

CHAPTER 139

BEVERAGE, CONTROLLED SUBSTANCES AND TOBACCO TAXES

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SUBCHAPTER I

BEVERAGE TAXES

139.01 Definitions. In ss. 139.01 to 139.25 unless the context or the subject matter otherwise requires:

(1) “Bottler” means any person other than a brewer who places fermented malt beverages in bottles or similar containers.

(2) “Brewer” means any person who manufactures fermented malt beverages for sale or transportation.

(3) “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 cent or more of alcohol by volume, which are fit for use for beverage purposes, but does not include “fermented malt beverages” as defined in s. 125.02.

(4) “License,” and “fermented malt beverages” have the same meaning as in s. 125.02, and “licensed premises” are premises described in licenses issued by cities, villages or towns under the authority of said section.

(5) A “manufacturer” is a person, other than a rectifier, who 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.

(6) A “rectifier” is a person who 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 or her possession any still or leach tub or

keeps any other apparatus for the purpose of refining in any manner distilled spirits or the other liquors, or who after rectifying and purifying distilled spirits, by mixing such spirits or liquors with any materials, manufactures any spurious, imitation or compound liquors for sale, and any person who, without rectifying, purifying or refining distilled spirits, by mixing such spirits with any materials, manufactures 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 or her without any other license than that of a rectifier.

(7) “Retailer” as applied to a seller of fermented malt beverages has the same meaning as in s. 125.02, and as applied to a seller of intoxicating liquors is any person who sells such liquors to consumers.

(8) “Secretary” means the secretary of revenue.

(9) “Sell” or “sold” or “sale” or “selling” includes the transfer, gift, barter, trade or exchange of intoxicating liquor or fermented malt beverages; offering or exposing intoxicating liquor or fermented malt beverages for transfer, gift, barter, trade or exchange; possession of intoxicating liquor or fermented malt beverages with intent to transfer, give, barter, trade or exchange the same; or any shift, device, scheme or transaction whatever whereby intoxicating liquor or fermented malt beverages may be obtained; but excludes the solicitation of orders for, or the sale for future delivery.

(10) “Wholesaler” as applied to a seller of fermented malt beverages has the same meaning as in s. 125.02, and as applied to

a seller of intoxicating liquors is any person other than a manufacturer or rectifier who sells such liquors to licensed retailers or other permittees for the purpose of resale.

History: 1981 c. 79 s. 18; 1983 a. 189; 1993 a. 482.

139.02 Fermented malt beverages tax. (1) TAX IMPOSED; RATE; LIMITATION. An occupational tax is imposed upon the removal for consumption or sale or selling of fermented malt beverages at the rate of \$2 per barrel of 31 gallons and at a proportionate rate for any other quantity or fractional parts thereof. Not more than one occupational tax shall be required to be paid on any one container of fermented malt beverages.

(2) TAX CREDIT TO ELIGIBLE PRODUCERS. (a) Each eligible producer shall receive a credit in the amount of 50% of the tax paid or payable by the producer under this section in any given calendar year on the first 50,000 barrels taxed under this section in that year.

(b) In this section “eligible producer” means any producer of fermented malt beverages, whether or not located in this state, producing less than 300,000 barrels of fermented malt beverages in the calendar year for which credit under par. (a) is claimed. In determining the number of barrels, all brands or labels of a producer shall be combined. All facilities for the production of fermented malt beverages owned or controlled by the same person shall be deemed a single producer.

History: 1973 c. 256; 1977 c. 203.

139.03 Liquor tax. An occupational tax is imposed upon the selling of intoxicating liquor as follows:

(2m) The rate of that tax is 85.86 cents per liter on intoxicating liquor, except wine containing not in excess of 21% of alcohol by volume, containing 0.5% or more of alcohol by volume. The department of revenue may, by rule, set the amount of the taxes imposed under this section for various sizes of containers if the amounts set are in the same proportion to the size of the containers as the rate per liter under this subsection.

(2n) The rate of that tax is 6.605 cents per liter on wine containing 14% or less of alcohol by volume, and 11.89 cents per liter on wine containing more than 14% of alcohol by volume but not in excess of 21% of alcohol by volume.

(2x) INTOXICATING LIQUOR FLOOR TAX IMPOSED; PROCEDURES. (a) *Floor tax imposed.* On the date tax rate changes become effective under this section a floor tax is imposed upon every manufacturer, rectifier, wholesaler and retailer who is in possession of any intoxicating liquor held for resale on which the intoxicating liquor tax already has been imposed. The person shall determine the volume of that intoxicating liquor and shall file with the department of revenue by the 15th day of the month following the month in which the new tax rate becomes effective a return, together with any tax due on it, determined under par. (b). The department of revenue shall provide the returns required under this subsection.

(b) *Floor tax computation.* The amount of any intoxicating liquor floor tax shall be computed by multiplying the number of liters of intoxicating liquor held in inventory as determined under par. (a) by the difference between the tax rate already paid and the new tax rate, and expressing the resulting figure in dollars.

(c) *Administration.* Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c) and (2) to (8), 71.92, 73.01 and 73.015 apply to the administration of this subsection for the assessment and collection of additional taxes when tax rate changes become effective.

(d) *Late filing fee.* Any person who fails to file a floor tax return when due shall pay a late filing fee of \$10. A return shall be considered filed in time if it is mailed in a properly addressed envelope with 1st class postage duly prepaid, if the envelope is officially postmarked on the date due and if the return is actually received by the department within 5 days of the due date.

(e) *Delinquent interest.* If the tax imposed in this subsection is not paid when due, interest at the rate of 1.5% per month accrues from the date the tax became due until the tax is paid.

(f) *Penalty.* If any person liable for the tax under this subsection files a false or fraudulent return, there shall be added to the tax an amount equal to the tax the person evaded or attempted to evade.

(3) Not more than one occupational tax shall be required to be paid on any one container of intoxicating liquor.

(4) Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c) and (2) to (8), 71.92, 73.01 and 73.015 apply to the administration of this section for the assessment and collection of additional taxes when a tax rate change becomes effective.

(5) (a) No person who enters this state from another state may have in his or her possession and bring into the state any intoxicating liquor or wine. The prohibition in this paragraph does not apply to a person who changes his or her domicile from another state or a foreign country to this state and who brings into this state intoxicating liquor and wine constituting household goods. The prohibition in this paragraph does not apply to intoxicating liquor or wine consigned to any person having a permit from the secretary to engage in the sale of such intoxicating liquor or wine.

(b) Any person, except an underage person as defined under s. 125.02 (20m), who leaves a foreign country, after spending at least 48 hours in that foreign country, with the purpose of entering this state may have in that person’s possession and bring into the state intoxicating liquor or wine in sealed original containers in amounts not to exceed, in the aggregate, 4 liters without payment of the tax imposed under this subchapter. The 4 liters of tax-free intoxicating liquor and wines may not be sent, shipped or carried into the state other than in the immediate possession of the person as qualified by this subsection.

(c) Any person who violates any provision of pars. (a) and (b) by having in his or her possession more than the amount specified may be fined not less than \$25 nor more than \$500 or imprisoned for not more than 90 days or both. If any such person is convicted of a 2nd or subsequent offense, the person may be fined not less than \$100 nor more than \$500 or imprisoned for not more than 6 months or both.

(d) Any intoxicating liquor or wine involved in a violation of this section is declared forfeit and upon confiscation by the department of revenue shall be disposed of in accordance with s. 125.14 (2) (e).

History: 1971 c. 125, 164, 211, 336; 1973 c. 121; 1975 c. 224; 1977 c. 12, 81, 203, 418; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 317; 1983 a. 27; 1985 a. 302; 1987 a. 312 s. 17; 1987 a. 399; 1993 a. 482; 1995 a. 233.

139.035 Reciprocal agreements. The department shall negotiate and, if possible, enter into reciprocal agreements with the appropriate officials of other states concerning the shipping of wine to individuals in this state under ss. 125.58 (4) and 125.68 (10) (bm). The purpose of the agreements shall be to permit those shipments while ensuring that the fiscal impact of shipments of wine to individuals in this state from other states, and from this state to individuals in other states, is fair to this state. An agreement under this section may include the provision that this state will tax wine shipped from this state to individuals in another state and the other state will tax wine shipped to individuals in this state.

History: 1987 a. 399.

139.04 Exclusions. No tax is levied by ss. 139.02 and 139.03 in respect to:

(1) Making of wine, cider or fermented malt beverages at home solely for consumption therein and use thereof in such home by the family and guests without compensation.

(2) Furnishing by a brewer of fermented malt beverages to workmen employed in the brewery for consumption on the brewery premises without charge.

(3) Manufacture or sale of any beverage containing less than one-half of one per cent of alcohol by volume.

(4) Sale or shipment of fermented malt beverages by a brewer to a bottler or of intoxicating liquor in bulk between manufacturers, rectifiers and wineries.

(5) Sale, possession or removal of fermented malt beverages or intoxicating liquor for shipment in interstate or foreign commerce.

(6) Sale and use of wine for sacramental purposes.

(7) Sale of alcohol to industrial permittees to be used for industrial purposes.

(7m) Sale of fermented malt beverages to industrial permittees to be used for industrial purposes.

(8) Sale of alcohol to medicinal permittees to be used for hospital or medicinal purposes.

(9) Sale of wine to industrial wine permittees to be used for industrial purposes.

History: 1973 c. 90; 1985 a. 29.

139.05 Payment of malt beverages tax. (1) The tax imposed in s. 139.02 shall be paid to the department on or before the fifteenth day of the month following the month in which such malt beverages are first sold in this state or shipped into this state.

