

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.

(9m) “Sign” means write one’s signature or, if the department prescribes another method of authenticating, use that other method.

(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; 1997 a. 27, 136; 2007 a. 20.

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 other than cider containing 14% or less of alcohol by volume, 1.71 cents per liter on cider 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 a return by the 15th day of the month following the month in which the new tax rate becomes effective and shall pay any tax due on it, as determined under par. (b).

(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 (7), 71.92, 73.01, 73.015 and 73.0301 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 that is mailed shall be considered filed in time if it is mailed in a properly addressed envelope with postage duly prepaid, if the envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this paragraph, “mailed” includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(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 (7), 71.92, 73.01, 73.015 and 73.0301 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) 1. Except as provided in subd. 2., 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.

2. A person who is a member of the national guard, the U. S. armed forces or a reserve component of the U. S. armed forces; who is a state resident; and who leaves a foreign country, after spending at least 48 hours in that foreign country on duty or for training, with the purpose of entering into this state may bring into the state, in sealed original containers and in the person's immediate possession, intoxicating liquor and wine in an aggregate amount not exceeding 16 liters without paying the tax imposed under this subchapter on that amount.

(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; 1997 a. 27, 136, 237; 1999 a. 9; 2001 a. 16; 2005 a. 49.

Cross Reference: See also s. Tax 8.01, Wis. adm. code.

139.035 Wine shipped directly to individuals in this state.

(1) All wine shipped directly to an individual located in Wisconsin by a person holding a direct wine shipper's permit under s. 125.535 shall be sold with the occupational tax imposed under s. 139.03 included in the selling price. As directed by the department, the taxes imposed under s. 139.03 shall be paid to, and a quarterly return filed with, the department once every quarter on or before the 15th day of the next month following the close of the calendar quarter. In addition to filing a quarterly liquor tax return, each person holding a direct wine shipper's permit under s. 125.535 shall be required to file an addendum, on forms furnished by the department, that provides, at minimum, the identity, quantity, and price of all wine shipped to individuals in this state during the previous quarter, along with the name, address, and birthdate of each person who purchased the wine as well as the name of the person of legal drinking age who acknowledged delivery of the wine. Working with permittees under s. 125.535, the department shall develop forms, in both paper and electronic format, for use by such permittees in obtaining this information and complying with any other requirement under this state's law in connection with the direct shipment of wine. The department shall keep confidential, in the same manner required for tax returns under s. 71.78 (1) and (5) to (8), reports submitted under this subsection, but the department may use aggregated or summary information from such reports for purposes of s. 139.11 (4) (b).

(2) Any failure of a person holding a direct wine shipper's permit under s. 125.535 to pay the occupational tax or file the addendum required under sub. (1) within 30 days of its due date constitutes grounds for revocation or suspension of the permit. The provisions on timely filing under s. 71.80 (18) apply to the tax and addendum required under this section.

(3) No wine may be shipped directly to an individual in this state by a person holding a direct wine shipper's permit under s. 125.535 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such wine.

History: 1987 a. 399; 2007 a. 85.

Cross Reference: See also s. Tax 8.24, Wis. adm. code.

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 or brewpub of fermented malt beverages to workmen employed in the brewery or brewpub for consumption on the brewery premises or brewpub 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; 2007 a. 20.

Cross Reference: See also ss. Tax 8.31 and 8.35, Wis. adm. code.

139.05 Payment of malt beverages tax. (1) The tax imposed in s. 139.02 shall be paid on or before the 15th 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, brewpub, 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, brewpub, bottler, or wholesaler or by the shipper for the next preceding calendar month on malt beverages.

(2a) The payments and returns under subs. (1) and (2) that are mailed are furnished, filed or made on time, and payments therein referred to are timely, if mailed in a properly addressed envelope, with postage duly prepaid, which envelope is officially post-marked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, 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 or at the destination that the department prescribes within 5 days of the prescribed date. Payments and returns that are not mailed are timely if they are received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(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. The state shall not pay interest on security placed with the secretary.

TAXES

(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 or brewpub 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 or brewpub that the brewer or brewpub 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 or brewpub 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 a bond 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; 1997 a. 27; 2005 a. 49; 2007 a. 20.

