

## Chapter Tax 61

### RETAILERS

<p>Tax 61.01 Purpose.                  Tax 61.02 Definitions.                  Tax 61.03 Procedure for selecting and renewing contracting retailers.                  Tax 61.04 Criteria for selecting retailers.                  Tax 61.05 Fidelity bond.                  Tax 61.06 Certificate of authority.</p>	<p>Tax 61.07 Contract denial appeal procedure.                  Tax 61.08 Retailer contract terms and conditions.                  Tax 61.085 Retailer performance program.                  Tax 61.09 Limitation on length of suspension.                  Tax 61.10 Appeal procedure.                  Tax 61.25 Discretion of enforcement.</p>
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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 administrator 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 administrator 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.

**Note:** Section Tax 61.01 interprets ss. 565.10 and 565.12, Stats.  
**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; CR 01-088: am. Register February 2002 No. 554, eff. 3-1-02.

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

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

(1m) "Billing procedure" means the procedures used to collect revenue due the lottery by retailers consistent with s. 565.10 (15), Stats.

(2) "Commencement of a game" means the date, designated by the administrator, on which lottery tickets for a particular game under sub. (3) shall go on sale to the general public.

(3) "Lottery ticket" or "lottery share" means one of the following types:

(a) For instant scratch ticket games under s. 565.01 (6m) (a) 1., Stats., a chance received for consideration that may entitle a player to a prize as a winning ticket under sub. (8), consistent with lottery games under s. 565.27, Stats.

(b) For on-line ticket games under s. 565.01 (6m) (a) 2., Stats., a chance received for consideration that may entitle a player to a prize as a winning ticket under sub. (8), consistent with lottery games under s. 565.27, Stats.

(c) For break-open ticket games under s. 565.01 (6m) (a) 1., Stats., a chance received for consideration that may entitle a player to a prize as a winning ticket under sub. (8), consistent with lottery games under s. 565.27, Stats.

(4) "Low tier prize" means a lottery prize of \$49.00 or less, unless otherwise specified in the retailer's handbook.

(5) "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.

(6) "Selling location" means each cash register or instant ticket vending machine at a Wisconsin lottery retail outlet where a lottery ticket is sold.

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

(8) "Validation" means the action of identifying whether a Wisconsin lottery ticket is a winning lottery ticket, by industry means consistent with the type of ticket under sub. (3).

(9) "Winning lottery ticket" or "winning lottery share" any lottery ticket under sub. (3), for which an appropriate validation under sub. (8) has been conducted by a representative of the lottery, which indicates that the lottery ticket is a winning ticket.

(10) "Wisconsin lottery" means the department of revenue Wisconsin lottery division, the executive assistant, the secretary or the deputy secretary of revenue.

**Note:** Section Tax 61.02 interprets ss. 565.10 and 565.12, Stats.  
**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 (5), (7), (8) and (10), cr. (1), (6) and (9), Register, October, 2000, No. 538, eff. 11-1-00.; CR 01-088: am. (2), r. (3), renum. subs. (4) to (10) to be (3) to (9), and am. (6), (7) and (9) as renumbered Register February 2002 No. 554, eff. 3-1-02; CR 04-083: am. (2), (3) and (4), cr. (3) (a) to (c) and (8), renum. (8) and (9) to be (9) and (10) and am. Register April 2005 No. 592, eff. 5-1-02; CR 07-087: cr. (1m), am. (6) Register April 2008 No. 628, eff. 5-1-08.

**Tax 61.03 Procedure for selecting and renewing contracting retailers.** (1) Any person may apply for a contract 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 contacting the Wisconsin lottery. 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.

**Note:** Applications and application fees should be mailed or delivered to Wisconsin Lottery, 2135 Rimrock Road, PO Box 8941, Madison WI 53708-8941.

(2) The administrator 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 a contract or deny the application. The administrator shall grant the contract or deny the application within 35 business days after the Wisconsin lottery receives the completed application and application fee under sub. (1) or within 35 business days after the administrator completes a credit check under s. Tax 61.04 (1) (a), whichever is later.