(2) Each brewer and bottler in this state and each wholesaler of malt beverages within this state to whom malt beverages are shipped from outside this state shall on or before the fifteenth day of each month file with the secretary on forms prescribed by the secretary a verified return containing such information as may be required to compute and show the amount of occupational tax payable by the brewer, bottler or wholesaler or by the shipper for the next preceding calendar month on malt beverages.

(2a) For the purposes of subs. (1) and (2), the payments and returns therein referred to shall be considered furnished, filed or made on time, and payments therein referred to shall be considered timely made, if mailed in a properly addressed envelope, with first class postage duly prepaid, which envelope is officially post-marked before midnight on the date prescribed for such furnishing, filing or making of such payment, provided such statement, return or payment is actually received by the secretary of revenue within 5 days of the prescribed date.

(3) The amount of the occupational tax disclosed by the return shall accompany the return and shall be paid to the department.

(4) In order to ensure the payment of the tax under s. 139.02 together with all interest and penalties thereon, all persons required to make returns and payment of such tax shall first either deposit with the secretary security in the amount, and of a type, determined by the secretary or enter into a surety bond with corporate surety, both bond and surety to be approved by the secretary. The secretary shall require a bond in total amount equal to twice the taxpayer's estimated maximum monthly tax, ascertained in such manner as the secretary deems proper, and the secretary may increase or reduce the amount of the bond, except that the amount of such bond required of any one taxpayer shall not be less than \$1,000 nor more than \$100,000. These bonds shall be filed with the secretary. The state shall not pay interest on security placed with the secretary.

(7) (a) If any present or future law or regulation effective in any state prohibits a person from shipping into such state a fermented malt beverage produced outside thereof except upon condition that the person shipping such fermented malt beverage into such state first obtain a license therefor from such state and if such license or a renewal thereof may be refused for violation of any law of such state relating to fermented malt beverages, it is unlawful to ship into this state or to purchase or sell within this state any fermented malt beverage produced in such state, unless and until

the brewer thereof is the holder of a valid subsisting license as provided in this subsection.

(b) Such license shall be issued by the secretary to persons who hold a valid certificate issued under s. 73.03 (50). The application for such license shall be verified and shall contain an agreement on the part of the brewer that the brewer shall observe all laws of this state relating to fermented malt beverages, and such other information and statements as the secretary may require. Any such brewer who has, directly or indirectly, violated any law of this state relating to fermented malt beverages shall not be entitled to such a license. The secretary may require the applicant to furnish and file a bond to be approved by the secretary payable to the state in an amount not less than \$1,000 nor more than \$5,000 conditioned upon the faithful compliance by the applicant with the undertakings set forth in the application for the license.

(c) The secretary may suspend or revoke any such license for any false statement made in the application therefor and for any prior or subsequent violation by the licensee, directly or indirectly, or by any person affiliated with or in any way subject to the direction or control of the licensee, of any of the laws of this state relating to fermented malt beverages.

(d) Any such brewer and any other person who ships or causes or permits to be shipped into this state any such fermented malt beverage, and any person who knowingly receives within this state from outside this state any such fermented malt beverage, at a time when the brewer thereof is not the holder of a valid and subsisting license as herein provided, is guilty of a misdemeanor.

(e) The conditions and requirements of this subsection are in addition to, and not in lieu of, the conditions and requirements of subs. (1) to (4).

(f) If any law or regulation of any state specifies uniform or substantially uniform requirements with respect to any ingredient of fermented malt beverages produced in such state and fermented malt beverages produced outside thereof but sold within such state and if such state or its officials or agencies enforce or give effect to such provisions as against any malt beverage produced outside of such state without concurrently and to the same extent enforcing and giving effect to such provisions as against all malt beverages produced and sold within such state, and if the foregoing is found and determined by the secretary after a public hearing, it shall thereafter be a misdemeanor for any person with knowledge of such finding and determination to ship into or receive or sell within this state any malt beverage produced in such state unless and until the secretary finds and determines, after a public hearing, that such discriminatory treatment has been discontinued.

History: 1977 c. 29; 1981 c. 79; 1985 a. 120; 1987 a. 399; 1991 a. 39; 1993 a. 482; 1995 a. 27.

139.06 Liquor tax returns; exceptions. (1) (a) The taxes imposed under s. 139.03 (intro.) on intoxicating liquor at the rates under s. 139.03 (2m) shall be paid to, and a monthly return filed with, the department of revenue on or before the 15th of the month following the month in which the tax liability is incurred. An administrative fee of 3 cents per gallon on intoxicating liquor taxed at the rates under s. 139.03 (2m) is imposed, shall be paid along with the taxes and shall be deposited in the appropriation under s. 20.566 (1) (ha).

(b) Liability for taxes at the rates under s. 139.03 (2m) on intoxicating liquor is incurred by a shipper when intoxicating liquor is shipped into this state, except that liability on liquor produced or bottled in this state or imported directly from a foreign country into this state by a Wisconsin permittee is incurred at the time of the first sale in this state and except that liability for liquor under sub. (3) or (4) is incurred when a Wisconsin permittee receives that liquor.

(c) Each person subject to the tax under s. 139.03 shall file an information report prescribed by the secretary on the dates prescribed by the secretary.

(2) (a) The taxes on wine containing not in excess of 21% of alcohol by volume shall be paid to and a monthly return filed with

the department on or before the 15th of the month following the month in which tax liability is incurred. Tax liability is incurred by the shipper when wine is shipped into the state. In the case of wine produced or bottled within the state and wine imported directly from a foreign country into the state by a Wisconsin permittee or winery licensee, tax liability is incurred by the permittee or winery licensee at the time of first sale within the state.

(b) All persons required to file a return and pay intoxicating liquor taxes shall first provide security in the amount, at the time and of the type required by the department of revenue or enter into a surety bond with a corporate surety to secure payment of the tax with bond and surety to be approved by the department. Such bond shall be twice the department's estimate of the taxpayer's maximum monthly tax liability but shall not be less than \$1,000 nor more than \$100,000. The bonds shall be filed with the department.

(c) Further to secure the payment of the taxes at the rates under s. 139.03 (2m) on intoxicating liquor, the department shall require all persons liable for the return and payment of such taxes in either of the 2 previous fiscal years to maintain a deposit of the department's estimate of tax liabilities in an amount equal to 20% of the estimated tax liability for fiscal year 1985–86 or an amount specified by the department. Such deposit payment shall be paid to the department on July 15, 1986, or according to an arrangement specified by the department. This deposit shall be deposited in the general fund. On August 15, 1987, the department shall credit 25% of the deposit against taxes due for the quarter beginning on the first day of the month before the month when the taxes are due or a later quarter. At the end of each succeeding 12-month period the department shall credit 25% of the original deposit until 100% of each deposit has been refunded. If any permittee has an unpaid tax liability at the time that a credit would be allowed the permittee, the department shall not allow the credit until the liability is paid in full.

(3) In shipping intoxicating liquor in bulk for the purpose of bottling or rectifying to a rectifier located within the state, the manufacturer shall securely affix thereto a label or statement, in such form as is prescribed by the secretary, reciting that the shipment is made for the purpose of bottling or rectifying. Each manufacturer making such shipments shall file an information report with the secretary as the secretary prescribes, showing the dates and quantities of shipments and the name and address of each consignee.

(4) When intoxicating liquor is stored in an alcohol beverage warehouse for which a permit has been issued under s. 125.19, by a manufacturer or rectifier holding a permit under s. 125.52 as a pledge for the loan of money, it is not necessary to affix front labels to the containers until the liquor is sold or removed from the warehouse. When it becomes necessary for a pledgee to sell such intoxicating liquor in good faith pursuant to the terms of the pledge, and not for the purpose of avoiding ss. 139.01 to 139.25 or ch. 125, it shall be sold to a manufacturer, rectifier or wholesaler holding a permit under s. 125.52 for the purpose of affixing front labels. All such sales shall be reported to the secretary by the pledgee.

History: 1973 c. 121; 1977 c. 142, 203; 1981 c. 79; 1985 a. 120; 1987 a. 399; 1991 a. 39.

139.08 Powers and duties of the secretary of revenue.

(1) **ADMINISTRATION; PERSONNEL.** The secretary of revenue shall administer ss. 139.01 to 139.25 and collect and keep a record of all taxes collected.

(2) **RULES.** The secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter.

(3) **POLICE POWERS.** The department of revenue shall enforce and the duly authorized employes of the department shall have all necessary police powers to prevent violations of s. 134.65, this subchapter and ch. 125.

(4) **INSPECTION FOR ENFORCEMENT.** Duly authorized employes of the department of justice and the department of revenue and any

sheriff, police officer, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter any licensed premises, and examine the books, papers and records of any brewer, manufacturer, bottler, rectifier, wholesaler or retailer, for the purpose of inspecting the same and determining whether the tax and fee imposed by ss. 139.01 to 139.25 have been fully paid, and may inspect and examine, according to law, any premises where fermented malt beverages or intoxicating liquors are manufactured, sold, exposed for sale, possessed or stored, for the purpose of inspecting the same and determining whether the tax imposed by ss. 139.01 to 139.25 has been fully paid, and whether ss. 139.01 to 139.25 and ch. 125 are being complied with. Any refusal to permit such examination of such premises is sufficient grounds under s. 125.12 for revocation or suspension of any license or permit granted for the sale of any fermented malt beverages or intoxicating liquors and is punishable under s. 139.25 (10).

History: 1975 c. 39, 199; 1977 c. 289; 1981 c. 79 s. 18; 1981 c. 391; 1985 a. 120; 1985 a. 135 s. 83 (5); 1987 a. 399; 1989 a. 31.

139.09 Registration. Every brewer, bottler, manufacturer, rectifier, wholesaler or retailer liable for payment of the occupational tax imposed in ss. 139.01 to 139.25 shall apply for a valid certificate under s. 73.03 (50). The secretary shall assign the person a registration number.

