LRB-3396

1999 DRAFTING REQUEST

Bill

Received: **08/09/1999**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Marc Duff (608) 266-1190**

By/Representing: **marsha**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Alt. Drafters:

Subject: **Tax - cigarettes and t.p.**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

cigarette tax refunds on cigarettes sold to tribal members if certified as tribal member; eliminate refund for non-member sales

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	jkreye 08/13/1999 jkreye 09/02/1999	jgeller 08/17/1999 jgeller 09/02/1999	mclark 08/18/1999	_____ _____ _____ _____	lrb_docadmin 08/18/1999		State
/2	jkreye 09/15/1999	jgeller 09/16/1999	martykr 09/07/1999	_____ _____	lrb_docadmin 09/07/1999	lrb_docadmin 09/08/1999	State
/3			kfollet 09/16/1999	_____ _____	lrb_docadmin 09/16/1999	lrb_docadmin 09/16/1999	State

FE Sent For: 09/08/1999. /2 09-16-99 "/3"

<END>

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	jkreye 09/02/1999	jgeller 09/02/1999		_____ _____			
/2		/3 9/16 jg	martykr 09/07/1999	_____ _____	lrb_docadmin 09/07/1999	lrb_docadmin 09/08/1999	State

Kjf 9/16 lgf/jf 9/16

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/2			martykr 09/07/1999	_____ _____	lrb_docadmin 09/07/1999		State

FE Sent For:

<END>

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/1	jkreye 08/13/1999	jgeller 08/17/1999	mclark 08/18/1999	_____ _____	lrb_docadmin 08/18/1999		State

/2 9/1 jlg kmg/7 kf 9 kmg/7

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **08/09/1999**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Marc Duff (608) 266-1190**

By/Representing: **marsha**

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Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	jkreye	/, 8/17 JG	MRC 8/18	MRC/KF 8/18			

FE Sent For:

<END>

8-6-99

STATE OF WISCONSIN – **LEGISLATIVE REFERENCE BUREAU** – LEGAL SECTION
(608-266-3561)

6-1190 —— Marsha — Duff's office (native american)

bill draft → cig. tax refund → offered as amendment to budget

she will send over copy of amendment for my reference → redraft amendment as a bill draft

---

Motion 1177

① eliminate current ~~and pa~~ cig. tax refunds for cigs sold to non tribal members

② allow 100% refund for cigs sold to tribal members if member presents tribal certification to retailer

③ penalties for delinquent tax payments

Here's the motion — Thanks! Marsha 6-11-90

Representative Duff

GENERAL FUND TAXES

Refunds of Cigarette Taxes on Sales to Native Americans

Joseph

① repeal 139.323 (check & repeal refs)
② amend 139.325

Motion:

Move to eliminate the current provisions under which the state refunds 70% of cigarette taxes on cigarettes sold by Native American retailers to non-tribal members and 100% of cigarette taxes on sales by Native American retailers to tribal members. Instead, require the Department of Revenue (DOR) to refund 100% of the cigarette tax on sales by Native American retailers to tribal members, if the purchaser of the cigarettes presents an exemption certificate issued by DOR to the retailer indicating that the purchaser is a member of the same tribe as the retailer.

see 139.321 amend 139.44(8)

Provide a penalty on delinquent payment of use taxes on purchases of unstamped cigarettes of $100 for each 200 cigarettes. ③ amend s. 139.33 (3)

In addition, specify that the penalties for unlawfully possessing in excess of 400 cigarettes without properly affixed tax stamps are as follows:

④ amend 139.44(8)(a) to (c)

a. If the number of cigarettes does not exceed 6,000, a fine of at least $100 ~~to~~ but not more than $500 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 at least $250 ~~to~~ but not more than $1,500 or imprisonment for not more than one year or both; and

c. If the number of cigarettes exceeds 36,000, a fine of at least $500 ~~to~~ but not more than $15,000 or imprisonment for not more than two years or both

Specify that these provisions would take effect on January 1, 2000.

