

## CHAPTER 139.

## BEVERAGE AND CIGARETTE TAXES.

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**139.01 Tax imposed.** An occupational tax is assessed, imposed and levied from June 30, 1935, upon the sale, exchange, offering or exposing for sale, having in possession with intent to sell, or removal for consumption or sale of fermented malt beverages, other than for shipment in interstate or foreign commerce or for shipment or sale by a brewer to a bottler or sales company. Such tax is levied and shall be collected at the rate of \$1 per barrel of 31 gallons, and at a proportionate rate for any other quantity or for fractional parts thereof.

**139.02 Definitions.** As used in this chapter, the terms "brewer," "bottler," "wholesaler," "retailer," "license," "fermented malt beverages" shall have the same meaning as in section 66.054, and "licensed premises" shall be premises described in licenses issued by cities, villages or towns under the authority of said section. "Sales company", as used herein shall mean any person, firm or corporation whose place of business is located on the premises of a brewer in this state and who shall purchase from such brewer in the original package fermented malt beverages manufactured by such brewer for sale and shipment outside the state in interstate commerce.

**139.03 Registration; stamps.** (1) Every brewer, bottler, wholesaler, or retailer liable for payment of the emergency occupational tax imposed in this chapter shall, upon making application therefor, be assigned a registration number by the commissioner of taxation. The form of such application shall be prescribed by the commissioner. In the case of a brewer or bottler, such registration number shall be the same as that issued under 66.054 (3). Stamps pursuant to this section shall be sold and issued only to duly registered brewers, bottlers, wholesalers, or retailers.

(2) The emergency occupational tax imposed in section 139.01 shall be paid by the purchase of stamps from the commissioner of taxation, of such design and denominations as shall be designated by him. Each brewer, bottler, wholesaler, or retailer shall affix at the time of sale (unless previously affixed thereto) to each barrel, keg, case, or other container in which fermented malt beverages shall be packed for sale within the state except sales by brewers to bottlers a stamp so purchased, which stamp shall be of proper denomination. Not more than one tax shall be required to be paid on any one barrel, keg, case, or other container.

(3) Such stamp shall be affixed in this state to every barrel, keg, case or container at or before the time it is sold, delivered or given to any purchaser or consumer other than a bottler or sales company and before any fermented malt beverages are removed therefrom. Provided, however, that the commissioner of taxation may require in all cases, except sales by a brewer to a bottler, that fermented malt beverages shipped into this state shall have such stamp affixed to the barrel, keg or other container at the time the same enters this state. In case of sales by a brewer to a bottler or sales company within this state, it shall not be necessary for the brewer to affix stamps, but said stamps shall be affixed and canceled by said bottler before sale or delivery to any purchaser or consumer within this state. Such stamps shall be canceled by the person affixing the same. No retailer shall sell or remove any fermented malt beverages from any barrel, keg, case or other container, unless the same shall have affixed thereto duly canceled stamps of proper denomination. Every wholesaler or retailer shall be liable for the payment of the tax provided in this chapter on sales made for resale or consumption within this state, and shall be required to affix stamps of the proper amount on every barrel, keg, case or other container containing fermented malt beverages imported from without the state, sold, delivered or given to any purchaser or consumer within this state, unless such stamps

shall have been previously affixed and canceled by a brewer or bottler. The stamps so affixed shall be evidence of the payment of the tax. It shall not be necessary to affix stamps to individual bottles of fermented malt beverages, but no fermented malt beverages shall be sold, offered or exposed for sale, bartered, exchanged, nor shall any bottles containing the same be removed from containers for sale or consumption, except for sale by a brewer to a bottler or sales company, unless the original container in which said fermented malt beverages are packed by the brewer or bottler shall have affixed thereto stamps of proper denominations.

(4) Sales by a brewer to a sales company for shipment outside the state in interstate commerce shall not be subject to the payment of the tax or other requirements imposed by this chapter except as herein specifically provided.

(5) Every brewer, bottler, wholesaler or retailer who shall be liable for the payment of the stamp tax as herein imposed shall, at the time any fermented malt beverages are sold within the state of Wisconsin, and before any of the contents shall be removed from the barrel, keg, case or other container, affix thereto a stamp or stamps of the proper denomination, which shall be canceled by the person affixing the same thereto. The commissioner of taxation shall, by regulation, prescribe the manner in which said stamps shall be affixed and canceled.

(6) No person or corporation shall sell, give or lend any stamps, nor shall any person or corporation purchase, accept or receive, or borrow any stamps from any person or corporation, it being the intent hereof in order to prevent fraud and deception and insure the collection of said tax to limit all sales and transfers of such stamps to the commissioner of taxation or his duly authorized representatives. The commissioner shall not sell or issue any stamps to any person or corporation other than a brewer or bottler, who shall have been assigned a registration number by the commissioner, or to a licensed wholesaler or retailer selling the product of a brewer or bottler who shall have been assigned a registration number by the commissioner. Nothing in this subsection shall be construed to prevent the pledging of any stamps legally secured to any banking institution located in Wisconsin as collateral security to a loan.

(7) The commissioner of taxation shall keep a suitable record of the sale of all stamps which shall show the dates of sale and the names of the purchasers. On the certification of the commissioner the state treasurer shall refund to any purchaser or any banking institution located in Wisconsin the money paid for any stamps returned unfit for use or otherwise unused, the tax paid on any fermented malt beverages or intoxicating liquor which is spoiled or has become unfit for beverage purposes, and the tax paid on fermented malt beverages sold to the armed forces of the United States. The commissioner shall prescribe the method of proof required for obtaining such refunds.

(8) It shall be unlawful, except as otherwise herein provided, for any person, brewer, bottler, dealer or retailer, to sell, offer for sale, have in possession with intent to sell, offer or expose for sale, barter, exchange or give away fermented malt beverages within this state, except for shipment in interstate commerce, or sale or shipment by a brewer to a bottler or sales company without having first affixed to the barrel, keg, case or other container in which same shall be placed, the stamps required by this chapter.

(9) Any person who shall falsely or fraudulently make, forge, alter or counterfeit any stamp prescribed by this chapter, or shall procure or cause to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or who shall knowingly utter, publish, pass or tender as true any false, altered, forged, or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamps, or shall affix the same to any barrel, keg, case or other container, or shall use any barrel, keg, cask, box, case or container upon which the stamp or stamps have been canceled, for the purpose of placing therein for sale, offering for sale, or having in possession with intent to sell, or selling, offering for sale, or exposing for sale, exchange or barter, any fermented malt beverages, without placing thereon stamps in the amount and of the kind and character herein provided, except for shipment in interstate commerce, or for shipment by a brewer to a bottler shall be deemed guilty of a felony and, upon conviction, shall be imprisoned in the state prison for a term of not less than one year nor more than 10 years.

(10) Whenever the department of taxation or any sheriff, policeman, marshal or constable, within his respective jurisdiction, shall discover any fermented malt beverages in or upon any premises other than the premises of a brewer, bottler or sales company, or any intoxicating liquor in or upon any premises other than the premises of a manufacturer, rectifier, winery or wholesaler, and upon which the tax has not been paid or which was possessed, kept, stored, manufactured, sold, distributed or transported in violation of the provisions of this chapter and chapters 66 and 176, the department of taxation or any such officer may forthwith seize and take possession of said fermented malt beverages

or intoxicating liquors. Any such fermented malt beverages or intoxicating liquors so seized shall be held by the department of taxation and disposed of through the director of purchases in the manner provided in section 176.62.