History: 1995 a. 27.

139.092 Audits; additional assessments; refunds. Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (2), (4) to (7) and (10), 71.77 and 71.80 (12) as they apply to the taxes under ch. 71 apply to the taxes under this subchapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this subchapter.

History: 1985 a. 120; 1987 a. 399; 1991 a. 39; 1993 a. 205; 1995 a. 408.

139.094 Appeals. Sections 71.88 (1) (a) and (2) (a), 71.89 and 71.90 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter.

History: 1985 a. 120; 1991 a. 39.

139.096 Failure to file. If any taxpayer required to file any return fails to do so within the time prescribed, the taxpayer shall, on the written demand of the department, file the return within 20 days after the mailing of it and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the return, the department shall prepare the return from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the department has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any return or assessment made by the department because of the failure of the taxpayer to make a return.

History: 1985 a. 120.

139.10 Refunds by state treasurer. (1) On the certificate of the secretary, the state treasurer shall refund to any purchaser or any banking institution in Wisconsin the tax paid on intoxicating liquor or on whole cases or full kegs of fermented malt beverages which are spoiled or unfit to drink and the tax paid on fermented malt beverages sold to the U.S. armed forces or the secretary may make allowance of the amount of the tax.

(2) When the tax has been paid on intoxicating liquor supplied to hospitals for hospital or medicinal purposes, or on alcohol supplied to institutions of learning or museums for nonbeverage purposes, the purchaser shall, upon application to the secretary, be entitled to a refund of the tax.

(3) The secretary shall prescribe the method of proof and the forms of application for refund or allowance.

History: 1985 a. 120; 1995 a. 225.

139.11 Records and reports. (1) **PRESERVATION OF RECORDS.** Every person who manufactures, rectifies, distributes,

imports, transports, stores, warehouses or sells intoxicating liquor or fermented malt beverages shall keep complete and accurate records of all such liquor or malt beverages purchased, sold, manufactured, rectified, 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 secretary and shall be safely preserved to ensure accessibility for inspection by the secretary.

(2) REPORT. Each brewer, bottler, manufacturer, rectifier and wholesaler shall on or before the 15th day of each calendar month or the dates prescribed by the secretary make a verified report to the department of revenue of all fermented malt beverages or intoxicating liquor manufactured, received, sold, delivered or shipped by him or her during the preceding calendar month, except that the department may allow wholesale, winery and out-of-state shipper permittees whose tax liability is less than \$500 per quarter to file on a quarterly basis. Quarterly reports shall be mailed on or before the 15th of the next month following the close of the calendar quarter. Such report shall be made upon forms furnished by the department of revenue and shall contain the information it deems necessary for the collection and enforcement of the tax.

(2m) TIMELY FILING. The provisions on timely filing under s. 71.80 (18) apply to the tax under this subchapter.

(3) SECRETARY'S POWERS. When the secretary 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 secretary may give notice of such fact to such person and may require the records to be kept in such form as the secretary prescribes. If such requirements are not complied with within 30 days after the date of the notice, the brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall pay the expenses reasonably attributable to the determination of tax at the rate of \$30 per day for each auditor. The secretary 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. The brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall, within 10 days after the mailing of the bill, pay its amount, and such payment shall be credited to the appropriation made in s. 20.566 (1) (a).

(4) CONFIDENTIALITY. Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a fermented malt beverage or intoxicating liquor tax return, report, schedule, exhibit or other document or from an audit report relating to any of those documents, except that the department of revenue shall publish brewery production and sales statistics and shall publish or permit the publication of statistics on the total number of gallons of the types and brands of intoxicating liquor sold in this state.

History: 1981 c. 20; 1985 a. 120, 302; 1987 a. 312 ss. 10, 17; 1991 a. 39; 1993 a. 482.

139.115 Collection. Sections 71.91 (1) (a) and (c) and (2) to (7) and 71.92 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter.

History: 1991 a. 39.

139.18 Presumptions from possession. (1) The possession of any fermented malt beverages on any licensed premises, other than upon the premises of a brewer or bottler, shall be deemed prima facie evidence that such products are kept with intent to sell and that such products are subject to the tax herein imposed.

(2) The possession of intoxicating liquor on which a tax has not been paid 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 it contrary to law.

History: 1985 a. 120.

139.20 Compulsory testimony. (1) Any person may be compelled to testify in regard to any violation of this chapter of which the person may have knowledge, even though such testimony may tend to incriminate the person, 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 the person has testified.

(2) The immunity provided under sub. (1) is subject to the restrictions under s. 972.085.

History: 1989 a. 122, 359.

139.22 Confiscation. If a duly authorized employe of the department of revenue or the department of justice or any sheriff, police officer, marshal or constable, within his or her respective jurisdiction, discovers any fermented malt beverages upon any premises other than the premises of a brewer or bottler, or any intoxicating liquor 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 ss. 139.01 to 139.25 and ch. 125, the employe or any such officer may immediately seize the fermented malt beverages or intoxicating liquors. Any such fermented malt beverages or intoxicating liquors so seized shall be held by the department of revenue and disposed of under s. 125.14 (2) (e).

History: 1975 c. 39, 199; 1977 c. 29; 1981 c. 79 s. 18.

139.25 Penalties. (1) INTEREST AND PENALTIES. Unpaid taxes bear interest at the rate of 12% per year from the due date of the return until paid or deposited with the department, and all refunded taxes bear interest at the rate of 9% per year from the due date of the return to the date on which the refund is certified on the refund rolls.

(1m) ORDER OF APPLICATION. All nondelinquent payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.

(2) DELINQUENT RETURNS. Delinquent beverage tax returns are subject to a \$10 late filing fee. Delinquent beverage taxes bear interest at the rate of 1.5% per month until paid. The taxes imposed by this subchapter shall become delinquent if not paid:

(a) In the case of a timely filed return, no return or a late return, on or before the due date of the return; or

(b) In the case of a deficiency determination of taxes, within 2 months after the date of demand.

(3) INCORRECT RETURN. If due to neglect an incorrect return is filed, the entire tax finally determined is subject to a penalty of 25% of the tax exclusive of interest or other penalty. A person filing an incorrect return has the burden of proving that the error or errors were due to good cause and not due to neglect.

(4) FAILURE TO FILE RETURN. In case of failure to file any return required under s. 139.05, 139.06 or 139.11 by the due date, unless it is shown that that failure was due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on that return 5% of the amount of that tax if the failure is for not more than one month, and an additional 5% of the tax for each additional month or fraction thereof during which that failure continues, not exceeding 25% of the tax in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(5) FALSE OR FRAUDULENT RETURN. If a person fails to file a return when due or files a false or fraudulent return with intent in either case to defeat or evade the tax imposed by this subchapter, a penalty of 50% of the tax shall be added to the tax required to be paid, exclusive of interest and other penalties.

(6) FURNISH DATA OR RETURN. Any person who fails to furnish any return required to be made or who fails to furnish any data

required by the department may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(7) **REPORT OR RETURN VERIFICATION.** Any person, including an officer of a corporation, who is required to make, render, sign or verify any report or return required by this subchapter and who makes a false or fraudulent report or return or who fails to furnish a report or return when due with the intent, in either case, to defeat or evade the tax imposed by this subchapter may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(8) **ASSISTING FALSE OR FRAUDULENT RETURN.** No person may aid, abet or assist another in making any false or fraudulent return or false statement in any return required by this subchapter, with intent to defraud the state or evade payment of the tax, or any part thereof, imposed by this subchapter. Anyone who violates this subsection may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(9) **FAILURE TO KEEP RECORDS.** Failure to comply with s. 139.11 (1) shall carry a penalty of revocation by the secretary of revenue of the license or permit.

(10) **MISCELLANEOUS.** Any person who violates any provision of ss. 139.01 to 139.22 for which specific penalty is not provided shall be fined not more than \$500 nor less than \$50, or imprisoned not more than 90 days nor less than 10 days or both, and any license or permit issued to that person shall be subject to revocation. The license or permit of any licensee or permittee convicted of evading payment of the tax on intoxicating liquor, or any attempt to evade payment of such tax, shall be deemed forfeited immediately upon conviction.

(11) **SECOND OFFENSES.** Any person convicted of a 2nd offense under the provisions of ss. 139.01 to 139.22 shall, in addition to the penalties provided in this section, forfeit all rights conferred upon him or her by any license issued to him or her by any city, village or town, without notice.

History: 1977 c. 418 s. 924 (18) (e); 1985 a. 120; 1987 a. 399.

139.26 Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

History: 1985 a. 302.

SUBCHAPTER II

CIGARETTE TAXES

139.30 Cigarette tax; definitions. In ss. 139.30 to 139.44, unless the context otherwise requires:

(1) “Cigarette” means any roll of tobacco wrapped in paper or any substance other than tobacco.

(2) “Department” means the department of revenue.

(3) “Distributor” means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages or other containers, stores them and sells them to other permittees or to retailers for resale or who acquires stamped cigarettes from another permittee for such sales.

(4) “Enrolled member” means a person whose name appears on the tribal role of an Indian tribe or whose status as an enrolled member of a tribe is recognized by the tribal council of that tribe.

(5) “Indian tribe” means a federally recognized Indian tribe in this state.

(6) “Jobber” means any person who acquires stamped cigarettes from manufacturers or distributors, stores them and sells them to retailers for resale.

(7) “Manufacturer” means any person who manufactures cigarettes for the purpose of sale.

(8) “Multiple retailer” means any person who acquires stamped cigarettes from manufacturers or permittees, stores them

and sells them to consumers through 10 or more retail outlets which he or she owns and operates within or without this state.

(9) “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.

(10) “Retailer” means any person who sells, exposes for sale or possesses with intent to sell to consumers any cigarettes.

