price authorized by the lottery, condition the sale of a lottery ticket upon purchase of any other item or service, or impose any restriction upon the sale of a lottery ticket unless specifically authorized by the executive director.

(f) The retailer may not play the lottery games by using any method other than random, fair chance, or by any method contrary to the principle that every lottery ticket has an equal and random chance of winning.

(g) The retailer shall make player brochures available to potential lottery ticket customers and explain the game rules when requested.

(h) The retailer shall stamp each ticket with the retailer's identification number assigned by the lottery.

(12) **SALES BEFORE COMMENCEMENT OF GAME PROHIBITED.** The retailer may not sell any lottery tickets for a game before the commencement of that game.

(13) **RETAILER RESPONSIBILITY FOR TICKETS.** (a) The retailer shall be responsible for the condition and security of lottery tickets received. If the retailer's lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. The executive director may not reimburse the retailer for such losses or for instant scratch tickets not returned by the retailer in the proper sequentially numbered order.

(b) The retailer shall report by telephone within 24 hours any stolen tickets to the director of security in Madison, Wisconsin.

(14) **RETAILER'S PAYMENT FOR TICKETS.** (a) All lottery tickets received by the retailer shall be deemed to have been purchased by the retailer.

(b) The retailer's accounting records and correspondence under par. (a) shall be available to the executive director for examination and copying during the retailer's regular business hours. All such records and correspondence are subject to seizure and audit without prior notice.

(bm) The retailer's electronic fund transfer account shall be debited once a week by the lottery for tickets received the previous week.

(c) If the retailer failed to place sufficient funds in the electronic fund transfer account for the tickets received the previous week, the retailer shall not receive more tickets until the lottery is paid in full.

(d) The executive director may assess the retailer a \$20.00 surcharge for each dishonored retailer's check or electronic fund transfer.

(15) **UNSOLD INSTANT SCRATCH TICKETS RETURNED FOR CREDIT.** (a) On or before the settlement date, the retailer may return to the lottery unsold instant scratch tickets and receive credit. Credit shall be the retailer's purchase price.

(b) The lottery shall credit the retailer's electronic fund transfer account for all returned unopened packs of tickets, and for one opened, partial pack of tickets per selling location.

(c) For tickets returned up to 90 calendar days after the settlement date, the lottery shall credit the retailer's account with what the credit would have been if timely returned minus a 20% late penalty.

(d) The executive director may not accept unsold tickets which are returned more than 90 calendar days after the settlement date.

(16) **INSTANT SCRATCH TICKET REDEMPTION.** (a) The retailer shall redeem low tier prizes for tickets sold at the retailer's outlet and presented to the retailer by the customer. If the customer elects to redeem the low tier prize from the lottery's office, the lottery shall debit the retailer's account in that amount.

(b) The retailer may not redeem winning lottery tickets for prizes in amounts different from the amounts authorized by the executive director or condition redemption of a lottery prize upon the purchase of any other item or service, or impose any restriction upon the redemption of a lottery prize unless specifically authorized in writing by the executive director.

(17) **BREAK-OPEN TICKETS.** (a) Unsold break-open tickets may not be returned for credit.

(b) The retailer shall redeem all prizes from tickets purchased at the retailer's outlet.

(18) **POINT-OF-SALE MATERIAL.** The retailer shall maintain and display prominently lottery point-of-sale material, including the door decal, current game poster, current game player brochures and the ticket dispenser.

(19) **RIGHT TO APPEAL SUSPENSION OR TERMINATION.** In the event the executive director suspends or terminates the retailer's contract, the retailer is entitled to an appeal in accordance with the provisions set forth under s. Tax 61.10.

(20) **SUSPENSION OR TERMINATION PROCEDURE.** The retailer upon notice of the suspension or termination, shall immediately stop selling lottery tickets. Within 2 weeks of the suspension or termination, the retailer shall make payment on any money owed for tickets for unsold tickets and surrender all state owned lottery property.