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 11 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 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 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 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.

(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 that shows 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; 1997 a. 27; 2005 a. 25.

Cross Reference: See also s. Tax 8.01, Wis. adm. code.

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 employees 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 employees 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, brewpub, 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; 2007 a. 20.

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

History: 1995 a. 27; 1997 a. 27; 2007 a. 20.

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 mailing the demand 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 file a return.

History: 1985 a. 120; 1997 a. 27.

139.10 Refunds by secretary of administration. (1) On the certificate of the secretary, the secretary of administration 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; 2003 a. 33.

Cross Reference: See also ss. Tax 7.01 and 8.04, Wis. adm. code.

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, brewpub, bottler, manufacturer, rectifier, and wholesaler shall on or before the 15th day of each calendar month or the dates prescribed by the secretary file a verified report 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 filed on or before the 15th of the next month following the close of the calendar quarter.

(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, brewpub, 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, brewpub, 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, brewpub, 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 AND PUBLICATIONS. (a) 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 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.

(b) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income, franchise and gift tax returns, do not apply to any information obtained from any person on an intoxicating liquor tax return, report, schedule, exhibit or other document or from an audit report relating to any of those documents. With the information provided to the department by any person, the department of revenue shall publish at least once each month:

1. Statistics on the total number of liters of the types and brands of intoxicating liquor sold in this state.

2. A current and regularly updated list, made available on paper and on the department's Internet Web site, of permit holders that minimally includes detailed information on the name,

address, contact person, and date of permit issuance for every manufacturer's and rectifier's permit issued under s. 125.52, winery permit issued under s. 125.53, direct wine shipper's permit issued under s. 125.535, wholesaler's permit issued under s. 125.54, and out-of-state shipper's permit issued under s. 125.58.

3. A report summarizing the identity, quantity, and price of all products sold under each winery permit issued under s. 125.53 and each direct wine shipper's permit issued under s. 125.535.

4. A report summarizing the sales quantity and product data available for all products sold under each wholesaler's permit issued under s. 125.54.

History: 1981 c. 20; 1985 a. 120, 302; 1987 a. 312 ss. 10, 17; 1991 a. 39; 1993 a. 482; 1997 a. 27; 2007 a. 20, 85.

Cross Reference: See also ss. Tax 7.01, 8.02, 8.11, 8.21, and 8.81, Wis. adm. code.

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, brewpub, 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; 2007 a. 20.

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 employee 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, brewpub, 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 employee 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; 2007 a. 20.

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

Cross Reference: See also ch. Tax 9, Wis. adm. code.

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

(1d) “Bonded direct marketer” means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages or other containers, stores them and sells them by direct marketing to consumers for their own personal use and who may also acquire stamped cigarettes from manufacturers or distributors for such sales.

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

(1s) “Consumer” means any individual who receives cigarettes for his or her personal use or consumption or any individual who has title to or possession of cigarettes for any purpose other than for sale or resale.

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

(2n) “Direct marketer” means a bonded direct marketer or a nonbonded direct marketer.

(2p) “Direct marketing” means publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes.

(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.

(4m) “File” means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(4n) “Government issued identification” includes a valid driver’s license, state identification card, passport, or military identification.

(5) “Indian tribe” means a federally recognized American Indian tribe or band 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, including the authorized agent of a 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.

(8d) “Nonbonded direct marketer” means any person who acquires stamped cigarettes from the manufacturers or distributors, stores them, and sells them by direct marketing to consumers for their own personal use.

(8m) “Pay” means mail or deliver funds to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(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” has the meaning given in s. 134.66 (1) (g).

(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.

(12m) “Sign” means write one’s signature or, if the department prescribes another method of authenticating, use that other method.

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

(13m) “Trust lands” means any lands in this state held in trust by the U. S. government for the benefit of a tribe or a member of a tribe.

(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; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25.

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, 88.5 mills on each cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 177 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 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 trans-

ported and cigarettes sold for shipment outside this state in interstate commerce are not subject to the tax.