(11) “Secretary” means the secretary of revenue.

(12) “Sell” or “sale” includes the transfer, gift, barter, trade or exchange or any shift, device, scheme or transaction whereby cigarettes may be obtained and the solicitation of orders for, or the sale for, future delivery of cigarettes.

(13) “Stamp” means the authorized indicia of cigarette tax payment including water transfer stamps and heat applied stamps.

(14) “Vending machine” is any mechanical device which automatically dispenses cigarettes upon the deposit therein of specified coins in payment for such cigarettes.

(15) “Vending machine operator” means a person who acquires stamped cigarettes from manufacturers or permittees, stores them and sells them through the medium of vending machines which he or she owns, operates or services and which are located on premises which are owned or under the control of other persons.

(16) “Warehouse” means the premises where any person is lawfully engaged in the business of storing cigarettes for profit but shall not include the premises where common carriers store cigarettes which are received by them as common carriers and are in transit in interstate commerce.

History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482.

139.31 Tax imposed; exceptions. (1) An excise tax is imposed on the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale of cigarettes or other disposition for any purpose whatsoever. The tax is imposed at the time and place of the first taxable event occurring in this state. The tax shall be passed on to the ultimate consumer of the cigarettes. All cigarettes received in this state for sale or distribution within this state, except cigarettes actually sold as provided in sub. (3), shall be subject to such tax. Any person licensed under ch. 100 and this chapter to have untaxed cigarettes in his or her possession which are lost, stolen, destroyed or which have mysteriously disappeared shall be liable for and shall pay the tax thereon. The tax shall be at the following rates:

(a) On cigarettes weighing not more than 3 pounds per thousand, 22 mills on each cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 44 mills on each cigarette.

(c) In addition to the rate under par. (a), on cigarettes weighing not more than 3 pounds per thousand, on each cigarette 8 mills minus the tax imposed on that cigarette under 26 USC 5701, but not less than zero.

(d) In addition to the rate under par. (b), on cigarettes weighing more than 3 pounds per thousand, on each cigarette, 16.8 mills minus the tax imposed on that cigarette under 26 USC 5701, except that if the cigarette is more than 6.5 inches in length it shall be taxed at the rate under par. (c) rather than at the rate under this paragraph, counting each 2.75 inches or fraction thereof of the length as one cigarette. The amount under this paragraph shall not be less than zero.

(3) Cigarettes sold to post exchanges of the armed forces of the United States and to federally or state operated veterans hospitals in this state and cigarettes sold to an interstate carrier of passengers for hire to be resold to bona fide passengers actually being transported and cigarettes sold for shipment outside this state in interstate commerce are not subject to the tax.

History: 1971 c. 125; 1981 c. 20, 317, 390; 1983 a. 2, 27; 1985 a. 29; 1987 a. 27; 1991 a. 269; 1995 a. 27.

State cigarette tax laws do not apply to Indian selling cigarettes on reservation. 68 Atty. Gen. 151.

139.315 Cigarette inventory tax imposed; procedures.

(1) **INVENTORY TAX IMPOSED.** On the effective date of any increase in the sum of the rates under s. 139.31 (1) (a) and (c) or in the sum of the rates under s. 139.31 (1) (b) and (d), an inventory tax is imposed upon cigarettes held in inventory for sale or resale on which the cigarette tax has been paid at the prior rate and upon unaffixed stamps in the possession of distributors. Any person who is in possession of any such cigarettes or unaffixed stamps is liable for payment of the tax imposed under this section. Any person liable for this tax shall determine the number of cigarettes and unaffixed stamps in the person's possession on the effective date of the increase, and by the 15th day after the effective date of the increase the person shall file with the department a return on a form provided by the department and shall by that date pay to the department the tax due.

(2) **INVENTORY TAX COMPUTATION.** The cigarette inventory tax under this section is computed by multiplying the number of cigarettes held in inventory for sale or resale by the difference between the prior tax rate and the new tax rate and adding to that amount an amount determined by multiplying the number of unaffixed stamps held by the difference between the prior tax rate and the new tax rate.

(3) **ADMINISTRATION.** Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c) and (2) to (8), 71.92, 73.01 and 73.015 apply to this section.

(4) **LATE FILING FEE.** Any person who fails to file a cigarette inventory tax return when due shall pay a late filing fee of \$10. A return is timely filed if it is mailed in a properly addressed envelope with 1st class postage prepaid, if the envelope is postmarked on the due date and if the return is actually received by the department within 5 days of the due date.

(5) **INTEREST ON DELINQUENT PAYMENTS.** If any person does not timely pay the tax imposed under this section, that person is liable for interest at the rate of 1.5% per month or fraction of a month from the date the tax is due until the date when the tax is paid.

(6) **PENALTY.** If any person who is liable for the tax under this section files a false or fraudulent return, that person is also liable, in addition to the tax due, for an amount equal to the amount of tax the person evaded or attempted to evade.

History: 1981 c. 317; 1985 a. 29; 1987 a. 312 s. 17; 1991 a. 39; 1995 a. 233.

139.32 Payment of taxes. (1) The tax imposed by s. 139.31 (1) shall be paid by purchase of stamps from the department. To evidence the payment, stamps of the proper denomination shall be affixed to each package in which cigarettes are packed, prior to the first sale within this state. First sale does not include a sale by a manufacturer to a distributor or by a distributor to a permittee who has obtained department approval as provided for in s. 139.321 (1) (a) 2. The tax shall be paid only once on each package or container.

(2) The secretary shall prepare and have available for sale stamps of such denominations and quantities as the secretary considers necessary for the payment of the taxes imposed by s. 139.31. The stamps shall be of such designs and materials as to make the removal and reuse thereof impossible after being once affixed.

(2m) The secretary shall prepare and have available for sale distinctive stamps, which shall be affixed to all packages of cigarettes in respect to which a refund can be made under s. 139.323 and only to those packages.

(3) Stamps shall be affixed in the manner prescribed by the secretary.

(4) In lieu of stamps the secretary may authorize impressions applied by the use of meter machines. The secretary shall pre-

scribe by rule the type of impression and the kind of machines which may be used.

(5) Manufacturers and distributors having a permit from the secretary may purchase stamps at a discount of 2.0%.

(5m) Distributors and manufacturers shall pay to the department the cost of printing and shipping those stamps.

(6) Manufacturers and distributors having a permit from the secretary may purchase stamps on credit. The secretary may require manufacturers and distributors who purchase stamps on credit to file under the conditions prescribed by the secretary by rule.

(7) Beginning on September 1, 1993, the cost to print stamps is the actual cost to print stamps, adjusted to reflect the expenses incurred to print stamps during the previous year and the reimbursement received for that purpose during the previous year, as determined by the department. Beginning in 1994, the department shall annually determine that cost and shall make the new cost effective on July 1.

History: 1971 c. 125; 1977 c. 29; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1989 a. 31; 1993 a. 16, 482.

139.321 Unlawful possession of cigarettes. (1) It is unlawful for any person to possess in excess of 400 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32 (1) and 139.33 (4).

(a) This subsection shall not apply to the following:

1. Manufacturers, distributors or warehouse operators possessing valid permits issued by the secretary.

2. Any permittee under s. 139.34 having department approval or person authorized to acquire, possess or sell unstamped cigarettes under s. 139.31 (3) provided that said permittee or person maintains a separate inventory thereof and records pertaining thereto in such manner and form as the department prescribes by rule.

3. Common carriers licensed by the interstate commerce commission to carry such commodities in interstate commerce who are in possession of proper bills of lading covering each such shipment. The department may by rule require that copies of all such bills of lading, clearly indicating thereon the quantities of cigarettes transported, be furnished to it.

(b) Any person violating this subsection shall be punished as provided in s. 139.44 (8).

(2) No retailer may possess cigarettes purchased from any person except a manufacturer, distributor or jobber who holds a valid permit from the department.

History: 1993 a. 16 ss. 2384, 2385, 2386.

139.322 Security. (1) The secretary may require any person who has not paid the tax under s. 139.31 (1) or who has failed timely to file a report for that tax to place with the department security in the amount that the secretary determines. That security may be a surety bond that is payable to this state and that is in the form prescribed by the secretary.

(2) The secretary may refuse to issue a permit to, and may revoke the permit of, any person who is required to place security with the department under sub. (1) and fails to do so.

(3) The department may not pay interest on security placed with the department under sub. (1).

(4) After giving 10 days' notice, the secretary may recover any tax, interest, penalties and other charges due the department from the security of any person who is delinquent under this subchapter.

History: 1993 a. 16.

139.323 Refunds to Indian tribes. The department shall refund 70% of the taxes collected under s. 139.31 (1) 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.
- (5) The retailer has not sold the cigarettes to another retailer or to a jobber.

History: 1983 a. 27; 1985 a. 29, 302.

139.325 Agreements with Indian tribes. The department may enter into agreements with Indian tribes to provide for the refunding of the cigarette tax imposed under s. 139.31 (1) on cigarettes sold on reservations to enrolled members of the tribe residing on the tribal reservation.

History: 1983 a. 27.

139.33 Use tax. (1) A use tax is imposed and levied upon the use of cigarettes in this state by any person for any purpose if the excise tax imposed by s. 139.31 has not been paid on such cigarettes. Such tax is levied and shall be collected at the same rates as provided for in s. 139.31. The tax imposed by this section is not applicable to cigarettes subject to the excise tax imposed by s. 139.31 nor to cigarettes exempt from that tax under s. 139.31 (3).