**Note:** Section Tax 61.03 interprets s. 565.10 (1) to (5), Stats.  
**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; CR 01-088: am. Register February 2002 No. 554, eff. 3-1-02.

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

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

(b) The applicant shall affirm, in the contract application, that the applicant's business is physically secure and that the premise has a secure place to store lottery tickets.

(d) The applicant is expected to sell a minimum monthly average of \$400 worth of instant scratch tickets or instant break-open tickets or the sum of both each fiscal quarter, under s. 565.01 (6m) (a) 1., Stats., which shall be represented in any retailer contract or

addenda. The administrator may deny a contract or a renewal to an applicant whose anticipated sales will not meet the stated minimum monthly average of sales per fiscal quarter or whose historical sales have not met the stated minimum monthly average of sales per fiscal quarter.

(e) The applicant may not be an employee of the department of revenue Wisconsin lottery division, or the executive assistant, the secretary or the deputy secretary of revenue, per s. 565.05 (1) (b), Stats.

(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 administrator 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 retailers selling lottery tickets in that area, the administrator shall 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 administrator shall, however, grant a sufficient number of contracts in a given area to serve public convenience.

(4) Any applicant who has a physical or mental disability that constitutes or results in a substantial handicap to the applicant's employment may be awarded a contract exclusively to sell lottery tickets if the applicant meets all of the following conditions:

(a) Each applicant includes 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) to (3).

(c) Each applicant's contract is approved by the administrator.

**Note:** Section Tax 61.04 interprets s. 565.10 (1) to (5), Stats.

**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; CR 01-088: am. (1) (intro.), (a), (e), (3), and (4) Register February 2002 No. 554, eff. 3-1-02; CR 04-083: r. and recr. (1) (b), r. (c), am. (d) Register April 2005 No. 592, eff. 5-1-05.

**Tax 61.05 Fidelity bond.** (1) The Wisconsin lottery may require from each retailer a fidelity bond or an irrevocable letter of credit, or both, in the amount determined by the administrator and based upon the applicant's projected lottery ticket sales. The administrator may also require from each retailer the payment of interest for any outstanding unpaid balance that results from a dishonored retailer's check or electronic funds transfer, under s. Tax 61.08 (14) (d).

(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. The letter of credit shall be drawn upon a financial institution with offices within the borders of the state of Wisconsin, and shall be drafted in a manner that allows the lottery to draw upon it without additional action taken by the retailer. No letter of credit may be accepted for which the lottery must pay a sum before it can draw upon the letter of credit.

**Note:** Section Tax 61.05 interprets s. 565.10 (13), Stats.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; CR 01-088: am. (1) Register February 2002 No. 554, eff. 3-1-02; CR 04-083: am. (1) and (2) Register April 2005 No. 592, eff. 5-1-05.

**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 shall 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 administrator upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the administrator within 15 calendar days of its recovery.

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

**Note:** Section Tax 61.06 interprets s. 565.10 (8) to (12), Stats.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; CR 01-088: am. (2) and (4) Register February 2002 No. 554, eff. 3-1-02.

**Tax 61.07 Contract denial appeal procedure.** (1) If the applicant was denied a contract, the administrator 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 reconsideration must be made by the applicant within 30 calendar days of the denial and that the request shall 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 administrator 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 it is received by the administrator.

(3) Within 20 calendar days of receipt of the request for reconsideration, the administrator may, in writing, request the applicant to submit any additional facts, legal and equitable arguments or documents that the administrator 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 administrator 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 administrator's consideration.

(5) The administrator, 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 administrator's receipt of the request for reconsideration or any supplemental information and documentation requested, the administrator 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 must contain the information in sub. (6).

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

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

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

**Note:** Section Tax 61.07 interprets s. 565.10 (1) to (5), Stats.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; CR 01-088: am. Register February 2002 No. 554, eff. 3-1-02.