Note:

Federal law prohibits states from imposing a cigarette tax on sales from Native American retailers to tribal members. Under current state law, DOR refunds 70% (50% under the bill) of cigarette taxes on sales by Native American retailers to non-tribal members and 100% on sales to tribal members on reservations. The 100% refund is based on estimated per capita consumption of cigarettes by tribal members. In exchange for the refunds, ten of the 11 tribes in Wisconsin have agreed to sell only stamped (taxed) cigarettes. The other tribe sells untaxed cigarettes to tribal

members and taxed cigarettes to non-tribal members. The state only provides a refund of 70% of taxes paid on sales to non-tribal members.

The current 70% refunds to non-tribal members are estimated to cost $8,568,000 in 1999-00 and $8,388,000 in 2000-01. The 100% refunds to tribal members are estimated to cost $952,000 in 1999-00 and $932,000 in 2000-01.

This motion would eliminate the current refund provisions and, instead, allow a 100% refund for sales by Native American retailers to tribal members, if the purchaser of the cigarettes presents an exemption certificate indicating that the purchaser is a member of the same tribe as the retailer.

Current law imposes a use tax on the use of cigarettes in this state by a person who has not paid the tax on such cigarettes that are not exempt from such tax. A penalty of $25 for each 200 cigarettes is imposed if the taxes are not paid within 15 days. This motion would increase the penalty to $100 for each 200 cigarettes.

Current law imposes the following penalties for unlawfully possessing in excess of 400 cigarettes without properly affixed tax stamps:

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

b. If the number of cigarettes exceeds 6,000 but does not exceed 36,000, a fine of a not more than $1,000 or imprisonment for not more than one year or both; and

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

The motion would increase the penalties as described above.

The fiscal effect of this motion depends upon how the tribes would react to the state repealing the current refund provisions. If the tribes continue to sell taxed cigarettes to nontribal members, state expenditures for the 70% refunds would be lower by $4,284,000 GPR in 1999-00 and $8,388,000 GPR in 2000-01. However, if the tribes chose to sell unstamped cigarettes, enforcement difficulties that occurred prior to the current refund arrangement could recur. This could result in reductions in the 30% share of taxes that the state now collects on sales to non-tribal members. Under current law, the 30% state share is estimated at $3.7 million annually, which would be the maximum amount of the loss in general fund revenues if the tribes chose to stop selling taxed cigarettes. However, as it not certain that the tribes would stop selling stamped cigarettes, the potential loss in revenue from the 30% state share of sales to non-tribal members is not included in the estimate.

[Change to Bill: -$12,672,000 GPR]

failed

Motion # 1177

Gard	Y
Porter	Y
Kaufert	Y
Albers	Y
Duff	Y
Ward	Y
Huber	Y
Riley	Y
Burke	Y
Decker	Y
Jauch	N
Moore	N
Shibilski	N
Plache	N
Cowles	N
Panzer	N
Aye	19
Nay	14
Absent	—

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–3396/1
JK:...:...
JG RMR

in 8-13-99

, the cigarette use tax, the unlawful possession of cigarettes

glr.

1 AN ACT ...; **relating to:** cigarette tax refunds to American Indian tribes and
2 providing a penalty.

Under current law,

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. 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 ~~may~~ 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, ~~only~~ if, at the time of purchase, the purchaser of cigarettes provides to the retailer a certificate that indicates that the purchaser is a member of the tribe and resides on the reservation. 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.

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 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:

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

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

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

SECTION 3. 139.323 of the statutes is repealed.

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

139.325 Agreements with Indian tribes. The department ~~may~~ shall 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. The department shall provide refunds under this section if, at the time of purchase, the purchaser of cigarettes sold on a tribal reservation provides to the retailer a certificate, issued and prescribed by the department ~~[illegible]~~, that indicates that the purchaser is an enrolled member of the tribe residing on the tribal reservation.

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

139.33 **(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 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~~ $100 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.