(3) No person other than a licensed distributor may import into this state more than 400 cigarettes on which the excise tax imposed by s. 139.31 has not been paid and the container of which does not bear proper stamps. Within 15 days, any such person importing cigarettes shall file with the department a declaration of such cigarettes imported and shall remit therewith the tax on such cigarettes imposed by this section. Members of the armed forces shall not be required to report or pay the tax on cigarettes in their possession if such cigarettes are issued to them by the U.S. government or any of its subdivisions or were purchased in any armed forces post exchange or service store. If the use tax imposed by this section is not paid when due, it shall become delinquent and the person liable for it shall pay, in addition, a penalty of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue at the rate of 1.5% per month or each fraction of a month from the date the tax became due until paid.

(4) Sections 139.30 to 139.44 relating to enforcement of the excise tax imposed by s. 139.31 apply to enforcement of the use tax imposed by this section.

History: 1977 c. 289; 1983 a. 27; 1987 a. 312 s. 17; 1991 a. 39.

139.34 Permits required. (1) (a) It is unlawful for any person to manufacture cigarettes in this state or sell cigarettes in this state as a distributor, jobber, vending machine operator or multiple retailer and no person shall operate a warehouse in this state for the storage of cigarettes for another person without first obtaining the proper permit to perform such operations from the department of revenue. The application for a permit and the permit shall be in the form prescribed by the department and the application form shall require such information as is necessary to administer this section.

(b) This section applies to all officers, directors, agents and stockholders holding 5% or more of the stock of any corporation applying for a permit under this section.

(c) Subject to ss. 111.321, 111.322 and 111.335, no permit under this section may be granted to any person to whom any of the following applies:

1. The person has been convicted of a misdemeanor, not involving chs. 340 to 349, at least 3 times.

2. The person has been convicted of a felony, unless pardoned.

3. The person is addicted to the use of a controlled substance or controlled substance analog under ch. 961.

4. The person has income which comes principally from gambling or has been convicted of 2 or more gambling offenses.

5. The person has been guilty of crimes relating to prostitution.

6. The person has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to ch. 125.

7. The person does not hold a permit under s. 77.52 (9), if the person is a retailer.

(d) Upon denial of a permit the department of revenue shall immediately notify such person in writing of the denial and the reasons therefor.

(e) A denial of a permit by the department of revenue shall be subject to judicial review under ch. 227.

(f) The person holds a valid certificate issued under s. 73.03 (50).

(4) A separate permit shall be required of and issued to each class of permittee and the holder of any permit shall perform only the operations thereby authorized. Such permit shall not be transferable from one person to another or from one premises to another. A separate permit shall be required for each place where cigarettes are stamped or where cigarettes are stored for sale at wholesale or through vending machines or multiple retail outlets.

(5) The ownership and operation of any retail outlet does not preclude a person from receiving a permit as a distributor or jobber, if more than 50% of that person's sales of cigarettes are at wholesale to retailers, vending machine operators or multiple retailers neither owned, controlled nor operated by that person.

(6) A vending machine operator or a multiple retailer may acquire unstamped cigarettes from the manufacturers thereof and affix the stamps to packages or other containers only if the vending machine operator or multiple retailer also holds a permit as a distributor.

(7) The secretary may require by rule that stamps affixed to cigarette packages be identified by a permit or code number assigned to the person affixing them.

(8) The holder of a warehouse permit is entitled to store cigarettes on the premises described in the permit. The warehouse permit shall not authorize the holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a manufacturer or distributor may be delivered only to a person holding a permit as a manufacturer or distributor.

(9) The applicant for a permit, if a nonresident, foreign corporation or foreign limited liability company, shall file proof that the applicant has appointed the department of financial institutions as agent for the service of process on any matter arising under ss. 139.30 to 139.44. A foreign corporation without a place of business in this state need not obtain a certificate of authority under ss. 180.1501 to 180.1505. If a foreign corporation has a certificate of authority under ss. 180.1501 to 180.1505, the foreign corporation satisfies this subsection by filing the address of its registered office in this state and the name of its registered agent at that office and by promptly filing any changes to this information. A foreign limited liability company without a place of business in this state need not obtain a certificate of registration under ss. 183.1002 to 183.1007. If a foreign limited liability company has a certificate of registration under ss. 183.1002 to 183.1007, the foreign limited liability company satisfies this subsection by filing the address of its registered office in this state and the name of its registered agent at that office and by promptly filing any changes to this information.

(10) Every vending machine operator shall in the vending machine operator's application for a permit list each county in which the vending machine operator operates such machines and state the number of such machines the vending machine operator is then operating in each such county.

History: 1971 c. 219; 1973 c. 198; 1975 c. 39 s. 732 (2m); 1977 c. 125; 1979 c. 34, 89, 221; 1981 c. 79 s. 18; 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1985 a. 313; 1989 a. 303; 1991 a. 32, 39; 1993 a. 112, 482; 1995 a. 27, 448.

139.35 Stamps. (1) TRANSFERS. No person may give, sell or lend any stamps to another and no person may accept, purchase or borrow any stamps from another. All sales and transfers of stamps may be made only by the secretary to permit holding manufacturers and distributors.

(2) **RECORDS.** The secretary shall keep a record of the sale of all stamps including the names of the purchasers and the date of sale.

139.355 Appeals. Sections 71.88 (1) (a) and (2) (a), 71.89 and 71.90 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter.

History: 1991 a. 39.

139.36 Refunds for unusable stamps. The secretary shall refund to any purchaser the money paid for any stamps returned unfit for use or otherwise unused or which have been affixed to packages which are unsalable. The secretary shall prescribe by rule the proof required to obtain such refund. The permittee shall pay the expenses of determining the amount of such refund.

History: 1991 a. 39; 1993 a. 482.

139.365 Other refunds. Section 71.75 (2), (4) to (7) and (10) as it applies to the taxes under ch. 71 applies to the taxes under this subchapter. Section 71.74 (13) as it applies to the refund of taxes under ch. 71 applies to the refund of taxes under this subchapter.

History: 1991 a. 39; 1993 a. 205.

139.37 Salespersons. (1) (a) No person shall sell or take orders for cigarettes for resale in this state for any manufacturer or permittee without first obtaining a salesperson's permit from the department of revenue. No manufacturer or permittee shall authorize any person to sell or take orders for cigarettes in this state without first having such person secure a salesperson's permit. The department shall issue the required number of permits to manufacturers and permittees who hold a valid certificate issued under s. 73.03 (50). Each application for a permit shall disclose the name and address of the employer and such permit shall remain effective only while the salesperson represents such named employer. If such salesperson is thereafter employed by another manufacturer or permittee the salesperson shall obtain a new salesperson's permit. Each manufacturer and permittee shall notify the department within 10 days after the resignation or dismissal of any such salesperson holding a permit.

(c) Subject to ss. 111.321, 111.322 and 111.335, no permit under this section may be granted to any person who:

1. Has been convicted of a misdemeanor not involving chs. 340 to 349, at least 3 times;
2. Has been convicted of a felony, unless pardoned;
3. Is addicted to the use of a controlled substance or controlled substance analog under ch. 961;
4. Has income which comes principally from gambling, or who has been convicted of 2 or more gambling offenses;
5. Has been guilty of crimes relating to prostitution; or
6. Has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to ch. 125.

(d) The department of revenue shall immediately notify any person who is denied a permit in writing of the denial and the reasons therefor.

(e) A denial of a permit by the department of revenue is subject to judicial review under ch. 227.

(2) No representative of any manufacturer shall sell more than 3 cartons of any one kind of cigarettes to any retailer at one time.

History: 1971 c. 219; 1973 c. 198; 1975 c. 39 s. 732 (2m); 1975 c. 199; 1977 c. 125; 1979 c. 89; 1981 c. 79 s. 18; 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1983 a. 27 s. 2200 (45); 1995 a. 27, 448.

139.38 Records, returns. (1) Every manufacturer located out of the state shall keep records of all sales of cigarettes shipped into this state. Every manufacturer located in the state shall keep records of production, sales and withdrawals of cigarettes. Every distributor shall keep records of purchases and sales of cigarettes. Every manufacturer and distributor holding a permit from the secretary with the right to purchase and apply stamps shall also keep records of purchases and disposition of stamps. Every jobber, multiple retailer and vending machine operator shall keep records of all purchases and disposition of cigarettes. Every warehouse operator shall keep records of receipts and withdrawals of cigarettes. All such records shall be accurate and complete and be kept in a manner prescribed by the secretary. These records shall be preserved on the premises described in the permit or license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the department.

(2) (a) Except as provided in par. (b), every permittee shall render a true and correct invoice of every sale of cigarettes at wholesale and shall on or before the 15th day of each calendar month make a verified report to the department of all cigarettes purchased, sold, received, warehoused or withdrawn during the preceding calendar month.

(b) The department may allow any jobber, multiple retailer or vending machine operator permittee who does not sell cigarettes, except for those on which the tax under this chapter is paid, to file a quarterly report. The quarterly report shall be filed on or before the 15th day of the next month following the close of each calendar quarter. The report shall specify the number of cigarettes purchased and sold during the preceding calendar quarter.

(2m) The provisions on timely filing under s. 71.80 (18) apply to the tax under this subchapter.

(3) The secretary shall prescribe reasonable and uniform methods of keeping records and making reports. The secretary shall prescribe and furnish the necessary report forms.

(4) If the secretary finds that the records of any permittee are not kept in the prescribed form or are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, the secretary shall give notice of such fact to such permittee and, in such notice, require that the records be revised and kept in the prescribed form. If such permittee fails to comply within 30 days the permittee shall pay the expenses reasonably attributable to a proper examination and tax determination at the rate of \$30 per day of each auditor. The secretary shall send a bill for such expenses and the permittee shall pay the amount of such bill within 10 days.

(5) If any permittee fails to file a report when due the permittee shall be required to pay a late filing fee of \$10. A report shall be considered filed in time if it is mailed in a properly addressed envelope with first class postage duly prepaid, which envelope is officially postmarked on the date due, and if the report is actually received by the secretary within 5 days of the due date.