### **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 administrator 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 that 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 Wisconsin lottery'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 or transferable and shall be conspicuously displayed at the point of sale.

(8) **NOTIFICATION OF CHANGES IN THE RETAILER'S APPLICATION.**  
(a) The retailer shall notify the administrator, in writing, 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 notify the administrator, in writing, at least 30 calendar days in advance of any change of the retailer's business address.

(c) The retailer shall notify the administrator, in writing, 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 of 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.

2. Maintain public liability and property damage insurance against any claim that may 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 requirements 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 Wisconsin 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 administrator reserves the right to request from the retailer verification that the retailer has complied with the insurance requirements 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 a person under 18 years of age.

(c) The retailer shall sell a minimum monthly average of \$400 worth of instant scratch tickets or instant break-open tickets or the sum of both each fiscal quarter, 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 Wisconsin 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 administrator.

(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 may not add any service fee, handling fee, or other expense to the purchase of a ticket or share.

(j) The retailer may not charge any service fee, handling fee or other cost when validating a ticket regardless of whether the ticket or share is a winning or non-winning ticket or share, without the written permission of the administrator.

(k) The retailer may not conduct sales of lottery tickets or shares to off-premises customers by telephone, email, instant messaging or similar electronic means, or by mail, parcel, delivery service, or similar service.

(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. Except as provided in pars. (c) and (cm), the administrator may not reimburse the retailer for those losses.

(b) The retailer shall report by telephone within 24 hours any stolen tickets to the Wisconsin lottery, consistent with the instruc-

tions for reporting stolen tickets as indicated in the retailer contract.

(c) The administrator may credit the retailer's account for the value that the retailer paid for instant scratch tickets that are unsalable after all the following conditions are met:

1. The tickets became unsalable due to any malfunction of lottery equipment used in the sale of the tickets or if the tickets are deemed to be misprinted or void, consistent with the features and procedures document of the game to which the ticket or share belongs.

2. The unsalable tickets are returned to the lottery before the settlement date of the game to which the pack belongs. Tickets returned after the settlement date may not be credited for value by the administrator.

3. There is no validation of any ticket that is returned for credit, and the latex or other protective measures on each returned ticket show no signs of tampering.

4. At the discretion of the administrator, the lottery may assess a service charge against the retailer account to recover the cost of returning the tickets.

5. Credit shall be the retailer's purchase price, and any credit or service charge shall be made to the retailer's electronic fund transfer account.

(cm) 1. The administrator may credit the retailer's account for the value the retailer paid for instant scratch tickets that are stolen. In determining whether to provide credit, the administrator may consider the following factors:

- a. Compliance with the reporting requirement under par. (b).
- b. Whether the theft has been reported to law enforcement.
- c. Final return date of the game to which the stolen tickets belong.
- d. Validation of any ticket that is reported stolen.
- e. The retailer's prior record of reporting stolen tickets to the department.
- f. Security of the retailer's business and the place where tickets are stored.
- g. Any other facts and circumstances the administrator believes pertinent.

2. Credit under this paragraph shall be the retailer's purchase price, and any credit shall be made to the retailer's electronic fund transfer account.

(d) In the event that the lottery administrator announces a settlement date for a game, a retailer may return tickets for credit on or before that announced settlement provided that conditions under par. (c) 2. to 5. are met.

(e) The administrator may charge a retailer for shipments delivered on a date different than the retailer's scheduled order delivery date or shipped on a date other than the retailer's shipment date. If a retailer is charged, the expense shall be limited to the cost of the delivery.

**(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 administrator for examination and copying during the retailer's regular business hours. All of those records and correspondence are subject to seizure and audit without prior notice.

(bm) The retailer's electronic fund transfer account shall be debited no less often than every 60 days for tickets received within the last 60 days.

(c) A retailer shall remit to the lottery, no less frequently than every sixty (60) days, the proceeds from the sale of lottery tickets received since the last remission of proceeds. The terms of billing processes shall be set by the administrator.