(4) No person may sell or distribute in this state, acquire, store, possess, or transport for sale or distribution in this state, import or cause to be imported into this state for sale or distribution in this state, or affix stamps as described under s. 139.32 to, any of the following:

(a) A cigarette package on which a statement, label, stamp, sticker, or notice indicates that the manufacturer did not intend the cigarettes in the package to be sold, distributed, or used in the United States, including labels stating “for export only,” “U.S. tax exempt,” “for use outside U.S.,” or similar wording.

(b) A cigarette package that does not comply with 15 USC 1333 and 15 USC 1335 or other federal law.

(c) A cigarette package that has been altered as described in sub. (5).

(d) Any cigarettes that are imported into the United States in violation of federal law.

(5) (a) No person may alter a cigarette package before the sale or distribution to the ultimate consumer so as to remove, conceal, or obscure any of the following:

1. Any statement, label, stamp, sticker, or notice described in sub. (4) (a).

2. Any health warning that is not specified in or that does not conform with the requirements under 15 USC 1333.

(b) No person may affix stamps, as described in s. 139.32, to any cigarette package that is altered as described in par. (a).

(6) Subsections (4) and (5) do not apply to cigarettes that may be brought into the United States for personal use and cigarettes that are sold or intended for sale by a duty-free enterprise, as provided under 19 USC 1555, not including cigarettes that are brought into a customs territory, as defined under 19 USC 1555 (2) (b) (C), for resale within the customs territory.

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; 1997 a. 27; 2001 a. 16; 2005 a. 22; 2007 a. 20.

Cross Reference: See also ss. Tax 9.21, 9.31, and 9.51, Wis. adm. code.

State cigarette tax laws do not apply to Indian persons or Indian tribes selling cigarettes on Indian reservations. 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 shall pay 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 30th day after the effective date of the increase the person shall file a return and shall by that date pay 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 (2) to (7), 71.92, 73.01, 73.015 and 73.0301 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 that is mailed is timely if it is mailed in a properly addressed envelope with postage prepaid, if the envelope is post-marked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the due

date and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, “mailed” includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(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; 1997 a. 27, 237; 2005 a. 49; 2007 a. 20.

139.32 Payment of taxes. (1) The tax imposed by s. 139.31

(1) shall be paid. To evidence the payment, the department shall provide stamps. A person who has paid the tax shall affix stamps of the proper denomination 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 to a bonded direct marketer 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 prescribe by rule the type of impression and the kind of machines which may be used.

(5) Manufacturers, bonded direct marketers, and distributors who are authorized by the department to purchase tax stamps shall receive a discount of 0.7 percent of the tax paid on stamp purchases.

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

(6) Manufacturers, bonded direct marketers, and distributors who are authorized by the department to purchase tax stamps may purchase stamps on credit. The secretary may require manufacturers, bonded direct marketers, 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; 1997 a. 27; 2005 a. 25; 2007 a. 20.

Cross Reference: See also ss. Tax 9.06, 9.19, 9.21, 9.22, 9.26, 9.36, 9.41, and 9.67, Wis. adm. code.

139.321 Unlawful possession of cigarettes. (1) It is unlawful for any person to possess 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; 2005 a. 25.

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.

Cross Reference: See also ss. Tax 9.08 and 9.19, Wis. adm. code.

Sub. (3) means that the federal government must hold the land in trust on or before that date and that the federal government does not hold the land in trust until formal acceptance under 25 C.F.R. s. 151.14 occurs. *Ho–Chunk Nation v. Department of Revenue*, 2008 WI App 95, ___ Wis. 2d ___, ___ N.W.2d ___, 07–1985.

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 cig-

rettes sold on reservations to enrolled members of the tribe residing on the tribal reservation.

History: 1983 a. 27.

Cross Reference: See also ss. Tax 9.08 and 9.09, Wis. adm. code.

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 member of the armed forces, as specified in this subsection, a distributor, or a bonded direct marketer who is authorized by the department to purchase and affix tax stamps may import into this state 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 for their personal use or consumption. 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; 1997 a. 27; 2005 a. 25.

Cross Reference: See also s. Tax 9.51, Wis. adm. code.

139.34 Permits required. (1) (a) No person may manufacture cigarettes in this state or sell cigarettes in this state as a distributor, jobber, vending machine operator or multiple retailer and no person may operate a warehouse in this state for the storage of cigarettes for another person without first filing an application for and obtaining the proper permit to perform such operations from the department.