(6) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a cigarette tax return, report, schedule, exhibit or other document or from an audit report pertaining to the same.

(7) The department may inspect the business records of any retailer doing business on a reservation or on an Indian tribe's trust land.

History: 1977 c. 289 ss. 9, 11m; 1981 c. 20; 1983 a. 27; 1985 a. 302; 1987 a. 312 ss. 11, 17; 1991 a. 39; 1993 a. 482.

139.39 Administration and enforcement. (1) The department shall administer and enforce ss. 139.30 to 139.44,

139.75 to 139.85 and 134.65. The department shall adopt rules necessary to administer and enforce its duties.

(1m) The duly authorized employes of the department have all necessary police powers to prevent violations of this subchapter.

(2) Authorized personnel of the department of justice and the department of revenue, and any sheriff, police officer, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter the premises of any permittee or retailer and examine the books and records to determine whether the tax imposed by s. 139.31 has been fully paid and may enter and inspect any premises where cigarettes are made, sold or stored to determine whether ss. 139.30 to 139.44 are being complied with.

(3) The secretary may suspend or revoke the permit of any permittee who violates ss. 100.30 or 139.30 to 139.44 or any rules adopted under sub. (1). The secretary shall revoke the permit of any permittee who violates s. 100.30 3 or more times within a 5-year period.

(4) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in s. 139.31. The aggrieved taxpayer shall pay the tax when due and, if paid under protest, may at any time within 90 days from the date of payment, sue the state to recover the tax paid. If it is finally determined that any part of the tax was wrongfully collected, the department of administration shall issue a warrant on the state treasurer for the amount 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.

(5) (a) Any person may be compelled to testify in regard to any violation of ss. 134.65 and 139.30 to 139.44 of which the person may have knowledge, even though such testimony may tend to incriminate the person, upon being granted immunity from prosecution in connection therewith, and upon the giving of such testimony, the person shall not be prosecuted because of the violation relative to which the person has testified.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(6) Sections 71.74 (1), (2), (10), (11) and (14), 71.77, 71.80 (12), 71.91 (1) (a) and (c) and (2) to (8) and 71.92 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter. Section 71.74 (13) as it applies to the collection of the taxes under ch. 71 applies to the collection of the taxes under this subchapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this subchapter.

NOTE: Sub. (6) is shown as affected by 2 acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

History: 1975 c. 39, 199; 1979 c. 34; 1981 c. 20; 1985 a. 135 s. 83 (5); 1989 a. 31, 122, 359; 1991 a. 39; 1995 a. 233, 408; s. 13.93 (2) (c).

139.395 Theft of tax moneys. All cigarette tax moneys received by a distributor or manufacturer for the sale of cigarettes on which the tax under this subchapter has become due and has not been paid are trust funds in the hands of the distributor or manufacturer and are the property of this state. Any distributor or manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette tax moneys that are the property of this state is guilty of theft under s. 943.20 (1), whether or not the distributor or manufacturer has or claims to have an interest in those moneys.

History: 1993 a. 16.

139.40 Seizure and confiscation. (1) All cigarettes owned, possessed, kept, stored, made, sold, distributed or transported in violation of this chapter, and all personal property used in connection therewith is unlawful property and subject to seizure by the secretary or any peace officer.

(2) If cigarettes which do not bear the proper tax stamps or on which the tax has not been paid are so seized they may be sold to qualified buyers by the secretary, without notice, and after deducting the costs of the sale and the keeping of the property, the pro-

ceeds of the sale shall be paid into the state treasury. When the secretary finds that such cigarettes may deteriorate or become unfit for sale or that such sale would otherwise be impractical the secretary may order them destroyed or give them to a charitable or penal institution for free distribution to patients or inmates.

(3) If cigarettes on which the tax has been paid and which bear the proper tax stamps are seized they shall be returned to the true owner if ownership can be ascertained and such owner or the owner's agent is not involved in the violation resulting in such seizure. If such ownership cannot be ascertained or if the owner or the owner's agent was guilty of a violation of any of the provisions of ss. 139.30 to 139.44, which resulted in the seizure of such cigarettes, they may be sold or otherwise disposed of as provided in sub. (2).

(4) If personal property other than cigarettes is so seized the secretary shall advertise the same for sale by publication of a class 2 notice under ch. 985. If no claimant, either of lien or ownership, has notified the secretary within 10 days after last insertion of such notice, the property shall be sold. If such sale is not practical the property may be destroyed. If a claimant of a lien or ownership notifies the secretary within the prescribed time, the secretary may apply to a court of record in the county where the property was seized for an order directing disposition of said property or the proceeds thereof. If a sale of such seized property is ordered, all liens, if any, may be transferred from the property to the proceeds of such sale. Neither the property seized nor the proceeds from the sale thereof shall be turned over to any claimant of lien or ownership unless such claimant first establishes that the property was not used in connection with any violation of ss. 139.30 to 139.44 or that, if so used, it was done without the claimant's knowledge or consent and without the claimant's knowledge of such facts as should have given the claimant reason to believe it would be put to such use. If no claim of lien or ownership is so established the property may be ordered destroyed. In case of sale, the net proceeds after deducting costs, expenses and established claims shall be paid into the state treasury.

History: 1993 a. 482.

139.41 Place to place delivery. No person shall peddle any cigarettes from house to house, where the sale is consummated and delivery made concurrently.

139.42 Nuisance. Any building or place of any kind where cigarettes are sold, possessed, stored or manufactured without a lawful permit in violation of ss. 139.30 to 139.41 is declared a public nuisance and may be closed and abated as such.

139.43 Statewide concern. Sections 139.30 to 139.44 shall be construed as an enactment of statewide concern for the purpose of providing a uniform regulation of the sale of cigarettes.

History: 1993 a. 213; 1995 a. 225.

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations which are not in strict conformity with those of the state. *U.S. Oil, Inc. v. City of Fond du Lac*, 199 W (2d) 333, 544 NW (2d) 589 (Ct. App. 1995).

139.44 Interest and penalties. (1) Any person who falsely or fraudulently makes, alters or counterfeits any stamp or procures or causes the same to be done, or who knowingly utters, publishes, passes or tenders as true any false, altered or counterfeit stamp, or who affixes the same to any package or container of cigarettes, or who possesses with the intent to sell any cigarettes in containers to which false, altered or counterfeit stamps have been affixed shall be imprisoned for not less than one year nor more than 10 years.

(1m) Any person who falsely or fraudulently tampers with a cigarette meter in order to evade the tax under s. 139.31 shall be imprisoned for not less than one year nor more than 10 years.

(2) Any person who makes or verifies any false or fraudulent report or who attempts to evade the tax imposed by s. 139.31 or 139.76, or who aids in or abets the evasion or attempted evasion of that tax shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 90 days nor more than one year or both.

(3) Any permittee who fails to keep the records required by ss. 139.30 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 6 months or both.

(4) Any person who refuses to permit the examination or inspection authorized in s. 139.39 (2) or 139.83 may be fined not more than \$500 or imprisoned not more than 90 days or both. Such refusal shall be cause for immediate suspension or revocation of permit by the secretary.

(5) Any person who violates any of the provisions of ss. 139.30 to 139.41 or 139.75 to 139.83 for which no other penalty is prescribed shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 10 days nor more than 90 days or both.

(6) Any person who violates any of the rules of the department shall be fined not less than \$100 nor more than \$500 or be imprisoned not more than 6 months or both.

(7) In addition to the penalties imposed for violation of ss. 139.30 to 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any person convicted shall be automatically revoked and he or she shall not be granted another permit for a period of 2 years following such revocation.

(8) Penalties for violation of s. 139.321 (1) shall be as follows:

(a) If the number of cigarettes does not exceed 6,000, a fine of not more than \$200 or imprisonment for not more than 6 months or both.

(b) If the number of cigarettes exceeds 6,000 but does not exceed 36,000, a fine of not more than \$1,000 or imprisonment for not more than one year in the county jail or both.

(c) If the number of cigarettes exceeds 36,000, a fine of not more than \$10,000 or imprisonment for not more than 2 years or both.

(9) Unpaid taxes bear interest at the rate of 12% per year from the due date of the return until paid or deposited with the department, and all refunded taxes bear interest at the rate of 9% per year from the due date of the return to the date on which the refund is certified on the refund rolls.

(10) All nondelinquent payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.

(11) Delinquent cigarette taxes bear interest at the rate of 1.5% per month until paid. The taxes imposed by this subchapter shall become delinquent if not paid:

(a) In the case of a timely filed return, no return filed or a late return, on or before the due date of the return; or

(b) In the case of a deficiency determination of taxes, within 2 months after the date of demand.

(12) If due to neglect an incorrect return is filed, the entire tax finally determined is subject to a penalty of 25% of the tax exclusive of interest or other penalty. A person filing an incorrect return has the burden of proving that the error or errors were due to good cause and not due to neglect.

History: 1981 c. 20; 1983 a. 63; 1985 a. 302; 1987 a. 399; 1989 a. 31; 1993 a. 16.

139.45 Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

History: 1985 a. 302.

SUBCHAPTER III

TOBACCO PRODUCTS TAX

139.75 Definitions. In this subchapter:

(1) “Business” means any trade, occupation, activity or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(2) “Consumer” means any person who has title to or possession of tobacco products in storage for use or other consumption in this state.

(3) “Department” means the department of revenue.

(4) “Distributor” means:

(a) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;

(b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in this state; or

(c) Any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to retailers in this state to be sold by those retailers.

(5) “Manufacturer” means any person who manufactures and sells tobacco products.