(d) If the retailer failed to place sufficient funds in the electronic fund transfer account for the tickets received, the retailer may not receive more tickets until the retailer pays the amount due the lottery consistent with pars. (bm) and (c), or until the retailer has signed an agreement with the administrator which indicates an alternative schedule of payment for outstanding debts consistent with s. Tax 61.02 (1m). The administrator shall determine whether to offer an alternative payment agreement to a retailer on a case by case basis, taking into consideration the retailer's previous payment history.

(e) The administrator may assess the retailer a surcharge, an interest penalty, or both, for each dishonored retailer's check or electronic fund transfer. The surcharge shall be equal to the costs incurred, incident to each dishonor. Interest may be charged only in the event that a retailer account is referred for overdue collection, and may be assessed at a rate not to exceed 8.5% of the overdue amount.

**(15) BULK RESELLING WITHOUT PERMISSION IS PROHIBITED.** (a) A retailer may not intentionally resell, or aid in the act of reselling, bulk tickets without the written permission of the administrator.

(b) For purposes of this section, "reselling" means selling or aiding in the selling of multiple tickets to anyone engaged in the business of selling lottery tickets for profit. Persons who participate in ticket buying pools among friends, family or co-workers are not involved in reselling, provided that all tickets are purchased by all participants at the price set by the lottery administrator.

**(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 at another retail location or at any Wisconsin lottery office, the Wisconsin 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 administrator 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 administrator.

**(17) BREAK-OPEN TICKETS.** (a) The administrator may accept returned break-open tickets for credit only under any of the following circumstances:

1. If the tickets are defective, the retailer shall return as many of the suspected defective tickets as is possible, using the original packaging materials if possible.

2. If the order was filled incorrectly by the Wisconsin lottery, the retailer shall return any incorrectly shipped break-open tickets, using the original packaging materials if possible.

3. If the shipment of tickets is unopened by the retailer. To be considered unopened, the package shall contain all the tickets that it contained when delivered to the retailer and have the original packaging and shipping seals intact and unopened.

4. If the lottery administrator announces a settlement date for a game, a retailer may return tickets for credit on or before the date provided that the retailer returns the tickets using the original packaging materials, or in a manner acceptable to the lottery administrator.

(b) The retailer shall redeem all prizes from tickets purchased at the retailer's outlet unless the features and procedures document for the game state otherwise.

**(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. The retailer shall maintain and display a sign provided by the lottery that indicates which games no longer have a top prize.

**(19) RIGHT TO APPEAL SUSPENSION OR TERMINATION.** In the event the administrator 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 to the Wisconsin lottery and surrender all unsold tickets and all state owned lottery property.

**(21) GROUNDS FOR SUSPENSION.** The retailer's contract may be suspended without prior notice by the Wisconsin lottery for any of the following reasons:

(a) The retailer failed to meet one or more of the qualifications for being a retailer under s. 565.10, Stats., or under the Wisconsin lottery's administrative rules.

(b) The retailer violated a provision under ch. 565, Stats., or of this chapter.

(c) The retailer failed to sell a minimum monthly average of \$400 worth of instant scratch tickets or instant break-open tickets or the sum of both in any fiscal quarter, under s. Tax 61.04 (1) (d).

(d) The retailer intentionally sold a lottery ticket to a person under 18 years of age.

(e) The retailer endangered the security of the Wisconsin lottery.

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

(g) The retailer failed to remit money owed to the Wisconsin lottery or failed to make payment on or before the settlement date.

(h) The retailer engaged in advertising of lottery products or services, or both, that in the administrator's determination was false, deceptive, or misleading.

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

**(22) GROUNDS FOR TERMINATION.** The retailer's contract may be terminated by the Wisconsin Lottery, regardless of whether the retailer has been previously suspended. Any issue which is grounds for termination may be considered instead for suspension, at the discretion of the administrator. The administrator may consider whether a retailer acted to promptly cure a cause within a reasonable time after notice, when reviewing the grounds for termination. The retailer's contract may be terminated for the following reasons:

(a) The retailer failed to meet one or more of the qualifications for being a retailer under s. 565.10, Stats., or under this chapter.