(21) **GROUND FOR SUSPENSION OR TERMINATION.** The retailer's contract may be suspended or terminated without prior notice by the lottery for any one of the following reasons:

(a) The retailer failed to meet any of the qualifications for being a retailer under s. 565.10, Stats., or under the commission's administrative rules;

(b) The retailer violated a provision under ch. 565, Stats., or any rule promulgated under this chapter;

(c) The retailer failed to sell a monthly minimum of \$400 worth of instant scratch tickets each month, under s. Tax 61.04 (1) (d);

(d) The retailer intentionally sold a lottery ticket to a person under 18;

(e) The retailer endangered the security of the lottery;

(f) The retailer engaged in fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the lottery;

(g) The retailer failed to remit money owed to the lottery or failed at least 3 times to make payment on or before the settlement date;

(h) The retailer engaged in telecommunication or printed advertising that in the executive director's determination was false, deceptive, or misleading; or

(i) The retailer failed to follow instructions and procedures for the conduct of any particular lottery game or lottery special event.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89; corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, March, 1995, No. 471; am. (11) (c) and (21) (c), Register, October, 2000, No. 538, eff. 11-1-00.

**Tax 61.085 Retailer performance program. (1) PURPOSE.** (a) The retailer performance program or RPP is intended to provide additional compensation, above the compensation provided under s. 565.10 (14) (b) 1. or 2., Stats., to retailers who meet certain performance goals identified by the department of revenue. This additional compensation is authorized under ss. 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats.

(b) This program is applicable to lottery retailer sales transactions beginning on January 1, 2000.

(2) **DEFINITIONS.** In this section:

(a) "Appropriate quarterly sales history" means the historical sales data that is used to calculate performance of a retail location within the RPP. The appropriate quarterly sales history data may be from either the comparable history quarter as defined under par. (b) or the immediately previous quarter as defined under par. (d).

(b) "Comparable history quarter" means the full sales quarter that is one year prior to the current sales quarter in which the RPP is being administered.

(c) "Gross sales" means the sales data as indicated by Wisconsin lottery accounts receivable documentation of weekly invoicing of the purchase of Wisconsin lottery products by retailers.

(d) "Immediately previous quarter" means the full sales quarter immediately prior to the current sales quarter in which the RPP is being administered.

(e) "Retail location" means the place of business at which lottery products such as instant tickets or terminal generated tickets are sold, as selected under s. Tax 61.04.

(f) "Sales goals incentive" means the component of the RPP that pays incentives to retailers who increase gross sales in a specified sales quarter or specified fiscal year, or both, when the sales quarter or fiscal year is compared to an appropriate quarterly sales history as defined under par. (a).

(g) "Sales quarter" means a quarter of the Wisconsin lottery fiscal year that is 13 weeks in length. Beginning in fiscal year 2001, the administrator shall determine the start and end dates of all sales quarters of a fiscal year no later than one month prior to the beginning of that fiscal year, and upon request shall provide the calendar dates that define each quarter of a fiscal year. A quarter shall start and end on dates that are consistent with the standard billing cycle that the lottery uses to collect revenue from retailer accounts.

(h) "Short-term incentive" means the component of the RPP that pays incentives to retailers who satisfy a performance expectation as established in short-term incentive features and procedures documentation.

(i) "Winning ticket incentive" means the component of the RPP that pays incentives to retailers who sell winning lottery tickets.

(3) **ELIGIBILITY.** Any retailer may participate in the RPP if it meets all of the following eligibility requirements:

(a) The retailer honors the current retailer contract, including any applicable addenda, and sells a minimum amount of instant tickets as indicated under s. Tax 61.08 (11) (c).

(b) The retailer is not a nonprofit organization as defined in s. 565.10 (14) (a), Stats.

(c) The retailer satisfies any qualifying requirements specific to each component of the RPP. If a retailer fails to satisfy the requirements specific to a component of the RPP, the retailer may not be considered qualified for that component of the RPP. A retailer qualifies for each component separately, and qualifying for one component of the RPP does not affect qualifying for another component.

(4) **DESIGN.** The retailer performance program shall consist of 3 components, the winning ticket incentive, the sales goals incentive, and the short-term incentive described as follows:

(a) *Winning ticket incentive.* The expected performance of the winning ticket incentive component of the RPP is the selling of winning lottery tickets. To qualify for the winning ticket incentive, a retailer shall satisfy the eligibility requirements in sub. (3). An incentive shall be paid to a retailer for selling any winning lottery ticket where the stated prize value of the winning lottery ticket is \$600 or greater. The incentive shall be paid as follows:

1. For winning lottery tickets, 2% of the stated prize value shall be paid on each prize, up to a maximum of \$100,000 per winning lottery ticket.