(6) “Place of business” means any place where tobacco products are sold, manufactured, stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

(7) “Retail outlet” means each place of business from which tobacco products are sold to consumers.

(8) “Retailer” means any person engaged in the business of selling tobacco products to ultimate consumers.

(9) “Sale” means any transfer, exchange or barter for a consideration. It includes a gift by a person engaged in the business of selling tobacco products for advertising or as a means of evading this subchapter or for any other purpose, and it includes solicitation of orders for, and the sale for, future delivery.

(10) “Storage” means any keeping or retention of tobacco products for use or consumption in this state.

(11) “Subjobber” means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

(12) “Tobacco products” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco products” does not include cigarettes, as defined under s. 139.30 (1).

(13) “Use” means the exercise of any right or power incidental to the ownership of tobacco products.

History: 1981 c. 20; 1985 a. 302.

139.76 Imposition; exceptions. (1) An occupational tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of tobacco products by any person engaged as a distributor of them at the rate of 20% of the manufacturer’s established list price to distributors without diminution by volume or other discounts on domestic products. On products imported from another country the rate of tax is 20% of the amount obtained by adding the manufacturer’s list price to the federal tax, duties and transportation costs to the United States. The tax attaches at the time the tobacco products are received by the distributor in this state.

(2) Tobacco products sold to or by post exchanges of the U.S. armed forces, to or by federally or state-operated veterans hospitals in this state, and tobacco products sold to an interstate carrier of passengers for hire to be resold to bona fide passengers actually being transported and tobacco products sold for shipment outside this state in interstate commerce are not subject to the tax. The tax imposed by sub. (1) and s. 139.78 shall not apply with respect to any tobacco products which under the constitution and laws of the United States may not be taxed by this state.

History: 1981 c. 20; 1983 a. 27; 1989 a. 56.

139.77 Distributors, monthly returns. (1) On or before the 15th day of each month, every distributor with a place of business in this state shall file a return with the department showing the quantity and taxable price of each tobacco product brought, or caused to be brought, into this state for sale; or made, manufactured or fabricated in this state for sale in this state, during the preceding month. Every distributor outside this state shall file a return showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers during the preceding month. Returns shall be made upon forms furnished and prescribed by the department and shall contain other information that the department requires. Each return shall be accompanied by a remittance for the full tax liability shown.

(2) As soon as practicable after any return is filed, the department shall examine each return and correct it, if necessary, according to its best judgment and information. If the department finds that any amount of tax is due from the taxpayer and unpaid, it shall notify the taxpayer of the deficiency, stating that it proposes to assess the amount due together with interest and penalties. If a deficiency disclosed by the department's examination cannot be allocated to one or more particular months, the department shall notify the taxpayer of the deficiency, stating its intention to assess the amount due for a given period without allocating it to any particular months.

(3) If, within 60 days after the mailing of notice of the proposed assessment, the taxpayer files a protest to the proposed assessment and requests a hearing on it, the department shall give notice to the taxpayer of the time and place fixed for the hearing, shall hold a hearing on the protest and shall issue a final assessment to the taxpayer for the amount found to be due as a result of the hearing. If a protest is not filed within 60 days, the department shall issue a final assessment to the taxpayer. In any action or proceeding in respect to the proposed assessment the taxpayer shall have the burden of establishing the incorrectness or invalidity of any final assessment made by the department.

(4) If any taxpayer required to file any return fails to do so within the time prescribed, the taxpayer shall, on the written demand of the department, file the return within 20 days after the mailing of it and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the return, the department shall prepare the return from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the department has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any return or assessment made by the department because of the failure of the taxpayer to make a return.

(5) All taxes are due not later than the 15th day of the month following the calendar month in which they were incurred.

(7) The department may recover the amount of any tax due and unpaid, interest and any penalty in a civil action. The collection of the tax, interest or penalty is not a bar to any prosecution under s. 139.85 (1).

History: 1981 c. 20; 1985 a. 302; 1987 a. 399; 1991 a. 39.

139.78 Use tax. (1) A tax is imposed upon the use or storage by consumers of tobacco products in this state at the rate of 20% of the cost of the tobacco products. The tax does not apply if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are exempt from the tobacco products tax under s. 139.76 (2).

(2) On or before the 15th day of each month, every consumer who during the preceding month has acquired title to or possession for use or storage in this state of tobacco products upon which the tax imposed by s. 139.76 (1) has not been paid shall file a return with the department showing the quantity of tobacco products acquired. The return shall be made upon a form furnished and prescribed by the department and shall contain the information that

the department requires. The return shall be accompanied by a remittance for the full unpaid tax liability.

(3) If any return is not filed within the time specified in this section, a penalty of 5% of the tax, with an additional 5% for each additional 30 days or fraction thereof up to a maximum of 25% is imposed, but the penalty for failing to file timely shall not be less than \$10. The department may for good cause shown extend the time for filing the return without penalty.

(4) Sections 139.30 to 139.44 relating to enforcement of the excise tax imposed by s. 139.31 apply to enforcement of the use tax imposed by this section.

History: 1981 c. 20; 1985 a. 332; 1987 a. 312 s. 17; 1991 a. 39.

139.79 Permits; distributor; subjobber. (1) No person may engage in the business of a distributor or subjobber of tobacco products at any place of business without first having obtained a permit from the department to engage in that business at such place. Every application for a permit shall be made on a form prescribed by the department, and the application form shall require the information that is necessary to administer this section.

(2) Section 139.34 (1) (b) to (f), (4) and (9) applies to the permits under this section.

(3) Any person holding a cigarette distributor permit under s. 139.34 may obtain a tobacco products distributor permit at no charge, and any person holding a cigarette jobber permit under s. 139.34 may obtain a tobacco products subjobber permit at no charge.

History: 1981 c. 20; 1983 a. 27; 1989 a. 56; 1995 a. 27.

139.80 Refunds, credits. If tobacco products upon which the tax has been reported and paid are shipped or transported by the distributor to consumers to be consumed outside the state or to retailers or subjobbers outside the state to be sold by those retailers or subjobbers outside the state or are returned to the manufacturer by the distributor or destroyed by the distributor, the tax may be refunded or credited to the distributor, as prescribed by the department. Any overpayment of the tax imposed under s. 139.78 may be refunded or credited to the taxpayer, as prescribed by the department.

History: 1981 c. 20.

139.81 Salespersons. (1) No person may sell or take orders for tobacco products for resale in this state for any manufacturer or permittee without first obtaining a salesperson's permit from the department. No manufacturer or permittee shall authorize any person to sell or take orders for tobacco products in this state without first having such person secure a salesperson's permit. The fee for the permit is \$2. Each application for a permit shall disclose the name and address of the employer and shall remain effective only while the salesperson represents the named employer. If the salesperson is thereafter employed by another manufacturer or permittee the salesperson shall obtain a new salesperson's permit. Each manufacturer and permittee shall notify the department within 10 days after the resignation or dismissal of any salesperson holding a permit.

(2) Section 139.34 (1) (b) to (e) applies to the permits under this section.

(3) Any person holding a cigarette salesperson's permit under s. 139.37 may obtain a tobacco products salesperson's permit at no charge.

History: 1981 c. 20; 1983 a. 27.

139.82 Records, returns. (1) Every manufacturer located out of the state shall keep records of all sales of tobacco products shipped into this state. Every manufacturer located in this state shall keep records of production, sales and withdrawals of tobacco products. Every distributor shall keep records of purchases and sales of tobacco products. Every subjobber shall keep records of all purchases and disposition of tobacco products. Every warehouse operator shall keep records of receipts and withdrawals of tobacco products. All records shall be accurate and complete and be kept in a manner prescribed by the department. These records

shall be preserved on the premises described in the permit in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the department.

(2) (a) Except as provided in par. (b), every permittee shall render a true and correct invoice of every sale of tobacco products at wholesale and shall on or before the 15th day of each calendar month make a verified report to the department of all tobacco products purchased, sold, received, warehoused or withdrawn during the preceding calendar month.

(b) The department may allow any subjobber permittee who does not sell tobacco products, except for those on which the tax under this subchapter is paid, to file a quarterly report. The quarterly report shall be filed on or before the 15th day of the next month following the close of each calendar quarter. The report shall specify the value of tobacco products purchased and sold during the preceding calendar quarter.

(3) The department shall prescribe reasonable and uniform methods of keeping records and making reports and shall prescribe and furnish the necessary report forms.

(4) If the department finds that the records of any permittee are not kept in the prescribed form or are in such condition that an unusual amount of time is required to determine from them the amount of tax due, the department shall give notice of such fact to that permittee and require that the records be revised and kept in the prescribed form. If that permittee fails to comply within 30 days that permittee shall pay the expenses reasonably attributable to a proper examination and tax determination at the rate of \$30 per day of each auditor. The department shall send a bill for expenses and the permittee shall pay the amount of the bill within 10 days.

(5) If any permittee fails to file a report when due the permittee shall be required to pay a late filing fee of \$10. A report shall be considered filed in time if it is mailed in a properly addressed envelope with first class postage prepaid, if the envelope is officially postmarked on the date due, and if the report is actually received by the department within 5 days of the due date.

(6) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a tobacco product tax return, report, schedule, exhibit or other document or from an audit report pertaining to the same.

History: 1981 c. 20; 1987 a. 312; 1991 a. 39.

139.83 Administration and enforcement. Sections 139.355, 139.365, 139.39 and 139.40, as they apply to the tax under subch. II, apply to the administration and enforcement of this subchapter.

History: 1981 c. 20; 1985 a. 302; 1991 a. 39.

139.832 Police powers. The duly authorized employees of the department have all necessary police powers to prevent violations of this subchapter.

History: 1989 a. 31.