(b) The retailer endangered the security of the lottery, or engaged in fraud, deceit, misrepresentation or other conduct in a manner that would cause perceptions prejudicial to public confidence.

(c) The retailer engaged in any practice identified under s. Tax 61.08 (21) (a) to (i).

**Note:** Section Tax 61.08 interprets ss. 565.02 (3) (j), 565.10 (7) to (15), and 565.12, Stats.

**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; CR 01-088: r. (15) (c) and am. (1), (3), (5), (7), (8), (10), (11) (b), (e) and (h), (13), (14) (b), (bm), (c) and (d), (15) (a), (b) and (d), (16), (19), (20) and (21) (intro.) and (a) to (h) Register February 2002 No. 554, eff. 3-1-02; CR: 04-083: am. (11) (c), (13) (a), (14) (d), (16) (a) and (21) (c), r. (11) (h), (12), and (15), cr. (13) (c) and (d), r. and recr. (17) (a) Register April 2005 No. 592, eff. 5-1-05; CR 07-087: cr. (11) (h), (j), (k), (13) (e), (14) (c), (15), (17) (a) 4., and (22), am. (13) (c) 1., (14) (bm), (17) (b), (18), (21) (intro.) and (g), renum. (14) (c) and (d) to be (14) (d) and (e) and am. Register April 2008 No. 628, eff. 5-1-08; **CR 13-034: am. (11) (h), (k), (13) (a), cr. (13) (cm) Register December 2013 No. 696, eff. 1-1-14.**

**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 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. (c) or the immediately previous quarter as defined under par. (e). The appropriate annual sales history data shall be from the comparable history fiscal year under par. (b).

(b) "Comparable history fiscal year" means the previous fiscal year that has sales history in each sales quarter for a specific retail location.

(c) "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.

(d) "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.

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

(f) "Instant ticket" means any of the following:

1. Any ticket which uses a scratch, pull-tab or break-open method, or a combination of those methods, as the method of player interaction with the ticket.

2. Any ticket where the features and procedures documentation under s. 565.27, Stats., indicates the ticket is an instant ticket for purposes of the retailer performance program as identified under this section.

(g) "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.

(h) "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 sales history as defined under par. (a).

(hm) "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.

(i) "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.

(j) "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.

(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 to a retailer on each prize, up to a maximum of \$100,000 per prize level per drawing. In the event that a retailer or retailers earn more than \$300,000 from any one prize level in any one drawing, then the lottery shall divide \$300,000 equally among all retailers who earned an incentive from that prize level.

(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 sales history. The incentive shall be tracked, measured and paid separately for each product type. For each product type, a retailer shall satisfy eligibility requirements in sub. (3), sell a minimum amount of instant tickets as indicated under s. Tax 61.08 (11) (c), and qualify for the product type under sub. (5).

1. Quarterly payments may be paid for instant ticket product and for non-jackpot terminal generated product, and shall be made in the following manner:

a. For the instant ticket sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate sales history 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 up to 2% 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.

b. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate sales history 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 up to 2% 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. Annual payments may be paid for instant ticket product, non-jackpot terminal generated product and jackpot terminal-generated product, and shall be made in the following manner:

a. For the instant ticket sales product type the retailer shall receive an incentive calculated by comparing a fiscal year against the appropriate sales history 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 up to 10% of the sales increase unless the administrator adjusts the payment 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. Any incentive paid to a retailer shall be adjusted by the percentage of locations contracted to that retailer that do not generate an increase, except that locations which do not have a comparable history fiscal year are not considered when this adjustment is made.