(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).

(3) No distributor or bonded direct marketer may affix stamps to cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct marketer certifies to the department, in a manner prescribed by the department, that the distributor or bonded direct marketer purchases cigarettes directly from a manufacturer.

(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.

Cross Reference: See also s. Tax 9.19, Wis. adm. code.

(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; 1997 a. 27; 2001 a. 16; 2005 a. 25.

Cross Reference: See also ss. Tax 9.21, 9.56, 9.61, and 9.68, Wis. adm. code.

139.345 Direct marketing. (1) (a) No person may sell cigarettes to consumers in this state as a direct marketer unless the person submits to the department the person's name, trade name,

address of the person's principal place of business, phone number, e-mail address, and Web site address.

(b) No person may sell cigarettes as described under this section unless the person certifies to the department, in the manner prescribed by the department, that the person shall acquire stamped cigarettes from a licensed distributor or unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this subchapter on all unstamped cigarettes and affix stamps to the cigarette packages or containers as provided under s. 139.32 (1), store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing; or acquire cigarettes from a distributor, to the packages or containers of which stamps have been affixed as provided under s. 139.32 (1), and sell only such packages or containers to consumers in this state by direct marketing.

(d) No person may sell cigarettes as described in this section unless the person certifies to the department, in the manner prescribed by the department, that the person shall register with credit card and debit card companies; that the invoices and all means of solicitation for all shipments of cigarette sales from the person shall bear the person's name and address; and that the person shall provide the department any information the department considers necessary to administer this section.

(2) No person may sell cigarettes to consumers in this state by direct marketing unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

(3) No person may sell cigarettes to consumers in this state unless the person does all of the following:

(a) Verifies the consumer's name and address and that the consumer is at least 18 years of age by any of the following methods:

1. The person uses a database that includes information based on public records.

2. The person receives from the consumer, at the time of purchase, a copy of a government issued identification.

3. The person uses a mechanism, other than a mechanism specified under subd. 1. or 2., that is approved by the department.

(b) Obtains from the consumer, at the time of purchase, a statement signed by the consumer that confirms all of the following:

1. The consumer's name, address, and birth date.

2. That the consumer understands that no person who is under 18 years of age may purchase or possess cigarettes or falsely represent his or her age for the purpose of receiving cigarettes, as provided under s. 254.92.

3. That the consumer understands that any person who, for the purpose of obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses with intent to use, any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her, is guilty of a Class H felony, as provided under s. 943.201.

(4) Any person who makes a sale of cigarettes by means of the Internet shall, at the time of purchase, obtain the purchaser's electronic mail address and shall receive payment for the sale by credit card, debit card, or check prior to shipping.

(5) The invoice for any shipment of cigarettes sold to consumers in this state by direct marketing shall specify the name and address of the seller and any valid permit issued under s. 139.34 that is held by the seller.

(6) All packages of cigarettes shipped to consumers in this state shall be clearly labelled "CIGARETTES" on the outside of such packages.

(7) (a) No person may deliver a package of cigarettes sold by direct marketing to a consumer in this state unless the person making the delivery receives a government issued identification card

from the person receiving the package and verifies that the person receiving the package is at least 18 years of age. If the person receiving the package is not the person to whom the package is addressed, the person delivering the package shall have the person receiving the package sign a statement that affirms that the person to whom the package is addressed is at least 18 years of age.

(b) No person may deliver a package of cigarettes to a consumer in this state unless the seller of the cigarettes provides proof to the person making the delivery that the seller has complied with all requirements under this subchapter. A seller shall have no course of action against any person who refuses to deliver cigarettes as provided under this subdivision.

History: 2005 a. 25.

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, distributors, and bonded direct marketers who are authorized by the department to purchase and affix tax stamps.

(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.

History: 2005 a. 25.

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.

Cross Reference: See also s. Tax 9.11, Wis. adm. code.

139.362 Bad debt deductions. (1) In this section, “bad debt” means an amount that is equal to the purchase price of cigarettes, if such amount may be claimed as a deduction under section 166 of the Internal Revenue Code. “Bad debt” does not include financing charges, interest on the wholesale price of cigarettes, uncollectible amounts on property that remains in the seller’s possession until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and repossessed property.