(11) The commissioner of taxation shall enforce and administer the provisions of this chapter. The commissioner shall design, procure, furnish and sell the stamps herein provided for. He shall collect and keep a record of all taxes collected and stamps sold, and shall issue such rules and regulations as may be necessary to carry out the provisions of this chapter.

(12) A brewer or bottler may have in and upon his premises fermented malt beverages in barrels, kegs, cases or other containers without having stamps affixed thereto, but the same shall not be removed from the premises of said brewer, bottler, or sales company except for shipment in interstate commerce or for shipment by a brewer to a bottler or sales company without such stamps being affixed thereto.

(13) A brewer may furnish to workmen employed in said brewery for consumption upon the brewery premises without charge, fermented malt beverages manufactured by said brewer without stamps being affixed to the barrel, keg, case or container from which said fermented malt beverages are drawn or removed.

(14) In case of shipments by a brewer to a bottler located within the state, of fermented malt beverages for the purpose of bottling by said bottler, the brewer shall not be required to place stamps upon any barrel, keg, case or other container in which said shipment is made, but shall securely affix thereto a label or statement, in such form as shall be prescribed by the commissioner of taxation, reciting that the shipment is made for the purpose of bottling. Each brewer making such shipments shall file with the commissioner on or before the 10th day of each calendar month a report for the preceding calendar month, in such form as the commissioner may prescribe, showing the dates and quantities of such shipments and the name and address of each bottler to whom made.

(15) Every brewer making sales to a sales company within this state shall file with the commissioner of taxation on or before the 10th day of each calendar month a report for the preceding calendar month, in such form as the commissioner shall prescribe, showing the dates and quantities of such sales and the names and addresses of the sales company to whom such sales were made.

(15a) Each brewer, bottler and wholesaler shall keep complete and accurate records of all sales of fermented malt beverages and of all such beverages manufactured or purchased for resale. The commissioner of taxation may prescribe reasonable and uniform methods for keeping such records. Every brewer, bottler and wholesaler shall on or before the 10th day of each calendar month make a verified return to the commissioner of all fermented malt beverages manufactured, sold, delivered or shipped by him during the preceding calendar month. Such return shall be made upon forms prescribed and furnished by the commissioner and shall contain such other information as the commissioner may deem necessary for the collection and enforcement of the tax imposed by this chapter.

(16) Any brewer, bottler or wholesaler required by this chapter to make, render, sign or verify any report, who makes any false or fraudulent return, or who shall fail to make such return when due, or who shall in any manner attempt to evade the tax imposed by this chapter, or any person who shall aid or abet in the evasion or attempted evasion of such tax, shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the county jail for not less than 90 days nor more than one year, or by both such fine and imprisonment. Any brewer, bottler or wholesaler who shall fail to keep the records required by this chapter or who shall falsify such records shall be guilty of a misdemeanor and shall upon conviction be subject to punishment in like manner.

**History:** 1951 c. 417.

**139.04 Enforcement not to be restrained.** No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in this chapter. The aggrieved taxpayer shall pay the tax as and when due, and, if paid under protest, may at any time within 90 days from the date of such payment, sue the state in an action at law to recover the tax so paid. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the director of budget and accounts to issue a warrant on the state treasurer for the amount of such tax so adjudged to have been wrongfully collected, and the treasurer shall pay the same out of the general fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made.

**139.05 Presumptions from possession.** The possession of any fermented malt beverages on any licensed premises, other than upon the premises of a brewer, bottler or sales

company, shall be deemed prima facie evidence that such products are kept and possessed with intent to sell, offer for sale, display for sale, barter, exchange, or give away such fermented malt beverages, and that such products are subject to the tax herein imposed.

**139.06 Inspection for enforcement.** The commissioner of taxation or his duly authorized employes, and any sheriff, policeman, marshal, or constable, within their respective jurisdictions, may at all reasonable hours enter in and upon any licensed premises, and examine the books, papers and records of any brewer, bottler, sales company, wholesaler, or retailer, for the purpose of inspecting the same and determining whether the tax imposed by this chapter has been fully paid, and shall have power to inspect and examine, according to law, any premises where fermented malt beverages are manufactured, sold, exposed for sale, possessed or stored, for the purpose of inspecting the same and determining whether the tax imposed by this chapter has been fully paid, and shall have power to inspect and examine, according to law, any premises where fermented malt beverages are manufactured, sold, exposed for sale, possessed or stored, for the purpose of determining whether the provisions of this chapter are being complied with. Any refusal to permit such examination of such premises shall constitute sufficient reason for the refusal of the commissioner to furnish to such person so refusing any stamps. Such refusal shall automatically operate as a revocation of any license or permit granted for the sale of any fermented malt beverages and in addition shall be deemed a misdemeanor, punishable as provided in section 139.08.

**139.07 Compulsory testimony.** Any person may be compelled to testify in regard to any violation of this chapter of which he may have knowledge, even though such testimony may tend to incriminate him, upon being granted immunity from prosecution in connection therewith, and upon the giving of such testimony, such person shall not be prosecuted for or because of the violation relative to which he has testified.

**139.08 Penalties.** Any person who shall violate any of the provisions of this chapter for which specific penalty is not herein provided shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$500; nor less than \$50, or by imprisonment in the county jail for not more than 90 days, nor less than 10 days, or by both such fine and imprisonment, and any license issued to him shall be subject to revocation. In the event that any such person shall be convicted of a second offense, such offender, in addition to the penalties herein provided, shall forthwith forfeit the right to purchase any stamps from the commissioner of taxation, and any license which may have been issued to him by any city, village or town shall without notice be forthwith forfeited.

**139.09 Exemption.** The provisions of this chapter shall not apply to the manufacture or sale of any beverage containing less than one-half of one per centum of alcohol by volume.

*[139.10 Stats. 1949 repealed by 1951 c. 261 s. 10]*

**139.25 Definitions.** In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

(1) "Intoxicating liquors" includes all ardent, spirituous, distilled, or vinous liquors, liquids, or compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per centum or more of alcohol by volume, which are fit for use for beverage purposes, but shall not include "fermented malt beverages" as defined in section 66.054.

(2) A "manufacturer" is a person, firm, or corporation, other than a rectifier, that manufactures or distills intoxicating liquors, including selling at wholesale such intoxicating liquors manufactured or distilled by the licensee at the premises designated in the license.

(3) A "rectifier" is a person, firm, or corporation that rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels or pipes, until the manufacture thereof is complete, or who has in his possession any still or leach tub or keeps any other apparatus for the purpose of refining in any manner distilled spirits or other liquors, or who after rectifying and purifying distilled spirits shall, by mixing such spirits or liquors with any materials, manufacture any spurious, imitation, or compound liquors for sale, and any person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits with any materials, manufacture any spurious, imitation, or compound liquors for sale under the name of "whiskey," "brandy," "gin," "rum," "spirits," "cordials," or any other name, and who is also a distiller or is under substantially the same management or control as a distiller. A rectifier may sell at wholesale intoxicating liquors rectified by him without any other license than that of a rectifier.

