

1999 ASSEMBLY BILL 501

October 5, 1999 – Introduced by Representatives DUFF, WARD, GUNDERSON, KLUSMAN, STONE, SUDER, KESTELL, ALBERS, HAHN, WALKER, KELSO, NASS, F. LASEE and HUEBSCH, cosponsored by Senators ROSENZWEIG, RUDE, DARLING and HUELSMAN. Referred to Committee on State Affairs.

1 **AN ACT to repeal** 139.32 (2m) and 139.323; and **to amend** 20.835 (2) (ep),
2 139.325, 139.33 (3), 139.44 (8) (a), 139.44 (8) (b) and 139.44 (8) (c) of the statutes;
3 **relating to:** cigarette tax refunds to American Indian tribes, the cigarette use
4 tax, the unlawful possession of cigarettes and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, an excise tax is imposed on the sale of cigarettes. The department of revenue (DOR) may enter into an agreement with an American Indian tribe to refund to the tribe all of the cigarette excise tax collected on cigarettes sold on the tribe's reservation to members of the tribe residing on the reservation. Under current law, DOR is also required to refund to an American Indian tribe 70% of the cigarette excise tax collected on cigarettes sold on the tribe's reservation to purchasers who are not members of the tribe.

Under this bill, DOR shall refund all of the cigarette excise tax collected on cigarettes sold on an American Indian tribe's reservation to members of the tribe residing on the reservation, if, at the time of purchase, the purchaser of cigarettes provides to the retailer an identification card issued by the tribe residing on the reservation that indicates that the purchaser is a member of the tribe. Under the bill, DOR does not refund any of the cigarette excise tax collected on cigarettes sold on an American Indian tribe's reservation to purchasers who are not members of the tribe or who are members of the tribe but do not reside on the reservation.

Under current law, a use tax is imposed on the use of cigarettes in this state, if the excise tax has not been paid on such cigarettes. If the use tax is not paid within

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15 days from the date on which a person brings cigarettes into this state, that person must pay, along with the use tax, a penalty of \$25 for every 200 cigarettes that the person brings into the state. Under the bill, if the use tax is not paid within 15 days from the date on which a person brings cigarettes into this state, that person must pay, along with the use tax, a penalty of \$100 for every 200 cigarettes that the person brings into the state.

Under current law, tax stamps must be affixed to each package of cigarettes that is sold in this state. A person who possesses over 400 cigarettes without tax stamps is subject to a fine and imprisonment. The amount of the fine and the term of imprisonment is determined by the number of cigarettes without tax stamps in the person's possession. Under the bill, the amount of the fine and the term of imprisonment is determined by the number of cigarettes without tax stamps in the person's possession, but there are minimum fines for possessing cigarettes without tax stamps and the maximum fines for possessing cigarettes without tax stamps are increased.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.835 (2) (ep) of the statutes is amended to read:

2 20.835 **(2)** (ep) *Cigarette tax refunds.* A sum sufficient to pay refunds under ss.
3 ~~139.323~~ and s. 139.325.

4 **SECTION 2.** 139.32 (2m) of the statutes is repealed.

5 **SECTION 3.** 139.323 of the statutes is repealed.

6 **SECTION 4.** 139.325 of the statutes is amended to read:

7 **139.325 Agreements with Indian tribes.** The department ~~may~~ shall enter
8 into agreements with Indian tribes to provide for the refunding of the cigarette tax
9 imposed under s. 139.31 (1) on cigarettes sold on reservations to enrolled members
10 of the tribe residing on the tribal reservation. The department shall provide refunds
11 under this section if, at the time of purchase, the purchaser of cigarettes sold on a
12 tribal reservation provides to the retailer an identification card issued by the tribe

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1 residing on the tribal reservation that indicates that the purchaser is an enrolled
2 member of the tribe.

3 **SECTION 5.** 139.33 (3) of the statutes is amended to read:

4 139.33 **(3)** No person other than a licensed distributor may import into this
5 state more than 400 cigarettes on which the excise tax imposed by s. 139.31 has not
6 been paid and the container of which does not bear proper stamps. Within 15 days,
7 any such person importing cigarettes shall file a declaration of such cigarettes
8 imported and shall remit therewith the tax on such cigarettes imposed by this
9 section. Members of the armed forces shall not be required to report or pay the tax
10 on cigarettes in their possession if such cigarettes are issued to them by the U.S.
11 government or any of its subdivisions or were purchased in any armed forces post
12 exchange or service store. If the use tax imposed by this section is not paid when due,
13 it shall become delinquent and the person liable for it shall pay, in addition, a penalty
14 of ~~\$25~~ \$100 for each 200 cigarettes. Interest on the delinquent tax and penalty shall
15 accrue at the rate of 1.5% per month or each fraction of a month from the date the
16 tax became due until paid.

17 **SECTION 6.** 139.44 (8) (a) of the statutes is amended to read:

18 139.44 **(8)** (a) If the number of cigarettes does not exceed 6,000, a fine of not less
19 than \$100 nor more than ~~\$200~~ \$500 or imprisonment for not more than 6 months or
20 both.

21 **SECTION 7.** 139.44 (8) (b) of the statutes is amended to read:

22 139.44 **(8)** (b) If the number of cigarettes exceeds 6,000 but does not exceed
23 36,000, a fine of not less than \$250 nor more than ~~\$1,000~~ \$1,500 or imprisonment for
24 not more than one year in the county jail or both.