(2) A person who pays the taxes imposed under this subchapter may claim as a deduction on a return under s. 139.38, and against the purchase of stamps under s. 139.32, the amount of any such taxes that are attributable to bad debt that the person writes off as uncollectible in the person’s books and records and that is eligible to be deducted as bad debt for federal income tax purposes, regardless of whether the person is required to file a federal income tax return. A person who claims a deduction under this section shall claim the deduction on the return under s. 139.38 that is submitted for the period in which the person writes off the amount of the bad debt as uncollectible in the person’s books and records and in which such amount is eligible to be deducted as bad debt for federal income tax purposes. If the person subsequently collects in whole or in part any bad debt for which a deduction is claimed under this section, the person shall submit to the department the portion of the deduction related to the amount collected, in the manner prescribed by the department and for the period in which the amount is collected.

(3) A person who claims a deduction under this section shall submit the claim on a form prescribed by the department and shall submit with the form all of the following:

(a) A copy of the original invoice for the sale of cigarettes that represents bad debt.

(b) Evidence that the cigarettes described in the invoice under par. (a) were delivered to the person who ordered them.

(c) Evidence that the person who ordered and received the cigarettes did not pay the person who claims a deduction under this section for the cigarettes.

(d) Evidence that the person who claims a deduction under this section used reasonable collection practices in attempting to collect the amount owed under par. (c).

(4) Any person who possesses cigarettes for which the taxes imposed under this subchapter have not been paid and have been claimed as a deduction under this section shall file a report as prescribed by the department, pay the taxes imposed under this subchapter on the cigarettes, and be subject to this subchapter in the same manner as is provided for persons who hold valid permits under this subchapter.

History: 2005 a. 25.

139.363 Preferred claims. If the property of any purchaser of cigarettes from any permittee under this subchapter is seized upon any intermediate or final process of any court in this state, or if the business of any purchaser of cigarettes from any permittee under this subchapter is suspended by the action of creditors or put into the hands of any assignee, receiver, or trustee, all amounts that are due from the purchaser to any permittee for taxes imposed under this subchapter that the permittee has paid to the state for cigarettes purchased from the permittee shall be considered preferred claims, and shall be paid in full, and the permittee shall be a preferred creditor.

History: 2005 a. 25.

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 and direct marketer shall keep records of purchases and sales of cigarettes. Every manufacturer, bonded direct marketer, and distributor who is authorized by the department 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.

(1m) Records of purchases and sales of cigarettes under sub. (1) that are kept by direct marketers shall indicate, for each shipment of cigarettes into this state in the month preceding the report under sub. (2), the invoice date and number; the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the manufacturer of the cigarettes shipped and the point of origin; the purchaser's name, address, and birth date; the name of the person to whom the cigarettes were shipped; the address to which the cigarettes were shipped; and any other information the department requires.

(2) (a) Except as provided in par. (b), every manufacturer, distributor, jobber, and direct marketer shall render a true and correct invoice of every sale of cigarettes and every permittee shall on or before the 15th day of each calendar month file a verified report of all cigarettes purchased, sold, received, warehoused or withdrawn during the preceding calendar month.

(b) The department may allow any jobber, multiple retailer, nonbonded direct marketer, 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 that is mailed is filed in time if it is mailed in a properly addressed envelope with postage duly prepaid, which envelope is officially post-marked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date

due, and if the report is actually received by the secretary or at the destination that the department prescribes within 5 days of the due date. A report that is not mailed is timely if it is received on or before the due date by the secretary or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(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; 1997 a. 27; 2005 a. 25, 49.

Cross Reference: See also ss. Tax 9.19, 9.22, 9.46, and 9.47, Wis. adm. code.

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 employees 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 secretary of administration shall pay the amount wrongfully collected 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.

(4m) Any person who sells, distributes, or manufactures cigarettes and who sustains direct economic or commercial injury as the result of a violation of this chapter may bring an action for injunctive relief.

(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 (7), 71.92 and 73.0301 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 addi-

tional assessment shall be given begins on the due date of the report under this subchapter.

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; 1997 a. 35, 237; 2001 a. 16; 2003 a. 33.

