

1999 DRAFTING REQUEST

Bill

Received: 10/22/98

Received By: shoveme

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 6-8593

By/Representing: Holden

This file may be shown to any legislator: NO

Drafter: dykmapj

May Contact:

Alt. Drafters:

Subject: Tax - cigarettes and t.p.

Extra Copies: MES JK

Topic:

DOA:.....Holden - Cigarette and tobacco product taxes for Native American tribes

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	shoveme 11/10/98			_____			S&L
/1	dykmapj 01/21/99	wjackson 01/22/99	hhagen 01/22/99	_____	gretskl 01/22/99		S&L

FE Sent For:

<END>

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1?	shoveme	1 WLj 1/22					
		1 jlg 1/22	1/22	1/22			

FE Sent For:

<END>

Wisconsin Department of Revenue
Income, Sales & Excise Division
February 23, 1998

Cigarette and tobacco
products taxes for
Native Americans

TITLE: Cigarette and Tobacco Products Taxes for Native Americans

DESCRIPTION OF CURRENT LAW AND PROBLEM:

A. Cigarette Tax

Under current law, the cigarette tax from sales made on Native American reservations to non-Native Americans is shared between the State and Tribe. The tax is split 70/30 with 70% going to the Native American Tribal Council, and 30% being kept by the State.

The cigarette tax revenue sharing was negotiated in the early 1980's as a means of promoting Native American economic development. In addition, it was seen as a practical way to resolve the problem of black market cigarettes being sold on reservations.

Since the 1980's, Native American gaming started and changed the economic standing of the Tribes. The 70% revenue sharing is now seen as unnecessarily generous by competing non-Native American retailers. However, the cigarette tax rebates continue to be relied on by the Tribes to fund their governmental services.

B. Tobacco Products Tax

Under current law, the tobacco products tax is an occupational tax imposed on distributors of tobacco products (for example, cigars, pipe tobacco, and chewing tobacco). There is a corresponding use tax imposed on the consumer if the tax has not been paid by the distributor.

All eleven Wisconsin Native American Tribes dispute whether the tobacco products tax applies to products sold on reservations to non-Native Americans. The tax is not currently being collected for these sales.

One issue the Tribes raised is the legal incidence of the tax. In general, the State is preempted from collecting a tax where the incidence falls on a Native American on his or her reservation. However, if the incidence falls on the ultimate non-Native American consumer, the Tribe may be required to collect the tax.

Another concern of both the Tribes and the State, is that of black market tobacco products. There is evidence that problems will arise unless there is Tribal-State cooperation for enforcing the tax.

RECOMMENDATION FOR ACTION:

For the cigarette tax, change the 70% revenue sharing percentage to 50%. The new percentage will be used in negotiating new tax agreements with Tribes.

For the tobacco products tax, make the following changes:

1. Amend section 139.76(1), 1995-97 Wis. Stats., to change the imposition language. The legal incidence of the tax should fall on the consumer, rather than the Native American distributor.
2. Create statutory language that allows the Department to refund 50% of the prepaid tobacco products tax, similar to the cigarette tax. The refund will apply to tax collected with respect to sales made on reservations to non-Native Americans.
3. Create language that allows the Department to enter into agreements with Native American Tribes to refund tobacco products tax paid by Native Americans purchasing on their reservation. (The State is preempted by federal law from collecting this tax.) This provision is necessary if the tax is prepaid by the distributor, and the product is later sold on a reservation to a Native American.
4. Create language that allows the Department to inspect the business records of any retailer doing business on a reservation.
5. Create a penalty that may be applied to tobacco products distributors who do not collect and remit the tax ~~from Native American retailers.~~

Jh. N. White 73556

FISCAL/ADMINISTRATIVE IMPACT:

The revenue impact of changing the cigarette tax refund percentage from 70% to 50% is estimated to be \$3 million annually.

The revenue impact of collecting the tobacco products tax from on-reservation sales to non-Native Americans is estimated to be \$500,000 annually. 50% of that amount would be refunded to Native Americans.

A small administrative impact is expected for the refund mechanism of the tobacco products tax.

DRAFTING INSTRUCTIONS:

The tobacco products tax 50% refund should have similar language and conditions to the cigarette tax refund:

1. Define "enrolled member," "Indian tribe," and "reservation" in s. 139.75, Wis. Stats.
2. Amend s. 139.76 to change the tax from an occupational tax to an excise tax. Also, add that the tax "shall be passed on to the ultimate consumer of the tobacco products."
3. Create: "The department shall refund 50% of the taxes collected under s. 139.76(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 in 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 tobacco products 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 tobacco products to another retailer or to a subjobber."
4. Follow language similar to the cigarette tax language when creating authority to enter into agreements, inspection authority, and a penalty for distributors.