(4) A "wholesaler" is any person, firm, or corporation, other than a manufacturer or rectifier, that sells intoxicating liquors to retailers or others for the purpose of resale.

(5) A "retailer" is any person, firm, or corporation that sells, exchanges, offers or exposes for sale or exchange, or has in possession with intent to sell or exchange to consumers any intoxicating liquors.

**139.26 Occupational tax on intoxicating liquors.** (1) An occupational tax to be collected as a stamp tax is assessed, imposed, and levied upon the sale, exchange, offering or exposing for sale or exchange, having in possession with intent to sell or exchange, or removal for consumption, exchange, or sale other than for shipment in interstate or foreign commerce or for shipment, sale, or exchange by a manufacturer to a rectifier, of intoxicating liquors, other than wine used for sacramental purposes and alcohol used for industrial, hospital, purposes. The rate of such tax shall be 50 cents per wine gallon on intoxicating liquors containing less than 21 per cent of alcohol by volume and \$2 per wine gallon on intoxicating liquors containing 21 per cent of alcohol by volume or more, and shall be computed in accordance with the following table:

Quantity in Wine Gallons	Quantity in Ounces	Tax when Alco- holic Content is 21% or More by Volume	Tax when Alco- holic Content is Less than 21% by Volume
Up to and including 1/64 of a gallon	Up to and includ- ing 2	3 1/8 cents	25/32 cent
More than 1/64 of a gallon to and including 1/32 of a gallon	More than 2 to and including 4	6 1/4 cents	1 9/16 cents
More than 1/32 gallon to and including 1/16 of a gallon	More than 4 to and including 8	12 1/2 cents	3 1/8 cents
More than 1/16 gallon and including 1/10 gallon	More than 8 to and including 12.8	20 cents	5 cents
More than 1/10 gallon to and including 1 pint	More than 12.8 to and including 16	25 cents	6 1/4 cents
More than 1 pint to and including 1/5 gallon	More than 16 to and including 25.6	40 cents	10 cents
More than 1/5 gallon to and including 1 quart	More than 25.6 to and including 32	50 cents	12 1/2 cents
More than 1 quart to and including 1/2 gallon	More than 32 to and including 64	\$1.00	25 cents
More than 1/2 gallon to and including 1 gallon	More than 64 to and including 128	\$2.00	50 cents

(1a) Whenever the tax imposed by this section has been paid on intoxicating liquors and such intoxicating liquors are supplied to hospitals, for hospital or medicinal purposes or has been paid on alcohol and such alcohol is supplied to institutions of learning or museums for nonbeverage purposes, the person, firm, or corporation making the purchase of such alcohol or intoxicating liquors shall, upon application to the commissioner of taxation, be entitled to a refund of an amount equivalent to the tax paid on such alcohol. Application for refund or tax exemption shall be made upon a form prescribed by the commissioner and under such rules and regulations as he may promulgate.

(1b) The rate of such tax shall be 10 cents per wine gallon on wine containing 14 per cent of alcohol by volume or less, and 20 cents per wine gallon on wine containing more than 14 per cent of alcohol by volume, but not in excess of 21 per cent of alcohol by volume, and shall be computed in accordance with the following table:

Quantity in Wine Gallons	Quantity in Ounces	Tax when Alco- holic Content is More than 14% but not in Ex- cess of 21%	Tax when Alco- holic Content is 14% or Less by Volume
Up to and including 1/16 of a gallon	Up to and includ- ing 8	\$ .0125	\$ .00625
More than 1/16 gallon and including 1/10 gallon	More than 8 to and including 12.8	.02	.01
More than 1/10 gallon to and including 1 pint	More than 12.8 to and including 16	.025	.0125
More than 1 pint to and including 1/5 gallon	More than 16 to including 25.6	.04	.02
More than 1/5 gallon to and including 1 quart	More than 25.6 to and including 32	.05	.025
More than 1 quart and including 1/2 gallon	More than 32 to and including 64	.10	.05
More than 1/2 gallon to and including 1 gallon	More than 64 to and including 128	.20	.10

(2) The provisions of this chapter shall be construed to exempt from taxation wines and fermented malt beverages made in the home and used solely for home consumption.

(3) (a) The payment of the taxes herein imposed shall be evidenced by the affixing of beverage tax stamps, to the containers in which all intoxicating liquors are placed, received, stored, warehoused, shipped, or delivered for sale.

(b) The commissioner of taxation shall prescribe, prepare and have available for sale, stamps of such denominations and quantities as he may deem necessary for the payment of the taxes imposed by this chapter.

(c) Stamps shall be affixed in such a manner as the commissioner of taxation promulgates by regulations.

(d) Licensed vendors of intoxicating liquors without this state may purchase stamps from the commissioner of taxation and affix them in the manner prescribed by him to containers of intoxicating liquor to be sold in this state, in which case the recipient of such alcoholic beverages within the state shall not be required to purchase and affix stamps thereon.

**139.27 Administrative and penal provisions of tax on fermented malt beverages applicable.** (1) The occupational tax on intoxicating liquors imposed in section 139.26 shall be collected by the commissioner of taxation and shall be administered, collected, and enforced as is the occupational tax on fermented malt beverages. All provisions of sections 139.03 to 139.10 shall be applicable to the occupational tax on intoxicating liquors, including all penalties therein prescribed, except that where the terms "fermented malt beverages," "brewer," or "botTLer" are used in said sections the terms "intoxicating liquors," "manufacturer," and "rectifier," respectively, shall be substituted and except as provided in subsection (2).

(2) The provision in section 139.03 (3) that stamps need not be affixed to individual bottles shall apply to bottles of wine containing not in excess of 21 per cent of alcohol by volume, but otherwise the provisions of section 139.03 (3) and (13) shall not apply to the tax imposed in section 139.26.

(3) The duly authorized employes of the commissioner of taxation shall have all necessary police powers to prevent violations of the provisions of sections 139.25 to 139.30 and the provisions of section 66.054 and chapter 176. In case the tax imposed in section 139.26 is not paid when due, a penalty of 15 per cent thereof shall immediately accrue.

**History:** 1951 c. 400.

**139.28 Distribution of revenues.** After an amount equal to the sum of 70 per cent of the estimated costs to be incurred from the appropriation made by section 20.09 (1) for beverage tax division administration and the estimated cost under section 20.17 (1) (a) for administering alcohol studies under the provisions of sections 51.40, 51.41, and 51.42 of the statutes, as certified July 1 for the current fiscal year by the director of the department of taxation and the director of the public welfare department, respectively, has been set aside, one-half of the balance of all revenues derived from the occupational tax on intoxicating liquors shall be distributed to the cities, towns and villages and shall be used by them to reduce the tax on general property. Such distribution to local units of

government shall be made semiannually and all cities, towns and villages shall share therein in proportion to their population in the last federal census. The estimated costs of administering the liquor tax law from section 20.09 (1) and of alcohol studies from section 20.17 (1) (a) shall be adjusted to actual costs on the cash basis per the records of the department of budget and accounts as of June 30 following, and such adjustment shall be reflected in the liquor tax apportionment made immediately after the close of the state's fiscal year pursuant to this section.