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

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

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

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

SECTION 8. 139.44 (8) (c) of the statutes, as affected by 1997 Wisconsin Act 283, is amended to read:

139.44 (8) (c) ~~If the number of cigarettes exceeds 36,000, a fine of at least $500 but not more than $10,000 $15,000 or imprisonment for not more than 3 years or both.~~

Insert 3 – 24

1 NOTE: NOTE: NOTE: Par. (c) is amended eff. 12–31–99 by 1997 Wis. Act 283 to read: NOTE:
2 (c) If the number of cigarettes exceeds 36,000, a fine of not more than $10,000 or imprisonment for not more than 3 years or both.
History: 1981 c. 20; 1983 a. 63; 1985 a. 302; 1987 a. 399; 1989 a. 31; 1993 a. 16; 1997 a. 27, 283.

3 **SECTION 9. Effective date.**

4 (1) This act takes effect on January 1, 2000.

5 (END)

INSERT 3-24

139.44 (8) (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.

NOTE: Par. (c) is amended eff. 12-31-99 by 1997 Wis. Act 283 to read: $15,000

NO BOLD

(c) If the number of cigarettes exceeds 36,000, a fine of not more than $10,000 or imprisonment for not more than 3 years or both.

plain

less than $500 max

History: 1981 c. 20; 1983 a. 63; 1985 a. 302; 1987 a. 399; 1989 a. 31; 1993 a. 16; 1997 a. 27, 283.

(end ins)

8-31-99

STATE OF WISCONSIN – **LEGISLATIVE REFERENCE BUREAU** – LEGAL SECTION
(608–266–3561)

Marcia at Rep. Duff's office LRB - 3396

use
same procedure as tracking sales of motor vehicle fuel tax to Indian

perhaps use same ID card as with motor vehicle fuel tax?

Marcia is sending over some written materials

part of admin. code? — taxation? — transportation?

Kreye, Joseph

From: Dake, Marsha
Sent: Tuesday, August 31, 1999 5:07 PM
To: Kreye, Joseph
Subject: Rep Duff LRB3396/1

Hi Joe,

Per our phone conversation, Rep Duff would like the bill redrafted based on the current procedure for tracking tax-exempt motor fuel purchases by American Indians. It requires them to present an identification card issued by their tribe in order to be exempt from the fuel tax. The retailer is responsible for checking the ID card and recording the tax-exempt purchase.

Issuance of identification certificates could be cumbersome and costly for the state. Concerns are who is going to pay for the initial issuance, maintenance of the records, and prosecution of false users. Also, the state would be unable to verify that the person asserting the right is, in fact, entitled to do so. The state is not equipped to determine enrollment status, and it would create issues of sovereign rights of the Indians to determine who is enrolled.

Thanks, call if you have questions.

Marsha Dake
Rep Duff's office
6-1190

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3396/1
JK:jlg:mrc

1999 BILL

in 9-2-99

Regen

AN ACT *to repeal* 139.32 (2m) and 139.323; and *to amend* 20.835 (2) (ep), 139.325, 139.33 (3), 139.44 (8) (a), 139.44 (8) (b) and 139.44 (8) (c) of the statutes; **relating to:** cigarette tax refunds to American Indian tribes, the cigarette use 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 ~~a certificate~~ an identification card issued by the tribe residing on the reservation that indicates that the purchaser is a member of the tribe and resides on the reservation. 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.

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 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:

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

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

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SECTION 3. 139.323 of the statutes is repealed.

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

139.325 Agreements with Indian tribes. The department ~~may~~ shall 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. The department shall provide refunds under this section if, at the time of purchase, the purchaser of cigarettes sold on a tribal reservation provides to the retailer ~~a certificate, issued and prescribed by the~~ an identification card issued by the tribe residing on the tribal reservation

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

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.

1 **SECTION 8.** 139.44 (8) (c) of the statutes, as affected by 1997 Wisconsin Act 283,
2 is amended to read:
3 139.44 **(8)** (c) If the number of cigarettes exceeds 36,000, a fine of not less than
4 $500 nor more than ~~$10,000~~ $15,000 or imprisonment for not more than 3 years or
5 both.
6 **SECTION 9. Effective date.**
7 (1) This act takes effect on January 1, 2000.
8 **(END)**

SUBMITTAL FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 09/07/1999

To: Representative Duff

Relating to LRB drafting number: LRB-3396

Topic
cigarette tax refunds on cigarettes sold to tribal members if certified as tribal member; eliminate refund for non-member sales

Subject(s)
Tax - cigarettes and t.p.