EFFECTIVE DATE OR INITIAL APPLICABILITY:

First day of the second month after publication.

PERSON TO CONTACT:

Lynn Williamson (608) 267-5190

Chuck Zettler *lwillia1@mail.state.wi.us*

PREPARED BY:

Lynn Williamson

1-8985

Dykman, Peter

From: LWILLIA1@mail.state.wi.us
Sent: Thursday, January 21, 1999 3:28 PM
To: Dykman, Peter
Subject: RE: Definition of tribe

Yes, amend the definition as you described- to add the words "American" before Indian and tribe "or band." Your new definition is more accurate.

John Nordlie, 267-3556, is analyzing the legislation draft you sent this morning. He said he would get back to you today.

From: PeterDykman
To: LWILLIA1; 'lwillia1@mail.state.wi.us'
Subject: Definition of tribe
Date: Thursday, January 21, 1999 11:49AM

<<File Attachment: X.TXT>>



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0619/1

PJD.../.....

wlj
+
jlg

DOA:.....Holden – Cigarette and tobacco product taxes for Native American tribes

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Don't Gen Cat

1 AN ACT [/]; relating to: the refund to Indian tribes of cigarette taxes collected in
2 sales on reservations or trust lands, changing the tobacco products tax from an
3 occupational tax to an excise tax, making an appropriation and providing a
4 penalty. ✓

Analysis by the Legislative Reference Bureau

TAXATION ✓

OTHER TAXATION ✓

This bill changes the tobacco products tax from an occupational tax to an excise tax.

The bill permits the department of revenue (DOR) ✓ to enter into agreements with Indian tribes to provide for the refunding of the tobacco products tax imposed on tobacco products sold on reservations to enrolled members of the tribe residing on the tribal reservation. In addition, DOR is required to refund 50% of the taxes collected 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. These ^{DOR} provisions parallel existing ^{authority} of DOR in regard to cigarette taxes.

This bill also reduces from 70% to 50% the percentage of cigarette tax revenue collected in sales on reservations or trust lands that is refunded to Indian tribes.

For further information see the *state and local* 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 and tobacco product tax refunds*. A sum sufficient to
3 pay refunds under ss. 139.323, and 139.325, 139.803 and 139.805.

History: 1971 c. 125 ss. 192 to 195, 521; 1971 c. 215; 1973 c. 90, 158, 333; 1975 c. 39; 1975 c. 372 s. 41; 1975 c. 424; 1977 c. 29, 31, 313, 418, 447; 1979 c. 34 ss. 637m to 643m, 2102 (46) (d); 1979 c. 221; 1979 c. 329 s. 25 (1); 1979 c. 350 s. 27 (1); 1981 c. 1, 20, 93, 317; 1983 a. 2 ss. 1, 12; 1983 a. 27 ss. 489m, 490m, 2202 (45); 1985 a. 29, 41, 205; 1987 a. 27 ss. 473 to 474r, 476; 1987 a. 92; 1987 a. 312 s. 17; 1987 a. 323, 328, 399, 411, 422; 1989 a. 31 ss. 551 to 557m, 564m; 1989 a. 56 s. 259; 1989 a. 336; 1991 a. 37; 1991 a. 39 ss. 250m, 653m to 659m; 1991 a. 225, 269; 1993 a. 16, 263; 1995 a. 27, 56, 209, 417; 1997 a. 27, 237.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 SECTION 2. 139.30 (5) of the statutes is amended to read:
5 139.30 (5) "Indian tribe" means a federally recognized American Indian tribe
6 or band in this state.

History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482; 1997 a. 27.

7 SECTION 3. 139.323 (intro.) of the statutes is amended to read:

8 **139.323 Refunds to Indian tribes.** (intro.) The department shall refund
9 ~~70%~~ 50% of the taxes collected under s. 139.31 (1) in respect to sales on reservations
10 or trust lands of an Indian tribe to the tribal council of the tribe having jurisdiction
11 over the reservation or trust land on which the sale is made if all the following
12 conditions are fulfilled:

13 SECTION 4. 139.75 (4d) of the statutes is created to read:

14 (B) 139.75 (4d) "Enrolled member" has the meaning given in s. 139.30 (4).

15 SECTION 5. 139.75 (4p) of the statutes is created to read:

16 (B) 139.75 (4p) "Indian tribe" has the meaning given in s. 139.30 (5).