Cross Reference: See also s. Tax 9.36, Wis. adm. code.

139.395 Theft of tax moneys. All cigarette tax moneys received by a distributor, bonded direct marketer, 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, bonded direct marketer, or manufacturer and are the property of this state. Any distributor, bonded direct marketer, 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, bonded direct marketer, or manufacturer has or claims to have an interest in those moneys.

History: 1993 a. 16; 2005 a. 25.

139.40 Seizure and confiscation. (1) All cigarettes acquired, owned, imported, 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. All cigarettes seized for violating s. 139.31 (4) or (5) shall be destroyed.

(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 given to law enforcement officers to use in criminal investigations or sold to qualified buyers by the secretary, without notice. If the cigarettes are sold, after deducting the costs of the sale and the keeping of the property, the proceeds of the sale shall be paid into the state treasury. If the secretary finds that such cigarettes may deteriorate or become unfit for use in criminal investigations or for sale or that those uses 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; 1997 a. 291; 2001 a. 16.

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 that are not in strict conformity with those of the state. *U.S. Oil, Inc. v. City of Fond du Lac*, 199 Wis. 2d 333, 544 N.W.2d 589 (Ct. App. 1995), 95–0213.

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 is guilty of a Class G felony.

(1m) Any person who falsely or fraudulently tampers with a cigarette meter in order to evade the tax under s. 139.31 is guilty of a Class G felony.

(2) Any person who makes or signs 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 may be fined not more than \$10,000 or imprisoned for not more than 9 months 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, the person is guilty of a Class I felony.

(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; 1997 a. 27, 283; 2001 a. 109.

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 or under ss. 134.65 and 134.66. The attorney general may take any action necessary to enforce s. 139.345.

History: 1985 a. 302; 2005 a. 25.

139.46 Lists. The department shall compile and maintain a list of direct marketers who have complied with the requirements of s. 139.345 and a list of direct marketers who the department knows have not complied with such requirements. The department shall provide copies of the lists described under this section to the attorney general and to each person who delivers cigarettes to consumers in this state that are sold by direct marketing under s. 139.345.

History: 2005 a. 25.

SUBCHAPTER III

TOBACCO PRODUCTS TAX

Cross Reference: See also s. Tax 9.69, Wis. adm. code.

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.

(4d) “Enrolled member” has the meaning given in s. 139.30 (4).

(4m) “File” means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(4p) “Indian tribe” has the meaning given in s. 139.30 (5).

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

(5d) “Moist snuff” means any finely cut, ground, or powdered smokeless tobacco that is intended to be placed or dipped in the mouth.

(5m) “Pay” means mail or deliver funds to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(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.

(6m) “Reservation” has the meaning given in s. 139.30 (9).

(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.

(9m) “Sign” has the meaning given in s. 139.01 (9m).

(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, including moist 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 (1m).

(12m) “Trust lands” has the meaning given in s. 139.30 (13m).

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

History: 1981 c. 20; 1985 a. 302; 1997 a. 27; 1999 a. 9; 2005 a. 25, 49; 2007 a. 20.

139.76 Imposition; exceptions. (1) An excise 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, for tobacco products, not including moist snuff, of 50 percent of the manufacturer’s established list price to distributors without diminution by volume or other discounts on domestic products and, for moist snuff, at the rate of \$1.31 per ounce, and at a proportionate rate for any other quantity or fractional part thereof, of the moist snuff’s net weight, as listed by the manufacturer. The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 cents for each cigar. On products imported from another country, not including moist snuff, the rate of tax is 50 percent 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. The tax shall be passed on to the ultimate consumer of the tobacco products. All tobacco products received in this state for sale or distribution within this state, except tobacco products actually sold as provided in sub. (2), shall be subject to such tax. The weight-based tax imposed under this subsection on moist snuff does apply to moist snuff that is the inventory of a distributor on January 1, 2008, and for which the tax levied under this subsection, 2005, stats., has been paid.

(2) Tobacco products sold to or by post exchanges of the U.S. armed forces, to or by federally 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.

History: 1981 c. 20; 1983 a. 27; 1989 a. 56; 1999 a. 9; 2001 a. 16; 2005 a. 22; 2007 a. 20.