**History:** 1951 c. 319 s. 213.

**139.29 Records, how kept; commissioner's powers.** Whenever the commissioner of taxation in administering the provisions of this chapter finds that the records kept by any brewer, bottler, manufacturer, rectifier, wholesaler or retailer are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, the commissioner may give notice of such fact to such brewer, bottler, manufacturer, rectifier, wholesaler or retailer and may in such notice require said records to be kept in such form as the commissioner may prescribe. If such requirements are not complied with within 30 days after the date thereof, such brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall pay the expenses reasonably attributable to such determination of tax at the rate of \$15 per day for each auditor. The commissioner shall render a bill therefor by registered mail to the person charged with payment at the conclusion of the audit, which bill shall constitute notice of assessment and demand of payment thereof. Upon the bill so rendered such brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall, within 10 days after the mailing thereof, pay the amount of said bill, and such payment, when made, shall be credited to the appropriation made in section 20.09 (10).

**139.295 Preservation of records; penalty.** (1) Every person who shall manufacture, distribute, transport, store, warehouse or sell intoxicating liquor, or fermented malt beverages, or import the same shall keep complete and accurate records of all such intoxicating liquors or fermented malt beverages purchased, sold, manufactured, improved, brewed, fermented, distilled, produced, stored, warehoused, imported or transported within this state. Such records shall be of a kind and in the form prescribed by the commissioner of taxation and shall be safely preserved for 2 years in such a manner as to insure permanency and accessibility for inspection by the commissioner or any duly authorized employe of the commissioner.

(2) Failure to comply with the provisions of this section shall carry a penalty of revocation by the commissioner of taxation of the license issued together with a fine of not less than \$100 nor more than \$500 for each and every offense.

**139.30 Retailers to purchase from persons or firms holding permits.** (1) No retailer shall purchase or have in his possession intoxicating liquor purchased from other than a Wisconsin manufacturer, rectifier or wholesaler holding a permit to engage in the sale of liquor in Wisconsin under the provisions of chapter 176.

(2) No intoxicating liquor shall be shipped into this state unless the same shall be consigned to individuals, firms, partnerships, corporations, or associations having a permit from the commissioner of taxation to engage in the sale of such liquor under the provisions of chapter 176.

(3) No common carrier or other person shall bring or carry into this state any intoxicating liquor unless the same shall be consigned to individuals, firms, partnerships, and corporations or associations having a permit from the commissioner of taxation to engage in the sale of such liquor under the provisions of chapter 176.

(4) Any such common carrier transporting any intoxicating liquor into the state of Wisconsin that shall fail to comply with the requirements of chapter 176 shall forfeit and pay to the state of Wisconsin the sum of \$100 for each and every offense.

(5) The provisions of this section shall not apply to any purchases made under any permit issued pursuant to section 176.404.

**139.35 Presumptions.** The possession of unstamped intoxicating liquor, other than wine or unadulterated apple cider, except upon the premises of a manufacturer, rectifier or wholesaler, or any licensed public warehouse shall be deemed prima facie evidence that such liquor is possessed with the intent to sell, offer for sale, display for sale, barter, exchange or give the same away, contrary to law.

**139.50 Occupational tax on tobacco products; distribution.** (1) **DEFINITIONS.** In this section, unless the context otherwise requires, the following words and phrases shall have the following meanings:

(a) "Tobacco products" includes cigarettes and cigarette papers and tubes.

(b) "Person" includes individuals, firms, corporations, associations, joint stock companies, copartnerships, trustees, receivers, or other legal representatives.

(c) "Manufacturer" means any person who shall manufacture tobacco products for the purpose of sale, barter or exchange.

(d) "Wholesaler" means any person holding a wholesaler, subjobber, cash and carry subjobber, vending machine operator or operator of 10 or more retail outlets permit.

(e) "Wholesaler" shall mean any person who shall:

1. Ship, transport or import into this state and sell, offer for sale or have in possession with intent to sell, stamped or unstamped tobacco products acquired and received by him directly from the manufacturer thereof.

2. Sell, offer for sale, or have in possession with intent to sell stamped or unstamped tobacco products acquired by him within the state directly from the manufacturer thereof.

3. Ship, transport or import into this state and sell, offer for sale or have in possession with intent to sell, exclusively to retailers or other wholesale permittees from premises described in the permit or through their salesmen agents, stamped or unstamped tobacco products acquired by him other than directly from the manufacturer thereof.

4. Sell, offer for sale or have in possession with intent to sell exclusively to retailers or other wholesale permittees from premises described in the permit or through their salesmen agents tobacco products acquired within the state other than directly from the manufacturer thereof.

(f) "Subjobber" shall mean any person other than a foreign or Wisconsin wholesaler or cash and carry subjobber, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell tobacco products for the purpose of resale to retailers only, and who, in addition, shall maintain a service delivery for tobacco products to retailers and shall render a true and correct invoice for each and every sale.

(g) The ownership and operation of a single retail outlet by a person otherwise within subdivisions 3 and 4 of paragraph (e) hereof shall not preclude him from a wholesale permit provided a substantial amount of the total volume of the business of such person in dealing in tobacco products consists of bona fide sales at wholesale to other retailers and wholesale permittees and separate accounts and records are kept by him of all such sales at wholesale.

(h) "Vending machine operator" shall mean any person other than a foreign or Wisconsin wholesaler, subjobber, or cash and carry subjobber, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell tobacco products exclusively to retailers through the medium of a vending machine or any mechanical device used for dispensing cigarettes and who shall own, operate or service vending machines or mechanical devices on 5 or more premises.

(i) "Operator of 10 or more retail outlets" shall mean any person who operates 10 or more retail outlets, whether within or without this state, and who shall purchase tobacco products which are to be sold at retail by such person from the premises occupied by such outlets.

(ia) "Retailer" means any person, firm or corporation that sells, exchanges, offers, or exposes for sale or exchange, or has in his possession with intent to sell or exchange to consumers, any tobacco products.

(j) The term "sell" or "sold" or "sale" includes the transfer, gift, barter, trade or exchange, or any shift, device, scheme or transaction whatever whereby tobacco products may be obtained, but does not include the solicitation of orders for, or the sale for future delivery of tobacco products.

(2) TAX IMPOSED. To provide revenue for the rehabilitation of veterans of World War II, construction and improvements at state welfare and educational institutions and for the repair, remodeling and fireproofing, and for new construction of buildings in the public welfare department, and other state property, post-war public works projects to relieve post-war unemployment, an occupational tax is assessed, imposed and levied upon the sale, exchange, offering or exposing for sale, having in possession with intent to sell, or removal for consumption or sale of tobacco products, or other disposition for any purpose whatsoever other than for shipment in interstate or foreign commerce. Such tax is levied and shall be collected at the following rates:

(a) On cigarettes weighing not more than 3 pounds per thousand, 1½ mills on each such cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 3 mills on each such cigarette.

