

Chapter Tax 9

CIGARETTE TAX

Tax 9.01	Definitions	Tax 9.22	Drop shipments
Tax 9.06	Affixing of state revenue stamps	Tax 9.26	Trade or transfer of unstamped cigarettes
Tax 9.08	Cigarette tax refunds to Indian tribes	Tax 9.31	Sales out of Wisconsin
Tax 9.09	Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department	Tax 9.36	Displaying of cigarettes
Tax 9.11	Refunds	Tax 9.41	Vending machines
Tax 9.12	Refunds—military	Tax 9.46	Purchases by the retailer
Tax 9.16	Meter machines	Tax 9.47	Invoicing of sales, including exchanges of cigarettes
Tax 9.17	Meter machine settings	Tax 9.51	Samples
Tax 9.19	Fuson machines and stamps	Tax 9.56	Branch offices
Tax 9.21	Shipments to retailers	Tax 9.61	Warehousing of cigarettes
		Tax 9.67	Cigarette tax credit

Tax 9.01 Definitions. (subch. II, ch. 139, Stats.) In this chapter:

(1) "Indian" means a natural person of Indian descent who is a member of a recognized federal Indian tribe occupying a reservation. Membership in a recognized federal Indian tribe is shown by either a name on the tribal roll or confirmation of such fact by the tribal council.

(2) "Indian corporation" means a corporation in which Indians own at least 51% of the voting stock.

(3) "Indian partnership" means a partnership in which at least 51% of the investment is made by Indians, at least 51% of the equity is owned by Indians and at least 51% of the profits or losses accrue to Indians.

(4) "Indian retailer" means an individual Indian, Indian partnership, Indian corporation or other person authorized to sell cigarettes by the tribal council of the reservation where the retailer's business is located.

(5) "Reservation" means all land within the boundaries of the Bad River, Forest County Potawatomi, Lac Courte Oreilles, Lac du Flambeau, Menominee, Mole lake, Oneida, Red Cliff, St. Croix and Stockbridge-Munsee reservations and the Winnebago Indian Communities.

(6) "Stamped cigarettes" means cigarettes bearing valid Wisconsin tax stamps or meter imprints.

(7) "Untaxed cigarettes" means cigarettes not bearing valid Wisconsin tax stamps or meter imprints.

History: Cr. Register, April, 1984, No. 339, eff. 4-1-84.

Tax 9.06 Affixing of state revenue stamps. (s. 139.32, Stats.) (1) Tax stamps of the proper denomination shall be affixed either to the top of each individual package of cigarettes or on the bottom thereof, excepting in the case of flat tins or other odd-sized containers when said tax stamps shall be affixed to some portion of the flat surface thereof.

Register, March, 1984, No. 339

(2) Tax revenue meter imprints shall be affixed at the bottom of each individual package of cigarettes.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.08 Cigarette tax refunds to Indian tribes. (ss. 139.323 and 139.325, Stats.) (1) **SCOPE.** This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who on behalf of their resident enrolled members have entered into agreements under s. 139.325, Stats., with the department for refunds of taxes on stamped cigarettes.

(2) **THE LAW.** (a) Section 139.323, Stats., directs the department of revenue to refund to Indian tribal councils 70% of the cigarette taxes collected under s. 139.31 (1), Stats., in respect to:

" . . . sales on reservations or trust lands of an Indian tribe to the tribal council of the tribe having jurisdiction over the reservation or trust land on which the sale is made if all the following conditions are fulfilled:

- (1) *The tribal council has filed a claim for the refund with the department.*
- (2) *The tribal council has approved the retailer.*
- (3) *The land on which the sale occurred was designated a reservation or trust land on or before January 1, 1983.*
- (4) *The cigarettes were not delivered by the retailer to the buyer by means of a common carrier, a contract carrier or the U.S. postal service."*

(b) Section 139.325, Stats., allows the department to *"enter into agreements with the Indian tribes to provide for refunding of the cigarette tax imposed under s. 139.31 (1), Stats., on cigarettes sold on reservations to enrolled members of the tribe residing on the tribal reservation."*

(3) **SALES TO INDIANS.** (a) Except as provided in s. Tax 9.09 (2) and (4), Wisconsin cigarette permittees shall sell only stamped cigarettes to federally recognized Indian tribes within Wisconsin, or to persons authorized by the Indian tribe to purchase and sell cigarettes.

(b) The Indian tribal council may authorize retailers on its reservations or trust land to purchase and sell cigarettes on which the tribal government may be entitled to a tax refund by providing the Wisconsin department of revenue and the cigarette distributor a certified letter stating that the retailer has tribal authorization to purchase and sell cigarettes on the reservation.