2. For lottery television program tickets, \$30 shall be paid on each winning lottery ticket.

(b) *Sales goals incentive.* The sales goals incentive component of the RPP shall pay a retailer an incentive based on an increase in the amount of sales over the appropriate quarterly sales history or the appropriate fiscal year in the case of jackpot terminal-generated games under subd. 3. The incentive shall be tracked, mea-

sured and paid based on one of 3 product types. For each product type, a retailer shall satisfy eligibility requirements in sub. (3) and qualify for the product type under sub. (5). For the 3 product types, instant ticket sales, non-jackpot terminal-generated sales and jackpot terminal-generated sales, the retailer shall receive incentives calculated as follows:

1. For the instant ticket sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2) (a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive 10% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator.

2. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2) (a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive 10% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator.

3. For the jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the previous fiscal year to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive 10% of the sales increase unless the administrator adjusts the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request to the administrator.

Note: For the fiscal year ending June 30, 2000, "fiscal year 2000," the Wisconsin lottery shall use the appropriate historical data from the fiscal year which ended on June 30, 1999, "fiscal year 1999," to determine a one-half fiscal year goal for the jackpot terminal-generated game product type under subd. 3.

(c) *Short-term incentive.* The short-term incentive shall pay a retailer an incentive based on the achievement of expected performance. Short-term incentives shall be designed to support a certain product or product type or to strengthen sales during certain times of the fiscal year. Performance expectations shall be related to the increasing of sales of lottery products and may be different for each short-term incentive offered to retailers. The administrator may not offer more than 4 short-term incentives in one fiscal year. A short-term incentive may not continue from one fiscal year into another fiscal year. The administrator shall determine whether short-term incentives are offered. The expected performance, and all other information important to the development of a specific short-term incentive, shall be indicated in a document that shall represent the features and procedures of the short-term campaign. The features and procedures document shall be published to the retailers no later than 21 calendar days prior to the start date of the incentive and shall include the following:

1. A statement of the requirements for a retailer to qualify for the program. The requirements for qualification for short-term

incentives shall be as consistent as possible with other aspects of the RPP.

2. A statement of the expected performance of a retailer who participates in the short-term incentive.

3. A statement of the start and end dates of the program and the expected time period that the plan will run, not to exceed 13 weeks.

4. A statement of how much funding may be made available for payment under the plan, not to exceed \$100,000 per short-term incentive.

5. A detailed explanation of how the incentive is calculated, to be consistent with other aspects of the RPP where appropriate.

6. A detailed explanation of how incentive payments will be made, and that payments shall be made no later than the last Thursday of the month following the last day of the sales quarter in which the short-term incentive ends.

7. Any other features or procedures determined by the administrator to be appropriate.

(5) **QUALIFICATION FOR PRODUCT TYPES.** (a) To qualify for the jackpot terminal-generated sales product type, a retail location shall have no less than 52 weeks of sales history in the previous fiscal year.

(b) To qualify for instant ticket sales or non-jackpot terminal-generated sales product type, a retail location shall meet the qualification criteria for that product type. Each product type shall be reviewed separately to determine if an appropriate quarterly sales history as defined under sub. (2)(a) is available to satisfy the criteria. The criteria are as follows:

1. For a retail location, if there is appropriate quarterly sales history as defined under sub. (2)(a), which is based on comparable history quarter sales data as defined under sub. (2)(b), the retailer shall be considered qualified for that product type.

2. If no comparable history quarter exists for a retail location, the administrator shall substitute sales history from the immediately previous quarter.

3. If no appropriate quarterly sales history can be determined, either by using data from a comparable history quarter or from an immediately previous quarter, the retail location may not be considered qualified for the program. The administrator shall review qualification under each product type no less often than quarterly so that retail locations that become qualified may be included for incentive payments as soon as possible.