**Note:** For example: If a retailer has a contract to sell lottery products that includes three retail locations and one of the retail locations fails to generate an increase, then the lottery will adjust the incentive payments to those retail locations which earned an increase. In this example, the adjustment of each payment is calculated by reducing each payment by one third, the number of retail locations included in the contract but for which an increase was not earned.

b. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the appropriate sales history 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 up to 10% of the sales increase unless the administrator adjusts the payment 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. Any incentive paid to a retailer shall be adjusted by the percentage of locations contracted to that retailer that do not generate an increase, except that locations which do not have a comparable history fiscal year are not considered when this adjustment is made.

**Note:** For example: If a retailer has a contract to sell lottery products that includes three retail locations and one of the retail locations fails to generate an increase, then the lottery will adjust the incentive payments to those retail locations which earned an increase. In this example, the adjustment of each payment is calculated by reducing each payment by one third, the number of retail locations included in the contract but for which an increase was not earned.

c. For the jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the appropriate sales history 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 up to 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 other 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. Any incentive paid to a location shall be adjusted by the percentage of locations contracted to that retailer that do not generate an increase, except that locations which do not have a comparable history fiscal year are not considered when this adjustment is made.

**Note:** For example: If a retailer has a contract to sell lottery products that includes three retail locations and one of the retail locations fails to generate an increase, then the lottery will adjust the incentive payments to those retail locations which earned an increase. In this example, the adjustment of each payment is calculated by reducing each payment by one third, the number of retail locations included in the contract but for which an increase was not earned.

**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. 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 spe-

cific short-term incentive, shall be indicated in a document that shall represent the features and procedures of the short-term campaign. Payment may be in the form of merchandise or lottery products. The features and procedures document shall be published to the retailers no later than 14 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.

4. A statement of how much funding may be made available for payment under the plan, not to exceed \$300,000 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. If payment is made in merchandise or lottery product, the explanation will include information about the merchandise or lottery product.

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

(d) *Merchandise as payment.* If merchandise is used as payment, all of the following conditions must be met:

1. The lottery may spend up to 10% of the funding available for the RPP, under s. 565.02 (4) (g), Stats., for merchandise or lottery product per fiscal year.

2. The lottery shall procure appropriate merchandise, merchandise fulfillment or inventory control for the implementation of short-term incentives by conducting procurement activities under s. 565.25, Stats. The lottery shall properly account for lottery product used in a short-term incentive.

3. The lottery shall provide for the appropriate control of the merchandise or lottery product, including provisions for inventory and physical security where necessary.

(5) **QUALIFICATION FOR PRODUCT TYPES.** (a) To qualify annual sales goals incentives under sub. (4) (b) 2., jackpot terminal-generated sales product type, a retail location shall have a comparable history fiscal year as defined under sub. (2) (b).

(am) If no appropriate sales history can be determined, the retail location may not be considered qualified for annual incentives for that product type. The administrator shall review qualification under each product type no less often than yearly, so that retail locations that become qualified may be included for incentive payments as soon as possible.

(b) To qualify for quarterly sales goals incentives under sub. (4) (b) 1., 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 comparable history quarter sales data as defined under sub. (2) (c), 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 as defined under sub. (2) (e).

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 quarterly incentives for that product type.

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 sequential order:

(a) Winning Ticket Incentives, under sub. (4) (a).

(b) Short-Term Incentives, under sub. (4) (c).

(c) Quarterly Sales Goals Incentives, under sub. (4) (b) 1., where the sequence of product types paid shall be instant ticket sales products, then non-jackpot terminal-generated products.

(d) Annual Sales Goals Incentives, under sub. (4) (b) 2., where the sequence of product types paid shall be instant ticket sales products, then non-jackpot terminal-generated products, and last jackpot terminal-generated products.

(e) The RPP incentives shall be paid in the following manner:

1. 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.

2. 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.

3. The sales goals quarterly 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. 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.