(c) On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes, made up in packages, books or sets, on each such package, book or set containing:

1. Fifty papers or less, one-half cent.

2. More than 50 papers but not more than 100 papers, one cent.

3. More than 100 papers, one-half cent for each 50 or fractional part thereof.

(d) On cigarette tubes, one cent for each 50 tubes or fractional part thereof.

(3) TAXES, HOW PAID; POLICE POWERS. (a) The payment of the taxes herein imposed shall be evidenced by the affixing of tobacco products tax stamps, to the containers in which the tobacco products are placed, received, stored, warehoused, shipped, or delivered for sale.

(b) The commissioner of taxation shall prescribe, prepare and have available for sale, stamps of such denominations and quantities as he may deem necessary for the payment of the taxes imposed by this section.

(c) Stamps shall be affixed in such a manner as the commissioner of taxation promulgates by regulations.

(d) Manufacturers and wholesalers within or without this state and having permits from the commissioner of taxation may purchase stamps at a discount of 5 per cent and affix them in the manner prescribed by him to containers of tobacco products to be sold in this state, in which case the recipient of such tobacco products within this state, from sources without this state, shall not be required to purchase and affix stamps thereto.

(e) In lieu of stamps the commissioner may permit the use of meter machines and where used a 5 per cent discount on the total tax due shall be allowed. Such machines shall be used under regulations prescribed by the state treasurer and a bond in a suitable amount to guarantee the payment of the tax may be required by him.

(f) The duly authorized employes of the commissioner of taxation shall have all necessary police powers to prevent violations of the provisions of this section. In case the tax imposed in this section is not paid when due, a penalty of 15 per cent thereof shall immediately accrue.

(4) PERMITS. (a) No manufacturer or wholesaler shall sell or manufacture any tobacco products within the state without first obtaining a permit from the commissioner of taxation to purchase stamps as provided in this section. The application for such permit and the permit shall be in such form as the commissioner shall prescribe. Distinct types of permits shall be issued to each class of wholesalers in accordance with the definitions of such classes contained in paragraphs (e) to (i) of subsection (1) of this section. Each permit shall expire on July 1 of each year, and the annual fee therefor shall be \$50.

(b) If any manufacturer or wholesaler violates any of the provisions of this section the commissioner of taxation may suspend or revoke such permit for such period of time as he may determine.

(c) A permit to purchase stamps issued to a manufacturer or wholesaler shall entitle the holder of such permit to sell, deal or traffic in tobacco products at wholesale.

(5) RETAILERS, STAMPS REQUIRED; EXCEPTION. (a) No retailer shall have in his possession tobacco products for the purpose of resale unless the proper tax stamps have been affixed thereto.

(e) The provisions of this subsection shall not apply to tobacco products purchased by, in the possession of, or shipped or carried into the state, or consigned to any railroad company (including any trustee or receiver of any such company) for sale to bona fide passengers or other persons actually being transported.

(7) APPLICATION FOR PERMIT. Any individual, firm, partnership, corporation or association desiring the permit required by subsection (4) shall file with the commissioner of taxation an application for such permit. The applicant, if a nonresident or foreign corporation shall file proof that he has appointed the secretary of state for service of process relating to any matter or issue arising under section 139.50. Any foreign corporation need not qualify as such but shall file the proof of appointment of the secretary of state for service of process as hereinbefore provided. Said application shall be in such form as shall be prescribed by the commissioner and shall set forth:

(a) The kind of permit desired;

(b) The name and address of the applicant; if the applicant be a firm, partnership or association, the name and address of each member thereof; if the applicant be a corporation, the name and address of each of its officers;

(c) The place or places where the business is to be conducted;

(d) The business or occupation, if any, theretofore engaged in by the applicant; or if a firm, partnership or association, by each member thereof, or if a corporation by each officer thereof for a period of at least 3 years immediately preceding the date of such application.

(e) Such further information as the commissioner of taxation may require to enable him to determine the trustworthiness of each applicant, including each member of the firm, partnership or association, or each officer of the corporation.

(f) Every permittee who uses vending machines or any similar device for resale purposes shall file with the commissioner of taxation a list giving the name and address of the person operating the same, its location, its capacity and any machine identification mark or number such machine or device may have. Any person who shall violate any provision

of this paragraph shall upon conviction thereof be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment in the county jail not to exceed 30 days.

(8) REGULATIONS; PENALTIES. (a) The commissioner of taxation in furtherance of effective collections may promulgate rules and regulations consistent with this section. Such rules and regulations shall be published once in the official state paper and shall become effective 5 days after such official publication.

(b) Any person who shall violate any rules and regulations of the commissioner of taxation shall be punished as provided in subsection (2a) of section 176.43.

(c) Any violation of any provision of this section shall be sufficient grounds for revocation by the commissioner of taxation of any permit issued by him to such violator.

(10) PENALTY. Any person, firm, partnership, corporation or association who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than 30 days nor more than 6 months, or by both such fine and imprisonment, and shall, in addition thereto, have his or its permit automatically revoked. Any person, firm, partnership, corporation or association having his or its permit so revoked shall not be granted another permit for a period of 2 years following such revocation.

(11) PERMIT. Every manufacturer and wholesaler, upon making application for a permit to purchase stamps shall be assigned a permit number by the commissioner of taxation. The form of such application shall be prescribed by the commissioner. Stamps pursuant to this section shall be sold and issued only to duly permitted manufacturers and wholesalers.

(12) STAMPS. The occupational tax imposed in section 139.50 shall be paid by the purchase of stamps from the commissioner of taxation, of such design and denominations as shall be designated by him. Each manufacturer and wholesaler shall affix at the time of sale (unless previously affixed thereto) to each package or other container in which tobacco products shall be packed for sale within the state a stamp so purchased, which stamp shall be of proper denomination. Not more than one tax shall be required to be paid on any one package, or other container.

(13) INTERSTATE SHIPMENTS. The commissioner of taxation may require in all cases where tobacco products are shipped into this state by any person holding a permit to any retailer or consumer that they shall have such stamp affixed to the package or other container at the time the same enters this state. In case of sales by any manufacturer or wholesaler within this state, it shall not be necessary for any manufacturer or wholesaler to affix stamps, but said stamps shall be affixed and canceled by said manufacturer or wholesaler before sale or delivery to any purchaser within this state. Such stamps shall be canceled by the person affixing the same. No retailer shall sell or remove any tobacco products from any package or other container, unless the same shall have affixed thereto duly canceled stamps of proper denomination. Every manufacturer or wholesaler shall be liable for the payment of the tax provided in this section on sales made for resale or consumption within this state, and shall be required to affix stamps of the proper amount on every package or other container imported from without the state, sold, delivered or given to any purchaser within this state.

(14) EXEMPTION FROM TAX. Sales, by a manufacturer or wholesaler for shipment outside the state in interstate commerce shall not be subject to the payment of the tax or other requirements imposed by this section except as herein specifically provided.

(15) CANCELLATION. Every manufacturer or wholesaler who shall be liable for the payment of the stamp tax as herein imposed shall, at the time any tobacco products are sold within the state of Wisconsin, and before any of the contents shall be removed from the package or other container, affix thereto a stamp or stamps of the proper denomination, which shall be canceled by the person affixing the same thereto. The commissioner of taxation shall, by regulation, prescribe the manner in which said stamps shall be affixed and canceled.