Cross Reference: See also ch. Tax 9, Wis. adm. code.

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 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. At the time that the return is filed, the distributor shall pay the tax.

(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; 1997 a. 27.

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, for tobacco products, not including moist snuff, of 50 percent of the cost of the tobacco products and, for moist snuff, at the rate of \$1.31 per ounce, and at a proportionate rate for any other quantity or fractional part thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax imposed under this subsection on

cigars shall not exceed an amount equal to 50 cents for each cigar. 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 showing the quantity of tobacco products acquired. At the time when the return is filed, the consumer shall pay the tax.

(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; 1997 a. 27; 2001 a. 16; 2007 a. 20.

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 unless that person has filed an application for and obtained a permit from the department to engage in that business at such place.

(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; 1997 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.

139.801 Bad debt deductions. (1) In this section, "bad debt" means an amount that is equal to the purchase price of tobacco products, if such amount may be claimed as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not include financing charges, interest on the wholesale price of tobacco products, uncollectible amounts on property that remains in the seller's possession until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and repossessed property.

(2) A distributor who pays the taxes imposed under s. 139.76 may claim as a deduction on a return under s. 139.77 the amount of any such taxes that are attributable to bad debt that the distributor writes off as uncollectible in the distributor's books and records and that is eligible to be deducted as bad debt for federal income tax purposes, regardless of whether the distributor is required to file a federal income tax return. A distributor who claims a deduction under this section shall claim the deduction on the return under s. 139.77 that is submitted for the period in which the distributor writes off the amount of the deduction as uncollectible in the distributor's books and records and in which such amount is eligible to be deducted as bad debt for federal income tax purposes. If the distributor subsequently collects in whole or in part any bad debt for which a deduction is claimed under this

section, the distributor shall include the amount collected in the return filed for the period in which the amount is collected and shall pay the tax with the return.

(3) A distributor who claims a deduction under this section shall submit with the return under sub. (2) all of the following:

(a) A copy of the original invoice for the sale of tobacco products that represents bad debt.

(b) Evidence that the tobacco products described in the invoice under par. (a) were delivered to the person who ordered them.

(c) Evidence that the person who ordered and received the tobacco products did not pay the distributor for the tobacco products.

(d) Evidence that the distributor used reasonable collection practices in attempting to collect the amount owed under par. (c).

(4) Any person who possesses tobacco products for which the taxes imposed under this subchapter have not been paid and have been claimed as a deduction under this section shall file a report as prescribed by the department, pay the taxes imposed under this subchapter on the tobacco products, and be subject to this subchapter in the same manner as is provided for persons who hold valid permits under this subchapter.

History: 2005 a. 25.

139.802 Preferred claims. If the property of any purchaser of tobacco products from any permittee under this subchapter is seized upon any intermediate or final process of any court in this state, or if the business of any purchaser of tobacco products from any permittee under this subchapter is suspended by the action of creditors or put into the hands of any assignee, receiver, or trustee, all amounts that are due from the purchaser to any permittee for taxes imposed under this subchapter that the permittee has paid to the state for tobacco products purchased from the permittee shall be considered preferred claims, and shall be paid in full, and the permittee shall be a preferred creditor.

History: 2005 a. 25.

139.803 Refunds to Indian tribes. The department may refund 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 on which the sale is made only if all of 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.

History: 1999 a. 9.

139.805 Agreements with Indian tribes. The department may enter into agreements with Indian tribes to provide for the refunding of the tobacco products tax imposed under s. 139.76 (1). If the department enters into an agreement with an Indian tribe, the agreement may provide for refunding 100% of that tax on tobacco products sold on the tribal reservation to enrolled members of the tribe residing on the tribal reservation and may provide for refunding 50% of that tax on tobacco products sold on the tribal reservation to persons who are not enrolled members of the tribe residing on the tribal reservation.

History: 1999 a. 9.

139.81 Salespersons. (1) No person may sell or take orders for tobacco products for resale in this state for any manufacturer or permittee unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and 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 unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit. 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; 1997 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 file a verified report 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 that is mailed 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 or at the destination that the department prescribes within 5 days of the due date. A report that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes.

(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.