(c) The Wisconsin cigarette permittee shall retain, for a period of 2 years from the date of sale, records substantiating sales to federally recognized Indian tribes or their authorized retailers.

(d) The Wisconsin cigarette permittee shall include with its monthly cigarette tax returns a list of all sales of cigarettes to federally recognized Indian tribes or their authorized retailers on a separate form prescribed by the department.

(4) **REFUNDS.** (a) Upon filing a claim for refund with the department, the department shall reimburse the Indian tribal council 70% of the amount of tax paid under s. 139.31, Stats., on all cigarettes purchased by the Indian tribal council or person authorized to purchase and sell ciga-

rettes by the tribal council of the reservation where the purchaser's business is located.

(b) Claims shall be filed upon forms prescribed and furnished by the department.

(c) Claims may not be filed more than twice a month.

(d) 1. The Wisconsin cigarette permittee upon request, shall furnish each purchaser with the original invoice prepared at the time of delivery, and the purchaser shall send the original invoice to the department when making a claim for a refund. In this paragraph, "original invoice" means the top copy and not a duplicate original or carbon copy of the original invoice.

2. The original invoice shall be printed or rubber stamped with the words "original invoice" and shall in addition contain the following information:

a. Date of sale.

b. Name and address of seller.

c. Name and address of purchaser.

d. Number of cigarettes purchased.

e. Amount of Wisconsin cigarette tax paid as a separate item.

3. Double-faced carbon paper shall be used between the original invoice and the first carbon copy unless the invoice is upon special paper or product approved in advance by the department as affording protection equivalent to double-faced carbon paper.

4. A separate original invoice shall be used for each sale and delivery and shall be legible.

5. If an original invoice has been lost or destroyed, a duplicate original invoice shall be used to support a claim for refund and accompanied by an affidavit by the purchaser that the original invoice has been lost or destroyed. The distributor when issuing the duplicate original invoice, shall indicate on the face of the invoice that it is a duplicate original invoice. The duplicate invoice shall contain the same information as on the original invoice.

(e) On the filing of a claim, the department shall determine the amount of refund due. The department may investigate the correctness of the facts stated in a claim and may require a claimant to submit records to substantiate the claim. When the department has approved a claim, it shall pay the claimant the reimbursement provided in this subsection, out of the monies collected under s. 139.31 (1), Stats.

(f) An Indian tribe that has entered into an agreement with the department under s. 139.325, Stats., shall file its claim for refund of the remaining 30% of the precollected tax on cigarettes sold on the reservation to enrolled members of the tribe residing on the tribal reservation on forms prescribed by the department.

(g) The penalties provided in s. 139.44, Stats., for filing a false or fraudulent claim apply to all refund claimants.

(h) The right of any tribal council to a refund under s. 139.323, Stats., is not assignable, and the application for a refund shall be made by the same tribal council who purchased or authorized the purchase of the cigarettes, and by no other person, and the proceeds or amount of the refund as determined by the department shall be paid to the tribal council whose name appears on the invoice and to no other person.

(i) Refunds under ss. 139.323 and 139.325, Stats., and this section shall be of tax only and shall not include interest.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; emerg. r. and recr., eff. 10-1-83; r. and recr. Register, March, 1984, No. 339, eff. 4-1-84.

Tax 9.09 Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department. (subch. II, ch. 139, Stats.) (1) SCOPE. This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who have not entered into agreements under s. 139.325, Stats., with the department for refunds of precollected taxes on stamped cigarettes.

(2) SALES TO INDIANS FOR SALE TO RESIDENT TRIBAL MEMBERS. (a) A Wisconsin cigarette distributor permittee may sell untaxed cigarettes to an Indian retailer if the untaxed cigarettes are to be sold to resident tribal members on the reservation. If this occurs:

1. The cigarettes shall be delivered by the distributor to the purchaser on the reservation.

2. The Wisconsin cigarette distributor shall retain, for a period of 2 years from the date of sale, proof that all of the sales were to a qualified Indian retailer. Either of the following types of proof shall be retained:

a. A purchase order issued by an Indian tribal council on its letterhead.

b. A photocopy of the written authorization to traffic in cigarettes issued to the Indian retailer by the tribal council of the reservation to which the cigarettes are to be delivered.

3. The Wisconsin cigarette distributor shall list all sales of untaxed cigarettes to Indian purchasers on form CT-103 as "Out-of-State Sales."