4. The annual incentive payments 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. Jackpot terminal-generated products shall be paid last of all incentive payments in a fiscal year. 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. 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; CR 04-083: cr. (2) (f) and (4) (d), am. (4) (a) 1. and 2., (c) (intro.), 3., 4., 6., and (7) Register April 2005 No. 592, eff. 5-1-2005; CR 04-083: am. (2) (a), (4) (b) (intro.), (5) (a), (b), and (6), renum. (2) (b) to (i), (4) (b) 1. to 3., (6) (a) and (b) to be (2) (c) to (j), (4) (b) 1. a., b., 2. c., and (6) (e) 1. and 3., and am. (2) (h), (4) (b) 1. a., b., 2. c., and (6) (e) 3., cr. (2) (b) and (f), (4) (b) 1. to 3., (5) (am), (6) (a), (b), (d), (e) (intro.), 2. and 4., r. and recr. (6) (c) Register April 2005 No. 592, eff. 7-2-05; CR 07-087: am. (3) (a) and (4) (b) (intro.), r. (4) (a) 2. Register April 2008 No. 628, eff. 5-1-08.

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

**Note:** Section Tax 61.09 interprets s. 565.12, Stats.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; CR 01-088: am. Register February 2002 No. 554, eff. 3-1-02.

**Tax 61.10 Appeal procedure.** (1) The administrator 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 must contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the notice, the retailer may request a reconsideration by filing with the administrator 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 it is received by the administrator.

(3) Within 20 calendar days of receipt of the request for reconsideration, the administrator may, in writing, request the retailer to submit any additional facts, legal and equitable arguments or documents that the administrator 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 administrator 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 administrator's consideration.

(5) The administrator, 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 administrator's receipt of the request for reconsideration or any supplemental information and documentation requested, the administrator 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 calendar days and that the request must contain the information in sub. (6).

(6) Within 20 calendar days of the administrator's mailing of the final determination, the retailer may request, in writing, a hearing under s. 227.42, Stats. A request shall be deemed filed on the date it is received by the administrator. 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 a retailer requests a hearing.

(c) The facts that 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.

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

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

**Note:** Section Tax 61.10 interprets s. 565.12, Stats.

**History:** Cr. Register, March, 1989, No. 399, eff. 4-1-89; CR 01-088: am. Register February 2002 No. 554, eff. 3-1-02; CR 07-087: am. (title) and (2) Register April 2008 No. 628, eff. 5-1-08.

**Tax 61.25 Discretion of enforcement.** (1) Consistent with s. 895.59, Stats., the lottery shall exercise the following discretion in the enforcement of rules and guidelines against a small business:

(a) For purposes of this section the definition of small business, under s. 227.114 (1), Stats., shall include any retailer who holds a contract under s. Tax 61.08, so that all retailers may expect the same treatment with respect to this section.

(2) If a retailer voluntarily discloses an actual or potential violation of lottery rules, guidelines, or terms of a contract with the lottery, the retailer shall be entitled to a reduction or waiver of any penalties associated with the disclosed potential violation. The amount of the reduction or the extent of the waiver shall be determined by the administrator on a case-by-case basis.

(3) Notwithstanding the provisions of sub. (2), no reduction or waiver may be granted for any of the following situations:

(a) The agency discovers the violation before the small business discloses the violation.

(b) The violation is disclosed after an agency audit or inspection of the small business has been scheduled.

(c) The violation was identified as part of the monitoring or sampling requirements that are consistent with the requirements under an existing permit.

(d) The violation results in a substantial economic advantage for the small business.

(e) The small business has repeatedly violated the same rule or guideline.

(f) The violation may result in an imminent endangerment to the environment, or to public health or safety.

(g) The violation is determined to be an act of deceit, fraud, misrepresentation or other conduct prejudicial to public confidence in the lottery.

(h) The violation may give the retailer an unfair economic advantage over another retailer.

(4) A retailer may appeal a determination of inappropriate use of discretion as outlined in section s. Tax 61.10. The administrator shall review each appeal on a case by case basis.

**Note:** Section Tax 61.25 interprets ss. 565.10, 565.12, and 895.59, Stats.

**History:** CR 07-087: cr. Register April 2008 No. 628, eff. 5-1-08.