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

(8) Each distributor shall collect and remit the excise tax imposed by s. 139.76 (1) on tobacco products not exempt from the tobacco products tax under s. 139.76 (2), with the reports required to be filed under this section.

History: 1981 c. 20; 1987 a. 312; 1991 a. 39; 1997 a. 27; 1999 a. 9.

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. In addition, a person who violates s. 139.82 (8) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(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; 1999 a. 9; 2001 a. 109.

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, 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 or more than 7 grams of ketamine or flunitrazepam. “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; 1999 a. 57.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. *State v. Jones*, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01–1398.

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.

(3) Per gram or part of a gram of ketamine or flunitrazepam, whether pure or impure, measured when in the dealer's possession, \$200.

History: 1989 a. 122; 1991 a. 39, 189, 208; 1995 a. 448; 1999 a. 57.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. *State v. Jones*, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01–1398.

The Wisconsin drug tax is fairly characterized as a criminal punishment for the purpose of double jeopardy analysis. Jeopardy attaches to a punitive tax when the defendant voluntarily pays the amount due in full or when the government takes title to a defendant's assets. The state cannot undo the punishment by returning the money, nor can it seek to impose another punishment once the money has been paid. *Dye v. Frank*, 355 F.3d 1102 (2004).

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, schedule II controlled substance or ketamine or flunitrazepam 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 schedule I controlled substance, schedule II controlled substance or ketamine or flunitrazepam 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; 1999 a. 57.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. *State v. Jones*, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01–1398.

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.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01-1398.

This section advises dealers that compliance with the drug tax stamp law does not immunize them from criminal prosecution for drug offenses. It says nothing about what evidence may be used in a criminal prosecution and does nothing to undercut the prohibition in s. 139.91 of using information obtained as a result of compliance with the drug tax stamp law in a criminal proceeding. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01-1398.

139.91 Confidentiality. (1) Except as provided in sub. (4), 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.

(2) The department may not require dealers to provide any identifying information in connection with the purchase of stamps.

(3) No information obtained from a dealer as a result of the dealer's compliance with this subchapter may be used against the dealer in any criminal proceeding unless that information has been independently obtained, except in connection with a proceeding involving taxes due under s. 139.88 from the dealer.

(4) The secretary of revenue and employees of that department may reveal facts obtained in administering this subchapter for the purposes of preparing and maintaining the list of persons with unpaid tax obligations as described in s. 73.03 (62) so that the list of such persons is available for public inspection.

History: 1989 a. 122; 1991 a. 39; 1997 a. 27; 2005 a. 25.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01-1398.

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.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01-1398.

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 employees of the department have all necessary police powers to prevent violations of, this subchapter.

History: 1989 a. 122.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01-1398.

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.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01-1398.

139.95 Penalties. (1) Any dealer who possesses a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam 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, a schedule II controlled substance or ketamine or flunitrazepam that does not bear evidence that the tax under s. 139.88 has been paid is guilty of a Class H felony.

(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, a schedule II controlled substance or ketamine or flunitrazepam or who possesses a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam to which a false, altered or counterfeit stamp is affixed is guilty of a Class F felony.

(4) Any person who violates s. 139.91 (1) may be fined not more than \$1,000 or imprisoned for not more than 60 days or both.

History: 1989 a. 122; 1991 a. 39; 1997 a. 27, 283; 1999 a. 57; 2001 a. 109.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01-1398.

139.96 Use of revenue. (1) If taxes, penalties and interest are collected under this subchapter as a result of an arrest, the department shall pay the taxes, penalties and interest, less the charge for administrative costs under sub. (2), to the state or local law enforcement agency that made the arrest associated with the revenue.

(2) The department shall retain a portion of taxes, penalties and interest collected under sub. (1) that is equal to the actual costs related to the administration of this subchapter. No later than November 1 of each year, the department shall review the costs of

administering this subchapter incurred in the previous fiscal year and shall adjust its charge under sub. (1) to reflect those costs.

History: 1989 a. 122; 1993 a. 16; 1997 a. 27.

Sections 139.87 to 139.96, as amended by 1997 Wis. Act 27 are constitutional. State v. Jones, 2002 WI App 196, 257 Wis. 2d. 319, 651 N.W.2d 305, 01–1398.