(16) LENDING OF STAMPS. No person or corporation shall sell, give or lend any stamps, nor shall any person or corporation purchase, accept or receive, or borrow any stamps from any person or corporation, it being the intent hereof in order to prevent fraud and deception and insure the collection of said tax to limit all sales and transfers of such stamps to the commissioner of taxation or his duly authorized representatives. The commissioner shall not sell or issue any stamps to any person or corporation other than a manufacturer or wholesaler, who shall have been assigned a permit number by the commissioner. Nothing in this subsection shall be construed to prevent the pledging of any stamps legally secured to any banking institution located in Wisconsin as collateral security to a loan.

(17) RECORDS. The commissioner of taxation shall keep a suitable record of the sale of all stamps which shall show the dates of the sale thereof and the names of the purchasers. He shall refund to any purchaser or any banking institution located in Wisconsin the money paid for any stamps returned unfit for use or otherwise unused, and shall prescribe the method of proof required for obtaining such refund. He shall also refund the tax paid on such tobacco products, and shall also refund the tax paid on tobacco products sold to post exchanges of the armed forces of the United States and to federally operated veterans' hospitals in the state. The commissioner of taxation shall prescribe the method of proof required for such refunds.

(18) SALE BY MANUFACTURERS. It shall be unlawful, except as otherwise herein provided, for any manufacturer, wholesaler or retailer, to sell, offer for sale, have in possession with intent to sell, offer or expose for sale, barter, exchange or give away tobacco products within this state, except for shipment in interstate commerce, or sale or shipment by a manufacturer to a wholesaler without having first affixed to the package or other container in which same shall be placed, the stamps required by this section.

(19) ALTERATION OF STAMPS. Any person who shall falsely or fraudulently make, forge, alter or counterfeit any stamp prescribed by this section, or shall procure or cause to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or who shall knowingly utter, publish, pass or tender as true any false, altered, forged or counterfeited stamps, or shall affix the same to any barrel, keg, case or other container, or shall use any package or container upon which the stamp or stamps have been canceled for the purpose of placing therein for sale, offering for sale, or having in possession with intent to sell, or selling, offering for sale, or exposing for sale, exchange or barter, any tobacco products, without placing thereon stamps in the amount and of the kind and character herein provided, except for shipment in interstate commerce, shall be deemed guilty of a felony and, upon conviction, shall be imprisoned in the state prison for a term of not less than one year nor more than 10 years.

(20) WAREHOUSE PERMIT. No warehouse shall store tobacco products without a permit. Such permits shall be issued by the commissioner of taxation and the provisions of subsection (7) shall apply to applications, forms, service of process and requirements of the commissioner unless inapplicable. The annual fee for such permit shall be \$10 for each place licensed. The holder of such permit shall be entitled, subject to rules and regulations issued by the commissioner, to store and warehouse tobacco products in premises of the warehouse so licensed. Such permit, however, shall not authorize the sale of tobacco products.

(21) ADMINISTRATION. The commissioner of taxation shall enforce and administer the provisions of this section. The commissioner shall design, procure, furnish and sell the stamps herein provided for. He shall collect and keep a record of all taxes collected and stamps sold, and shall issue such rules and regulations as may be necessary to carry out the provisions of this section.

(22) REMOVAL OF UNSTAMPED PRODUCTS. A manufacturer or wholesaler may have in and upon his premises tobacco products in packages or other containers without having stamps affixed thereto, but the same shall not be removed from the premises of said manufacturer or wholesaler except for shipment in interstate commerce without such stamps being affixed thereto.

(23) SALESMEN'S REGISTRATION. All persons to whom permits have been issued, as required by subsection (4), shall file with the commissioner of taxation a list of all representatives who shall sell or take orders for tobacco products, provided that nonresident manufacturers not holding permits may designate wholesale permittees, either foreign or domestic, to furnish the commissioner of taxation with the names of any representatives who from time to time shall represent any particular manufacturer of tobacco products. Notice of any additions to such representation or resignations or dismissal from such representation shall be furnished to the commissioner within 5 days after the event occurs. The commissioner shall issue permits, without the requirement of any fee, to such representatives if he is satisfied that they are such bona fide representatives. Any salesman who sells, offers for sale, has in possession for purposes of sale, exchange, barter or to give away tobacco products without first being registered and having obtained a permit from the commissioner shall upon conviction thereof be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment in the county jail not to exceed 30 days. No person not registered as a salesman as herein required shall be permitted to sell or offer for sale tobacco products in this state.

(23a) CIGARETTE AND TOBACCO PRODUCT DISTRIBUTION. (a) Each wholesaler of cigarettes and tobacco products shall apportion and allot to the subjobbers, cash and carry subjobbers, vending machine operators, and retailers, its current supply of cigarettes and tobacco products to each subjobber, cash and carry subjobber, vending machine

operators and retailers on the basis of such wholesaler's distribution and allotment of cigarettes to them, respectively, for the period from July 1, 1943 to December 31, 1943. Such proportion shall be applied monthly or for such other period of time therein as the commissioner of taxation may deem most representative of the average supply. Each such subjobber, cash and carry subjobber, vending machine operator, or retailer shall be entitled to receive from such wholesaler such portion of its current cigarette and tobacco products supply as shall be proportionate to the average purchases therefrom by such subjobber, cash and carry subjobber, vending machine operator, or retailer for the period of July 1, 1943 to December 31, 1943.

(b) In the event the wholesaler reduced supplies of cigarettes and tobacco products in the last 6 months of 1943 arbitrarily and against the wishes of the subjobber, cash and carry subjobber, vending machine operator, or retailer, it shall be construed by the commissioner of taxation the same as if the full amount of cigarettes and tobacco products had been received by him during the period of July 1, 1943 to December 31, 1943, for the purpose of determining fair and equitable quotas for the time in question. Any permittee who fails or refuses to comply with such determination may have his permit suspended as provided in paragraph (d).

(c) In the event a wholesaler, an individual, or individuals own or control both the wholesale and a vending machine operation, and if both wholesale and vending machine operation are on the direct list with the cigarette and tobacco product manufacturers, then the receipts of both shall be construed to be the sole receipts of the wholesaler for the purpose of determining quotas as provided in this subsection.

(d) 1. If the commissioner of taxation is informed of a violation of any provision of this subsection, he shall by notice in writing served upon the permittee in the same manner as a summons in a civil action advise him of the alleged violation. The notice shall specify that at a time and place to be stated in the notice, not less than 10 days from the date of service, the commissioner will hold a hearing for the purpose of determining whether the violation has occurred. If the commissioner finds that the violation has occurred, he may suspend the permit for any period of time not to exceed 60 days, or, any period in excess thereof during which the violation continues to exist. An order of suspension shall be in writing and a copy thereof shall be transmitted to the parties concerned. Where a license has been suspended pending compliance with the provisions of this subsection, the commissioner, when satisfied of compliance, shall revoke the suspension and shall transmit a copy thereof to the parties concerned. If a permit is suspended pending compliance with the provisions of this subsection a permittee may demand in writing a hearing before the commissioner upon the question of whether he has complied. Upon such demand the commissioner shall set a place for such hearing at a time not to exceed 10 days from the date of receipt of the demand and shall notify the permittee thereof in writing.