17 SECTION 6. 139.75 (6m) of the statutes is created to read:

18 (B) 139.75 (6m) "Reservation" has the meaning given in s. 139.30 (9).

1 **SECTION 7.** 139.76 (1) of the statutes is amended to read:

2 139.76 (1) An occupational excise tax is imposed upon the sale, offering or
3 exposing for sale, possession with intent to sell or removal for consumption or sale
4 or other disposition for any purpose of tobacco products by any person engaged as a
5 distributor of them at the rate of 20% of the manufacturer's established list price to
6 distributors without diminution by volume or other discounts on domestic products.
7 On products imported from another country the rate of tax is 20% of the amount
8 obtained by adding the manufacturer's list price to the federal tax, duties and
9 transportation costs to the United States. The tax attaches at the time the tobacco
10 products are received by the distributor in this state. The tax shall be passed on to
11 the ultimate consumer of the tobacco products. All tobacco products received in this
12 state for sale or distribution within this state, except tobacco products actually sold
13 as provided in sub. (2), shall be subject to such tax.

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

14 **SECTION 8.** 139.76 (2) of the statutes is amended to read:

15 139.76 (2) Tobacco products sold to or by post exchanges of the U.S. armed
16 forces, to or by federally or state-operated veterans hospitals in this state, and
17 tobacco products sold to an interstate carrier of passengers for hire to be resold to
18 bona fide passengers actually being transported and tobacco products sold for
19 shipment outside this state in interstate commerce are not subject to the tax. The
20 tax imposed by sub. (1) and s. 139.78 shall not apply with respect to any tobacco
21 products which under the constitution and laws of the United States may not be
22 taxed by this state.

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

23 **SECTION 9.** 139.803 of the statutes is created to read:

88

1 **139.803 Refunds to Indian tribes.** The department shall refund 50% of the
2 taxes collected under s. 139.76 (1) in respect to sales on reservations or trust lands
3 of an Indian tribe to the tribal council of the tribe having jurisdiction over the
4 reservation or trust land on which the sale is made if all the following conditions are
5 fulfilled:

6 (1) The tribal council has filed a claim for the refund with the department.

7 (2) The tribal council has approved the retailer.

8 (3) The land on which the sale occurred was designated a reservation or trust
9 land on or before January 1, 1983.

10 (4) The tobacco products were not delivered by the retailer to the buyer by
11 means of a common carrier, a contract carrier or the U.S. postal service.

12 (5) The retailer has not sold the tobacco products to another retailer or to a
13 subjobber.

14 **SECTION 10.** 139.805 of the statutes is created to read:

15 **139.805 Agreements with Indian tribes.** The department may enter into
16 agreements with Indian tribes to provide for the refunding of the tobacco products
17 tax imposed under s. 139.76 (1) on tobacco products sold on reservations to enrolled
18 members of the tribe residing on the tribal reservation.

19 **SECTION 11.** 139.82 (7) of the statutes is created to read:

20 139.82 (7) The department may inspect the business records of any retailer
21 doing business on a reservation or on an Indian tribe's trust land.

22 **SECTION 12.** 139.82 (8) of the statutes is created to read:

23 139.82 (8) Each distributor shall collect and remit the ^{excise} tax imposed by s. 139.76

24 (1) on tobacco products, but not exempt from the tobacco products tax under s. 139.76

25 (2), with the reports required to be filed under this section.

1 SECTION 13. 139.85 (1) of the statutes is amended to read:

2 139.85 (1) The interest and penalties under s. 139.44 (2) to (7) and (9) to (12)
3 apply to this subchapter. In addition, a person who violates s. 139.82 (8) shall be fined
4 not less than \$1,000 nor more than \$5,000 or imprisoned ^{for} not less than 90 days nor
5 more than ^{one} ~~more~~ year or both.

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

7 SECTION 9343. Initial applicability; revenue.

8 (1) REFUND TO INDIAN TRIBES OF CIGARETTE TAXES. The treatment of section
9 139.323 (intro.) of the statutes first applies to taxes imposed on the first day of the
10 2nd month commencing after the effective date of this subsection.

11 (2) CHANGE OF TOBACCO PRODUCTS TAX TO EXCISE TAX. The treatment of sections
12 139.76 (1) and (2), 139.803, 139.805 and 139.82 (8) of the statutes first applies to
13 claims for refunds of tobacco product taxes filed and to tobacco product taxes imposed
14 on the first day of the 2nd month commencing after the effective date of this
15 subsection.

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0619/1
PJD:wlj&jlg:hmh

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10 on the first day of the 2nd month commencing after the effective date of this
11 subsection.

12

(END)