139.835 Timely filing. The provisions on timely filing under s. 71.80 (18) apply to the tax under this subchapter.

History: 1985 a. 302; 1987 a. 312 s. 17.

139.84 Bonds. Section 78.11, as it applies to suppliers of motor vehicle fuel, applies to persons liable for the tax under this subchapter.

History: 1985 a. 302; 1995 a. 408.

139.85 Interest and penalties. (1) The interest and penalties under s. 139.44 (2) to (7) and (9) to (12) apply to this subchapter.

(2) If a person fails to file any return required under s. 139.77 (1) by the due date, unless the person shows that that failure was due to reasonable cause and not due to neglect, the department shall add to the amount of tax required to be shown on that return 5% of the amount of the tax if the failure is for not more than one

month and an additional 5% of the tax for each additional month or fraction of a month during which the failure continues, but not more than 25% of the tax. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of tax that is paid on or before the due date and by the amount of any credit against the tax that may be claimed on the return.

History: 1981 c. 20; 1987 a. 399; 1991 a. 39.

139.86 Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

History: 1985 a. 302.

SUBCHAPTER IV

TAX ON CONTROLLED SUBSTANCES

139.87 Definitions. In this subchapter:

(2) “Dealer” means a person who in violation of ch. 961 possesses, manufactures, produces, ships, transports, delivers, distributes, imports, sells or transfers to another person more than 42.5 grams of material containing tetrahydrocannabinols, more than 5 plants containing tetrahydrocannabinols, more than 14 grams of mushrooms containing psilocin or psilocybin, more than 100 milligrams of any material containing lysergic acid diethylamide or more than 7 grams of any other schedule I or schedule II controlled substance or of a controlled substance analog of a schedule I or schedule II controlled substance. “Dealer” does not include a person who lawfully possesses a controlled substance or controlled substance analog.

(3) “Department” means the department of revenue.

(5) “Schedule I controlled substance” means a substance included in s. 961.14.

(6) “Schedule II controlled substance” means a substance included in s. 961.16.

(7) “Tetrahydrocannabinols” means a substance included in s. 961.14 (4) (t).

History: 1989 a. 122; 1991 a. 39, 208; 1995 a. 448.

139.88 Imposition. There is imposed on dealers, upon acquisition or possession by them in this state, an occupational tax at the following rates:

(1) Per gram or part of a gram of material containing tetrahydrocannabinols, whether pure or impure, measured when in the dealer’s possession, \$3.50.

(1d) Per plant containing tetrahydrocannabinols, regardless of weight, counted when in the dealer’s possession, \$1,000.

(1g) Per gram or part of a gram of mushrooms or parts of mushrooms containing psilocin or psilocybin, whether pure or impure, measured when in the dealer’s possession, \$10.

(1r) Per 100 milligrams or part of 100 milligrams of any material containing lysergic acid diethylamide, whether pure or impure, measured when in the dealer’s possession, \$100.

(2) Per gram or part of a gram of other schedule I controlled substances or schedule II controlled substances, whether pure or impure, measured when in the dealer’s possession, \$200.

History: 1989 a. 122; 1991 a. 39, 189, 208; 1995 a. 448.

Constitutionality of ss. 139.87 to 139.96 upheld. *State v. Heredia*, 172 W (2d) 479, 493 NW (2d) 404 (Ct. App. 1992).

139.89 Proof of payment. The department shall create a uniform system of providing, affixing and displaying stamps, labels or other evidence that the tax under s. 139.88 has been paid. Stamps or other evidence of payment shall be sold at face value. No dealer may possess any schedule I controlled substance or schedule II controlled substance unless the tax under s. 139.88 has been paid on it, as evidenced by a stamp or other official evidence issued by the department. The tax under this subchapter is due and payable immediately upon acquisition or possessing of the sched-

ule I controlled substance or schedule II controlled substance in this state, and the department at that time has a lien on all of the taxpayer's property. Late payments are subject to interest at the rate of 1% per month or part of a month. No person may transfer to another person a stamp or other evidence of payment.

History: 1989 a. 122; 1991 a. 39.

The affix and display requirement of this section does not unconstitutionally infringe the right against self-incrimination. The state is precluded from using any information gained as a result of a tax stamp purchaser's compliance with the statute, including the presence of an affixed tax stamp, as evidence in a subsequent drug prosecution. *State v. Hall*, 196 W (2d) 850, 540 NW (2d) 219 (Ct. App. 1995).

139.90 No immunity. Acquisition of stamps or other evidence that the tax under s. 139.88 has been paid does not create immunity for a dealer from criminal prosecution.

History: 1989 a. 122.

139.91 Confidentiality. The department may not reveal facts obtained in administering this subchapter, except that the department may publish statistics that do not reveal the identities of dealers. Dealers may not be required to provide any identifying information in connection with the purchase of stamps. No information obtained by the department may be used against a dealer in any criminal proceeding unless that information has been independently obtained, except in connection with a proceeding involving possession of schedule I controlled substances or schedule II controlled substances on which the tax has not been paid or in connection with taxes due under s. 139.88 from the dealer.

History: 1989 a. 122; 1991 a. 39.

The state is precluded from using any information gained as a result of a tax stamp purchaser's compliance with the statute, including the presence of an affixed tax stamp, as evidence in a subsequent drug prosecution. *State v. Hall*, 196 W (2d) 850, 540 NW (2d) 219 (Ct. App. 1995).

139.92 Examination of records. For the purposes of determining the amount of tax that should have been paid, determining whether or not the dealer should have paid taxes or collecting any taxes under s. 139.88, the department may examine, or cause to be examined, any books, papers, records or memoranda that may be relevant to making those determinations, whether the books, papers, records or memoranda are the property of or in the possession of the dealer or another person. The department may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records or memoranda by persons required to attend, take testimony on matters material to the determination, issue subpoenas and administer oaths or affirmations.

History: 1989 a. 122.

139.93 Appeals, presumption, administration. (1) The taxes, penalties and interest under this subchapter shall be assessed, collected and reviewed as are income taxes under ch. 71.

(2) If the department finds that the collection of the tax under this subchapter is jeopardized by delay, the department may issue, in person or by registered mail to the last-known address of the taxpayer, a notice of its intent to proceed under this subsection, may make a demand for immediate payment of the taxes, penalties and interest due and may proceed by the methods under s. 71.91 (5) and (6). If the taxes, penalties and interest are not immediately paid, the department may seize any of the taxpayer's assets. Immediate seizure of assets does not nullify the taxpayer's right to a hearing on the department's determination that the collection of the assessment will be jeopardized by delay, nor does it nullify the taxpayer's right to post a bond. Within 5 days after giving notice of its intent to proceed under this subsection, the department shall, by mail or in person, provide the taxpayer in writing with its reasons for proceeding under this subsection. The warrant of the department shall not issue and the department may not take other action to collect if the taxpayer within 10 days after the notice of intent to proceed under this subsection is given furnishes

a bond in the amount, not exceeding double the amount of the tax, and with such sureties as the department of revenue approves, conditioned upon the payment of so much of the taxes as shall finally be determined to be due, together with interest thereon. Within 20 days after notice of intent to proceed under this subsection is given by the department of revenue, the person against whom the department intends to proceed under this subsection may appeal to the department the department's determination that the collection of the assessment will be jeopardized by delay. Any statement that the department files may be admitted into evidence and is prima facie evidence of the facts it contains. Taxpayers may appeal adverse determinations by the department to the circuit court for Dane county.

(3) The taxes and penalties assessed by the department are presumed to be valid and correct. The burden is on the taxpayer to show their invalidity or incorrectness.

(4) The department may request the department of administration to sell, by the methods under s. 125.14 (2) (f), all assets seized under sub. (2).

(5) No court may issue an injunction to prevent or delay the levying, assessment or collection of taxes or penalties under this subchapter.

(6) The department shall enforce, and the duly authorized employes of the department have all necessary police powers to prevent violations of, this subchapter.

History: 1989 a. 122.

139.94 Refunds. If the department is determined to have collected more taxes than are owed, the department shall refund the excess and interest at the rate of 0.75% per month or part of a month when that determination is final. If the department has sold property to obtain taxes, penalties and interest assessed under this subchapter and those taxes, penalties and interest are found not to be due, the department shall give the former owner the proceeds of the sale when that determination is final.

History: 1989 a. 122.

139.95 Penalties. (1) Any dealer who possesses a schedule I controlled substance or schedule II controlled substance that does not bear evidence that the tax under s. 139.88 has been paid shall pay, in addition to the tax under s. 139.88, a penalty equal to the tax due. The department shall collect penalties under this subchapter in the same manner as it collects the tax under this subchapter.

(2) A dealer who possesses a schedule I controlled substance or schedule II controlled substance that does not bear evidence that the tax under s. 139.88 has been paid may be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

(3) Any person who falsely or fraudulently makes, alters or counterfeits any stamp or procures or causes the same to be done or who knowingly utters, publishes, passes or tenders as true any false, altered or counterfeit stamp or who affixes a counterfeit stamp to a schedule I controlled substance or schedule II controlled substance or who possesses a schedule I controlled substance or schedule II controlled substance to which a false, altered or counterfeit stamp is affixed may be fined not more than \$10,000 or imprisoned for not less than one year nor more than 10 years or both.

History: 1989 a. 122; 1991 a. 39.

Possession of a controlled substance with intent to deliver under s. 161.41 is not a lesser included offense of a tax stamp violation under s. 139.95. *State v. Dowe*, 197 W (2d) 848, 541 NW (2d) 218 (Ct. App. 1995).

139.96 Use of revenue. If taxes, penalties and interest are collected under this subchapter as a result of an arrest, the department of revenue shall pay the taxes, penalties and interest to the state or local law enforcement agency that made the arrest associated with the revenue.

History: 1989 a. 122; 1993 a. 16.