2. The commissioner of taxation is empowered to delegate functions under this subsection to such employes as he may designate who shall have power to hold hearings, issue subpoenas, administer oaths and make determinations and he may promulgate such rules as may be necessary to carry this section into effect.

(e) Orders made under this subsection shall be subject to review as provided in chapter 227.

(f) The commissioner of taxation may upon application provide reasonable quotas of cigarettes and tobacco products for businesses established after December 31, 1943.

(24) RECORDS; RETURNS. Each manufacturer or wholesaler holding a permit from the commissioner of taxation shall keep complete and accurate records of all sales of tobacco products. The commissioner may prescribe reasonable and uniform methods for keeping such records. Every such permittee shall on or before the 10th day of each calendar month make a verified return to the commissioner of all tobacco products sold, delivered or shipped by him during the preceding calendar month. Such return shall be made upon forms prescribed and furnished by the commissioner and shall contain such other information as he may deem necessary for the collection and enforcement of the tax imposed by this section.

(25) FALSE RETURNS; PENALTIES. Any manufacturer or wholesaler required by this section to make, render, sign or verify any report, who makes any false or fraudulent return, or who shall fail to make such return when due, or who shall in any manner attempt to evade the tax imposed by this section, or any person who shall aid or abet in the evasion or attempted evasion of such tax, shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the county jail for not less than 90 days nor more than one year, or by both such fine and imprisonment. Any manufacturer or wholesaler who shall fail to

keep the records required by this section or who shall falsify such records shall be guilty of a misdemeanor and shall upon conviction be subject to punishment in like manner.

(26) ENFORCEMENT NOT TO BE RESTRAINED. No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in this section. The aggrieved taxpayer shall pay the tax as and when due and, if paid under protest, may at any time within 90 days from the date of such payment, sue the state in an action at law to recover the tax so paid. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the secretary of state to issue a warrant on the state treasurer for the amount of such tax so adjudged to have been wrongfully collected, and the treasurer shall pay the same out of the general fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made.

(28) INSPECTION FOR ENFORCEMENT. The commissioner of taxation or his duly authorized employes, and any sheriff, policeman, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter in and upon any licensed premises, and examine the books, papers and records of any manufacturer or wholesaler for the purposes of inspecting the same and determining whether the tax imposed by this section has been fully paid, and shall have power to inspect and examine, according to law, any premises where tobacco products are manufactured, sold, exposed for sale, possessed or stored, for the purpose of determining whether the provisions of this section are being complied with. Any refusal to permit such examination of such premises shall constitute sufficient reason for the refusal of the commissioner to furnish to such person so refusing any stamps. Such refusal shall automatically operate as a revocation of any license or permit granted for the sale of any tobacco products and in addition shall be deemed a misdemeanor, punishable as provided in subsection (30).

(29) COMPULSORY TESTIMONY. Any person may be compelled to testify in regard to any violation of this section of which he may have knowledge, even though such testimony may tend to incriminate him, upon being granted immunity from prosecution in connection therewith, and upon the giving of such testimony, such person shall not be prosecuted for or because of the violation relative to which he has testified.

(30) PENALTIES. Any person who shall violate any of the provisions of this section for which specific penalty is not herein provided shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$500, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment, and any permit issued to him shall be subject to revocation. In the event that any such person shall be convicted of a second offense, such offender, in addition to the penalties herein provided, shall forthwith forfeit the right to purchase any stamps from the commissioner of taxation, and any permit which may have been issued to him by the commissioner shall without notice be forthwith forfeited.

(31) POWERS OF COMMISSIONER. Whenever the commissioner of taxation in administering the provisions of this section finds that the records kept by any such manufacturer or wholesaler who shall hold a permit are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, or in the event the commissioner shall determine it necessary to inspect and audit the books of any such manufacturer or wholesaler located without the state, he may give notice of such fact to such manufacturer or wholesaler and may in such notice require said records to be kept in such form as he may prescribe. If such requirements are not complied with within 30 days after the date thereof, such manufacturer or wholesaler shall pay the expenses reasonably attributable to such determination of tax at the rate of \$15 per day for each auditor. The commissioner shall render a bill therefor by registered mail to the person charged with payment at the conclusion of the audit, which bill shall constitute notice of assessment and demand of payment thereof. Upon the bill so rendered such manufacturer or wholesaler shall, within 10 days after the mailing thereof, pay the amount of said bill.

(32) PRESERVATION OF RECORDS. Every person who shall manufacture, distribute, transport, store, warehouse or sell tobacco products, or import the same shall keep complete and accurate records of all such tobacco products purchased, sold, manufactured, improved, produced, stored, warehoused, imported or transported within this state. Such records shall be of a kind and in the form prescribed by the commissioner of taxation and shall be safely preserved for 2 years in such a manner as to insure permanency and accessibility for inspection by the commissioner or any duly authorized employe of the commissioner. Failure to comply with the provisions of this section shall carry a penalty of revocation by the commissioner of the permit issued together with a fine of not less than \$100 nor more than \$500 for each and every offense.

(33) SEIZURE. Whenever the commissioner of taxation or his duly authorized employes, and any sheriff, policeman, marshal or constable, within their respective jurisdictions, shall discover tobacco products in or upon any premises other than the premises of a manufacturer or wholesaler upon which the tax has not been paid, said commissioner, his employes, or any such officer of said city, village or town, may forthwith seize and take possession of said tobacco products and shall, at the end of 5 days after such seizure, advertise such seized goods for sale for the purpose of collecting the tax thereon. Such advertisement may be had by posting a notice of the time and place of sale upon the premises where such goods are seized, or by publication in any newspaper having a circulation within the county wherein such seizure is made. The sales shall not be had until 3 days after the posting of such notice or the publication thereof. The provisions of paragraph (b) of subsection (35) relative to expenses, costs of sale, disposition of proceeds and liens shall apply to the proceeds of sales derived under this subsection unless inapplicable. In case such tobacco products so seized shall have deteriorated or become for any reason unfit for sale, such tobacco products shall be destroyed in the presence of 3 reputable witnesses, and a report of such destruction, signed by such witnesses, shall be filed with the commissioner.

(34) STATE-WIDE CONCERN. The provisions of this section shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of tobacco products.

(35) CONFISCATION. (a) All tobacco products owned, possessed, kept, stored, manufactured, sold, distributed or transported in violation of this section, and all personal property used in connection therewith is declared to be unlawful property and subject to seizure by the commissioner of taxation or any peace officer.

(b) The court, upon the conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting tobacco products in violation of this section, shall, in case the person convicted be the owner thereof, order such tobacco products which were seized in connection with such violation to be destroyed, and in such case, shall order the personal property which was seized in connection with the violation to be sold at public auction, or if a sale is not practicable, to be destroyed by the commissioner of taxation or his duly authorized agents. The commissioner or such agent, after deducting the expense of keeping the property and the costs of the sale, shall pay, out of the proceeds of such sale, all liens according to their priorities, which are established, by intervention or otherwise, in the proceedings for conviction as being bona fide and as having been created without the lienor having notice that such property was being used or was to be used in connection with such violation. All such liens against property sold under the provisions of this subsection shall be transferred from the property to the proceeds of the sale of the property. No tobacco products confiscated pursuant to this section shall be sold within a period of 30 days after the date of seizure.