(b) The Wisconsin cigarette distributor may not sell untaxed cigarettes to an Indian retailer if the department of revenue has notified the distributor that the untaxed cigarettes are being sold to persons other than resident tribal members.

(3) SALES TO INDIANS FOR SALE TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. A Wisconsin cigarette distributor shall sell only stamped cigarettes to an Indian retailer if the cigarettes are to be sold to persons other than resident tribal members.

(4) SALES BY INDIANS TO RESIDENT TRIBAL MEMBERS. An Indian retailer may sell untaxed cigarettes to resident tribal members on the reservation.

(5) SALES BY INDIANS TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. An Indian retailer shall sell only stamped cigarettes to persons other than resident tribal members.

(6) RECORDS FOR SALES BY INDIANS. The Indian retailer shall keep detailed records of both taxable and nontaxable transactions and shall Register, March, 1984, No. 339

record the number and dollar volume of taxable sales to nonmembers of the tribe. With respect to nontaxable sales, and retailer shall record and retain for state inspection the names of all Indian purchasers, their tribal affiliations, the Indian reservation within which sales are made, and the dollar amounts and dates of sales. In addition, unless the Indian purchaser is personally known to the retailer, he or she shall present a tribal identification card.

(7) REFUNDS. If all the statutory requirements of s. 139.323, Stats., are fulfilled in accordance with s. Tax 9.08 (3) and (4), the department will refund 70% of the tax collected under s. 139.31 (1), Stats., to the tribal council.

History: Emerg. cr. eff. 10-1-83; cr. Register, March, 1984, No. 339, eff. 4-1-84.

Tax 9.11 Refunds. (s. 139.36, Stats.) (1) A refund shall be granted to any cigarette distributor for stamps which were applied to packages of cigarettes when the distributor supplies documentation to the department that the packages of cigarettes to which stamps have been affixed were damaged or otherwise unsalable and have been returned to the manufacturer thereof. A distributor who has unsalable cigarettes in his possession must file a written notice to the department of intent to return such cigarettes to the manufacturer thereof at least 10 days prior to shipping such cigarettes. If the department, upon receipt of this notice of intent, desires to exercise its right to inspect such cigarettes prior to shipment, it must so notify the distributor prior to the expiration of the 10 day period. If the department does not notify the distributor of its intent to inspect before the end of the 10 day period, the distributor may ship the cigarettes to the manufacturer and make application for refund. The distributor shall make application for such refund on a form to be furnished by the department. The application for refund must be accompanied by a copy of the signed bill of lading for said shipment. A copy of the credit memo for each shipment from the manufacturer must be forwarded to this department prior to processing the refund. The department may also require an affidavit from the manufacturer attesting to the number of cigarettes received in each shipment.

(2) Refund will be granted on all stamps unfit for use or otherwise unused, returned to this department by duly authorized permittees, providing the sale thereof may be verified by the department.

(3) On all refunds granted, the cost of printing and service charges will be deducted therefrom.

History: 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

Tax 9.12 Refunds—military. (s. 139.31 (3), Stats.) If the state tax has been paid on cigarettes sold to post exchanges of the armed forces of the United States or to federally or state operated veterans hospitals, the tax may be refunded to the distributor or jobber if:

(1) The cigarettes were actually sold and delivered to an exempt organization, and

(2) The distributor or jobber can provide evidence that the cigarette taxes were paid.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; r. and recr. Register, June, 1983, No. 330, eff. 7-1-83.

Register, March, 1984, No. 339

Tax 9.16 Meter machines. (s. 139.32 (4), Stats.) (1) All meters are under the direct control of the department of revenue, and all transfers or anything pertaining thereto must first be authorized by the department.

(2) Any distributor or manufacturer desiring to use a cigarette meter machine in lieu of affixing revenue stamps must apply to the department of revenue for permission to have such machine installed for such purpose.

(3) All repairs to either the machine or the meter are strictly prohibited except by an authorized representative of Pitney-Bowes, Inc. Requests for service should be directed to the branch office of Pitney-Bowes, Inc., for your territory.

(4) Meter machine ink imprints on all packages must be clear and legible. All dies and other equipment must be serviced and cleaned according to the instructions issued by Pitney-Bowes, Inc.; the department of revenue may refuse the continued use of the meter.

(5) All inks used in the stamping of cigarettes must be purchased from Pitney-Bowes, Inc., Stamford, Connecticut, and must be made up from the formula having the approval of the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (4), Register, December, 1977, No. 264, eff. 1-1-78.