1. **JACKET** the draft for introduction _____

   in the **Senate** ____ or the **Assembly** ✓ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

   A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

   If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Joseph T. Kreye, Legislative Attorney
Telephone: (608) 266-2263

NOTE: PLEASE RETURN THIS BILL DRAFT AND THIS TRANSMITTAL SHEET WITH YOUR FISCAL ESTIMATE FORMS

IF THERE IS A FISCAL EFFECT TO THE BILL, PLEASE SUBMIT THE FISCAL ESTIMATE WORKSHEET.

copy to Rep. Duff 10-22-99

FYI only
* Bill is now a "/3"
& intro. as AB 501

TO: **Eng Braun**

Department of Revenue

FROM: Deborah Uecker
Division of Executive Budget and Finance
101 East Wilson Street
Administration Building, 10th Floor
Madison, WI 53707

SUBJECT: Fiscal Estimate - **LRB Number 3396/2**

1999 Bill Number

Please provide the necessary information on fiscal estimate forms and return one copy to

Deborah Uecker, no later than: **15-Sep-99**

If you cannot comply with the above deadline for any reason, please call Deborah at 267-0371.

☒ Provide local government costs.

_____ is responsible for local government costs.

ALSO SENT TO:
Department of Revenue

DATE DOA SENT TO AGENCY:

08-Sep-99

DATE DOA RECEIVED FROM AGENCY:

10-21-99

TO BE COMPLETED BY AGENCY:

Name and phone number of person who prepared the fiscal estimate.

John Stott
(Name)

266-9706
(Phone Number)

PLEASE SEND ORIGINAL COPIES OF THE FORMS THAT CAN BE REPRODUCED.

MEMORANDUM

October 20, 1999

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Yeang-Eng Braun YEB
Department of Revenue

SUBJECT: Technical Memorandum on LRB 3396/2, Relating to Sales of Cigarettes by American Indian Tribes in Wisconsin

The bill would repeal sec. 139.323, eliminating the reference to the requirement for tribal cigarette sales to occur on land that was designated as reservation or trust land prior to January 1, 1983. The Department suggests retaining that date in the statute as a reference point.

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	Chapter 20	Amount	FTE Positions
FY 1999-00			
one-time	s. 20.566 (1)(a)	$ 37,700	
annual	s. 20.566 (1)(a)	$ 48,300	1.5 FTE
FY 2000-01			
annual	s. 20.566 (1)(a)	$162,500	3.0 FTE

If you have any questions regarding this technical memorandum, please contact John Stott at 266-9706; for administrative costs contact Pat Lashore at 266-3347.

YEB:JTS:dls
t:\fsn99-00\js\lrb33962.tec

FISCAL ESTIMATE FORM **1999 Session**

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB # 3396/2
INTRODUCTION #
Admin. Rule #

Subject
Sales of Cigarettes by American Indian Tribes in Wisconsin

Fiscal Effect

State: ☐ No State Fiscal Effect **See Text of Fiscal Note**
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☒ Increase Costs - May be Possible to Absorb Within Agency's Budget ☐ Yes ☒ No
☐ Decrease Costs

Local: ☒ No Local Government Costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ____ ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations
20.566 (1)(a), 20.835 (2)(ep)

Assumptions Used in Arriving at Fiscal Estimate:

Native American Tribes are currently refunded 70% of cigarette taxes paid for sales of stamped cigarettes by authorized tribal retailers. This bill would eliminate the refund based on net cigarette sales of tribal retailers, and replace it with a refund based on actual sales to members of American Indian tribes at tribal retail outlets.

The amendments to s. 139.325 do not give the Department of Revenue the authority to unilaterally reduce or eliminate the refund rate. The bill requires the Department to enter into a new agreement with the tribes in order to implement any changes in the current refund system. Therefore, by itself, this bill has no fiscal effect.

If tribes would agree to fully comply with the proposal, and assuming that sales of cigarettes remain at the FY 1999 levels, cigarette tax refunds from the sale of cigarettes to non-tribal members at tribal retail outlets and elsewhere would decline by an estimated $11 million annually.