(c) If tobacco products be seized in connection with such a violation of this section, and there be no one in possession thereof at the time of seizure, or if in such case there be a person in possession who does not claim ownership thereof, or if there be a person in possession and he be convicted for such violation and it be found at the time of his conviction that he is not the owner thereof, the taking of the same, with a description thereof, may be advertised by the commissioner of taxation in the official state paper once a week for 2 weeks, and, if no claimant, either of a lien or ownership, shall have notified the commissioner in writing within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the state treasury, or, if a sale is not practicable, the property shall be destroyed. If a claimant of a lien or of ownership notifies the commissioner within the prescribed period, the commissioner or the peace officer seizing the property shall apply to a court of record in the county where the property was seized for an order requiring such claimant to show cause why such property should not be confiscated. If, upon the hearing of the order, a claimant of a lien, but no claimant of ownership, has appeared, or if a claimant of ownership has appeared and fails to establish his title to the seized property, and the court shall find that the property was used in connection with such violation, it shall order the same to be sold, or destroyed, if a sale is not practicable, as provided in paragraph (b). If such claimant of ownership shall establish title, the court shall likewise order the property to be sold or destroyed unless the claimant shall establish also that the property was not used in connection with such violation or that it was so used without his knowledge or consent and without his knowledge of such facts as should have given him reason to believe that it would be put to such use. If the court shall order the property sold, the person making the sale, after deducting the expenses of keeping the property and the costs of the sale, shall pay, out of the proceeds of such sale, all liens according to their priorities which are established at the hearing upon the order as being

bona fide and as having been created without the lienor having notice that such property was being used or was to be used in connection with such violation. In case of all sales, the net proceeds remaining after payment of expenses and costs and the payment of liens, if any be paid, shall be paid into the state treasury. All such liens against property sold under the provisions of this subsection shall be transferred from the property to the proceeds of the sale of the property.

(d) The term "lienor" or "lien claimant" as herein used shall include the vendor under a conditional sales agreement and the mortgagee under a chattel mortgage.

(e) The provisions of this section relating to confiscation shall not exclude resort to the provisions of chapter 288 and the commissioner of taxation or the peace officer seizing property may in any case proceed under the provisions of that chapter.

(36) ARREST WITHOUT WARRANT. Any peace officer may arrest without warrant any person committing in his presence violations of any provisions of this section, and may without a search warrant seize any personal property used in connection with such violation.

(37) IMPERSONATION. (a) Any person who shall impersonate an inspector, agent or other accredited employe of the commissioner of taxation shall be guilty of a misdemeanor.

(b) Any person violating this subsection shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment in the county jail for not less than 6 months nor more than a year, or by both such fine and imprisonment.

(38) PLACE TO PLACE DELIVERY. No person shall peddle any tobacco products from house to house by means of a truck or otherwise, where the sale is consummated and delivery made concurrently.

(39) NUISANCE. Any building or place of any kind where tobacco products are sold, possessed, stored or manufactured without a lawful permit or license as provided in this section or where persons are permitted to resort, in violation of law is declared a public nuisance and may be closed and abated as such.

(40) TOBACCO IN WAREHOUSES. Whenever tobacco products are stored in a licensed warehouse, by a manufacturer or wholesaler as a pledge for the loan of money, it shall not be necessary to affix to such tobacco products state stamps until such tobacco products are sold or removed from such public warehouse. Whenever it shall become necessary for a pledgee to sell such tobacco products, in good faith pursuant to the terms of the pledge, and not for the purpose of avoiding the provisions of this section, such tobacco products shall be sold to a Wisconsin manufacturer or wholesaler for the purpose of affixing state revenue stamps.

**History:** 1951 c. 261 s. 10; 1951 c. 474, 506.  
Owner of retail store, or of several but less than 10 retail stores, is not a wholesaler within (1) (a). 38 Atty. Gen. 426.

**139.51 Tax on the use of tobacco products.** (1) DEFINITIONS. As used in this section, the expressions "tobacco products," "person" and "sell," "sold" or "sale" shall have the definition as provided in section 139.50 (1).

(2) IMPOSITION OF TAX. To provide revenue for the rehabilitation of veterans of World War II, construction and improvements at state welfare and educational institutions and for the repair, remodeling and fireproofing, and for new construction of buildings in the public welfare department and other state property, and post-war public works projects to relieve post-war unemployment, a tax is assessed, imposed and levied upon the use in this state by any person, whether the owner or otherwise, of tobacco products for any purpose whatsoever. Such tax shall be imposed but once with respect to the same tobacco products whether the possession thereof continues with the person paying the tax or is transferred to another.

(3) RATES OF TAX. The tax imposed by this section shall be collected at the following rates with respect to tobacco products not exempted under subsection (4):

(a) On cigarettes weighing not more than 3 pounds per thousand, 1½ mills on each such cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 3 mills on each such cigarette.

(c) On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes, made up in packages, books or sets, on each such package, book or set containing:

1. 50 papers or less, one-half cent.

2. More than 50 papers, but not more than 100 papers, 1 cent.

3. More than 100 papers, one-half cent for each 50 or fractional part thereof.

(d) On cigarette tubes, 1 cent for each 50 tubes or fractional part thereof.

(4) EXEMPTIONS. The tax imposed by this section shall not be applicable to the following:

- (a) Tobacco products subject to the tax imposed by section 139.50;
- (b) Tobacco products for purposes of shipment in interstate or foreign commerce;
- (c) Tobacco products by or consigned to any railroad company (including any trustee or receiver of any such company) for sale to bona fide passengers or other persons actually being transported.

(5) DECLARATION AND PAYMENT. (a) Any person subject to the tax imposed by this section shall, within 3 days after acquiring possession of the tobacco products involved or within 3 days after July 14, 1945 whichever occurs last, file with the commissioner of taxation a declaration of the possession of such tobacco products and shall transmit with the declaration to the commissioner the tax imposed by this section.

(b) On receipt of the declaration and payment of the tax as required by paragraph (a), the commissioner of taxation shall issue a receipt to the person paying the tax and furnish said person with a suitable tax stamp to be affixed to the package of tobacco products upon which the tax has been paid.

(c) The declaration and receipt referred to in paragraphs (a) and (b) shall contain the name and address of the person possessing the tobacco products involved, the location of such tobacco products, and the quantity, brand name, place of purchase and date of purchase of such tobacco products.

(6) PRESUMPTION FROM POSSESSION. The possession of any tobacco products which do not bear the stamp required by section 139.50 shall be prima facie evidence that the possession of such tobacco products is subject to the tax imposed by section 139.51 and that this latter tax has not been paid.

(7) PENALTIES, ADMINISTRATIVE PROVISIONS. To the extent consistent with this section, all provisions of section 139.50 relative to penalties, enforcement administration and review shall be applicable to the tax imposed under section 139.51.

**History:** 1951 c. 261 s. 10; 1951 c. 711.