(6) **PAYMENT OF INCENTIVES.** The RPP incentives shall be paid in the following manner:

(a) The winning ticket incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(b) The sales goals incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned, except for the jackpot terminal-generated games which shall be paid no later than the last Thursday of the month following the last day of the fiscal year in which the incentive is earned. The sales goals incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(c) The short-term incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin

lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(7) **FUNDING AUTHORITY.** The administrator shall monitor the expenditures of the RPP at least quarterly, to ensure that the funding authority is not exceeded. Prior to the payment of incentives under sub. (4) (b), the administrator may implement a pre-payment adjustment to ensure that funding authority for the RPP is not exceeded, by reducing the payment of incentives earned from an unexpectedly large jackpot or from an unexpectedly large increase in instant ticket or non-jackpot ticket sales. Any pre-payment adjustment in any product type shall be implemented as indicated under sub. (4) (b), to limit the incentive paid so that the payments do not exceed the funding available or negatively impact the payment of earned incentives in the other components of the RPP.

(8) **RIGHT TO APPEAL.** In the event the administrator terminates the eligibility or qualification of a retailer under the RPP, or in the event the retailer disputes their payments from the RPP, the retailer is entitled to an appeal in accordance with the provisions set forth under s. Tax 61.10.

(9) **REPORT.** The administrator shall document the total payments made to retailers under the RPP. The report shall include a breakdown of any incentives paid under the winning ticket incentive, the sales goals incentive and the short-term incentive. The report shall be available within 90 days of the completion of a fiscal year.

Note: Section Tax 61.085 interprets ss. 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

**Tax 61.09 Limitation on length of suspension.** A suspension shall be limited to a maximum of 45 calendar days, during which time the executive director shall consider the appropriate permanent action to be taken, including, but not limited to, termination of the retailer contract.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

**Tax 61.10 Appeal procedure for a contract termination.** (1) The executive director shall give the retailer written notice of the retailer's terminated contract and state the grounds for the termination. The retailer shall also be notified that a request for a reconsideration must be made by the retailer within 30 calendar days and that the request contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the notice of the termination, the retailer may request a reconsideration by filing with the executive director a written statement setting forth the retailer's legal, factual, or equitable arguments and submitting any supporting documents. The request for reconsideration shall be deemed filed on the date received by the executive director.

(3) Within 20 calendar days of receipt of the filing for reconsideration, the executive director may request the retailer to sub-

mit any additional facts, legal and equitable arguments, or documents which the executive director deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile all relevant correspondence, lottery accounting records, and all materials submitted to the executive director by the retailer for reconsideration. Legal counsel shall then review the file, research, if necessary, the applicable laws and rules, and prepare an analysis and recommendation for the executive director's consideration.

(5) The executive director, after considering all the facts and arguments submitted by the retailer, and legal counsel's recommendation, shall independently evaluate whether to either reinstate or terminate the contract. Within 45 calendar days of the executive director's receipt of the filing for reconsideration or any supplemental information and documentation requested, the executive director shall notify the retailer, in writing, of the determination. If the contract is terminated, the notification shall include a statement setting forth the reasons for the termination and notifying the retailer of the right to a hearing under s. 227.42, Stats. The retailer shall also be notified that a request for a hearing must be made by the retailer within 20 days and that the request contain the information in sub. (6).

Note: It is the intention of the commission that "20 days" should be considered in terms of calendar days.

(6) Within 20 calendar days of the mailing of the final determination by the executive director, the retailer may in writing request a hearing under s. 227.42, Stats. A request shall be deemed filed on the date received by the executive director. A request for a hearing under s. 227.42 Stats., shall contain all of the following:

- (a) The retailer's name and address;
- (b) The reasons why the retailer requests a hearing;
- (c) The facts which the retailer intends to prove at the hearing;
- (d) A description of the mistake the retailer believes was made, if the retailer claims that the termination of contract is based on a mistake in fact or in law; and

(e) Any supporting documents not previously submitted to the executive director.

(7) Within 20 calendar days of receipt of a request for hearing, the executive director shall in writing grant or deny the request for a hearing under s. 227.42, Stats. A hearing shall be granted if the criteria under s. 227.42 (1), Stats., are met. The executive director shall reasonably notify the retailer of the time and place of the hearing. The executive director shall inform the retailer in writing of the reason for denying a hearing.

(8) In the event that neither the retailer nor the retailer's representative appears at the time and place designated for the hearing, the executive director may take action based upon the record as submitted. By failing to appear, the retailer waives any further right to appeal before the Wisconsin lottery.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.