This bill would also repeal sec. 139.32 (2m), which would eliminate the need for a tribal stamp on cigarettes sold at Native American smokeshops. This would make it difficult for the Department of Agriculture and the Department of Revenue to enforce the current minimum mark-up requirement for cigarette sales by non-tribal retailers. The distinctive Native American stamp affixed to cigarettes sold by tribal retailers prevents non-tribal retailers from purchasing cigarettes at prices below the minimum mark-up and illegally reselling them. Removing the distinctive stamp requirement would make it harder for both the Department of Revenue and Department of Agriculture to enforce the minimum mark-up requirement and prevent the illegal purchase and resale of tribal cigarettes by non-tribal cigarette retailers. To the extent that such illegal purchases and resale of tribal cigarettes occur, there will be a decline in cigarette tax revenue of an unknown magnitude.

In addition, if tribes agreed to this proposal, the Department would incur one-time development costs of $37,700 and ongoing costs of $48,300 in FY00 and $162,500 in FY01 to counteract opportunities for cigarette tax evasion and related criminal activity.

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue John T. Stott, (608) 266-9706	Yeang-Eng Braun (608) 266-2700 Yeang Eng Braun	10/20/99

FISCAL ESTIMATE WORKSHEET

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

Detailed Estimate of Annual Fiscal Effect

1999 Session

LRB # 3396/2

INTRODUCTION #

Admin. Rule #

Subject

Sales of Cigarettes by American Indian Tribes in Wisconsin

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

$37,700 in one-time development costs

II. Annualized Costs:	**Annualized Fiscal impact on State funds from:**	
A. State Costs by Category	**Increased Costs** FY01	**Decreased Costs**
State Operations - Salaries and Fringe	$ 131,000	$ -
(FTE Position Changes)	(3.0 FTE)	(- FTE)
State Operations-Other Costs	$ 31,500	-
Local Assistance		-
Aids to Individuals or Organizations		- see text
TOTAL State Costs by Category	$ 162,500	$ -
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	$ 162,500	$ - see text
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	$	$ - see text
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	$	$ - see text

NET ANNUALIZED FISCAL IMPACT

	STATE	**LOCAL**
NET CHANGE IN COSTS	$ 162,500 and see text	$
NET CHANGE IN REVENUES	$ see text	$

Agency/Prepared by: (Name & Phone No.)	**Authorized Signature/Telephone No.**	**Date**
Wisconsin Department of Revenue	**Yeang-Eng Braun** Yeang Eng Braun	10/20/99
John T. Stott, (608) 266-9706	**(608) 266-2700**	

9-15-99

Joyce Keogh at Leg. Council 6-3137

changes to 3396/2 → Drafting office
sending the jacket back

1) analysis — change to reflect that no refunds for ag wld to members of tribe who do not reside on reservation

2) p3 l2 delete "residing on the tribal reservation"

(redundant?)

3) effective day — need delay because of 30 day notice requirement for changing agreements with tribes
— first day; 2nd month...

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3396/2
JK:jlg:km

1999 BILL

in 9-15-99

Regen

AN ACT ***to repeal*** 139.32 (2m) and 139.323; and ***to amend*** 20.835 (2) (ep), 139.325, 139.33 (3), 139.44 (8) (a), 139.44 (8) (b) and 139.44 (8) (c) of the statutes; **relating to:** cigarette tax refunds to American Indian tribes, the cigarette use 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 ~~and resides on the reservation.~~ 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.

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

or who are members of the tribe but do not reside on the reservation

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

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

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.

1 **SECTION 8.** 139.44 (8) (c) of the statutes, as affected by 1997 Wisconsin Act 283,
2 is amended to read:

3 139.44 **(8)** (c) If the number of cigarettes exceeds 36,000, a fine of not less than
4 $500 nor more than ~~$10,000~~ $15,000 or imprisonment for not more than 3 years or
5 both.

6 **SECTION 9. Effective date.**

7 (1) This act takes effect on ~~January 1, 2000.~~
8 **(END)**

the first day of the 2nd month beginning after publication