

CR 83-201

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

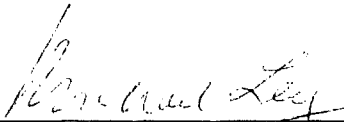
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Michael Ley, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed rules relating to cigarette taxes on sales to and by Indians, was duly approved and adopted by this department on March 9, 1984.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 9th day of March, 1984.



Michael Ley
Secretary of Revenue

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ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, RECREATING AND CREATING RULES

To repeal and recreate Tax 9.08 and to create Tax 9.01 and 9.09 relating to cigarette taxes on sales to and by Indians.

Analysis by the Department of Revenue

The 1983 Legislature enacted 1983 Wisconsin Act 27. Section 1497 of that act changed the tax imposed upon cigarette sales to an excise tax. Section 1502m of that Act requires that the department shall refund 70% of the cigarette excise taxes collected under s. 139.31(1), Wis. Stats. in respect to sales on reservation 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. Section 1503 of that act authorizes the department to enter into agreements with Indian tribes. Under Washington v. Confederated Tribes, 447 US 134, 65 L Ed 2d 10, 100 S Ct 2069 (1980), the department may not tax cigarette sales on the reservation to resident tribal members.

Section Tax 9.01 defines certain terms.

Section Tax 9.08 pertains to cigarette sales to Indian tribes with whom the Department of Revenue has entered into a refund agreement and to the refund of taxes precollected on such sales. It provides that cigarette permittees (i.e., cigarette distributors) shall sell only tax included stamped cigarettes to Indian tribes or their authorized retailers, and establishes requirements and procedures for Indian tribes in authorizing retailers on reservations and for distributors in recording information concerning sales of cigarettes to Indian tribes. It also provides specific requirements and procedures with respect to claims for refund and the furnishing of evidence of cigarette purchases.

Section Tax 9.09 pertains to cigarette sales to and by Indian tribes with whom the Department of Revenue has not entered into a refund agreement. It provides that a cigarette distributor shall sell only tax paid stamped cigarettes to an Indian retailer if the cigarettes are to be sold to persons other than resident tribal members, but that the cigarette distributor may sell unstamped tax-free cigarettes to an Indian retailer if the untaxed cigarettes are to be sold to resident tribal members on the reservation. It also provides that such tribal councils may obtain refunds of 70% of the precollected tax under s. 139.323, Stats.

Pursuant to authority vested in the Department of Revenue by section 139.08(2), Stats., the Department of Revenue hereby adopts rules interpreting sections 139.323 and 139.325, Stats., as follows:

SECTION 1. Tax 9.01 is created to read:

Tax 9.01 DEFINITIONS PERTAINING TO CIGARETTE TAXATION (Subch. II, Ch. 139, Stats.) In this chapter: (1) "Indian" means a natural person of Indian descent who is a member of a recognized federal Indian tribe occupying a reservation. Membership in a recognized federal Indian tribe is shown by either a name on the tribal roll or confirmation of such fact by the tribal council.

(2) "Indian corporation" means a corporation in which Indians own at least 51% of the voting stock.

(3) "Indian partnership" means a partnership in which at least 51% of the investment is made by Indians, at least 51% of the equity is owned by Indians and at least 51% of the profits or losses accrue to Indians.

(4) "Indian retailer" means an individual Indian, Indian partnership, Indian corporation or other person authorized to sell cigarettes by the tribal council of the reservation where the retailer's business is located.

(5) "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.

(6) "Stamped cigarettes" means cigarettes bearing valid Wisconsin tax stamps or meter imprints.

(7) "Untaxed cigarettes" means cigarettes not bearing valid Wisconsin tax stamps or meter imprints.

SECTION 2. Tax 9.08 is repealed and recreated to read:

Tax 9.08 CIGARETTE TAX REFUNDS TO INDIAN TRIBES (s. 139.323 and 139.325, Stats.)

(1) SCOPE. This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who on behalf of their resident enrolled members have entered into agreements under s. 139.325, Stats., with the department for refunds of taxes on stamped cigarettes.

(2) THE LAW. (a) Section 139.323, Stats., directs the department of revenue to refund to Indian tribal councils 70% of the cigarette taxes collected under s. 139.31(1), Stats., 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."

(b) Section 139.325, Stats., allows the department to "enter into agreements with the Indian tribes to provide for refunding of the cigarette tax imposed under s. 139.31(1), Stats., on cigarettes sold on reservations to enrolled members of the tribe residing on the tribal reservation."

(3) SALES TO INDIANS. (a) Except as provided in s. Tax 9.09(2) and (4), Wisconsin cigarette permittees shall sell only stamped cigarettes to federally recognized Indian tribes within Wisconsin, or to persons authorized by the Indian tribe to purchase and sell cigarettes.

(b) The Indian tribal council may authorize retailers on its reservations or trust land to purchase and sell cigarettes on which the tribal government may be entitled to a tax refund by providing the Wisconsin department of revenue and the cigarette distributor a certified letter stating that the retailer has tribal authorization to purchase and sell cigarettes on the reservation.

(c) The Wisconsin cigarette permittee shall retain, for a period of 2 years from the date of sale, records substantiating sales to federally recognized Indian tribes or their authorized retailers.

(d) The Wisconsin cigarette permittee shall include with its monthly cigarette tax returns a list of all sales of cigarettes to federally recognized Indian tribes or their authorized retailers on a separate form prescribed by the department.

(4) REFUNDS. (a) Upon filing a claim for refund with the department, the department shall reimburse the Indian Tribal Council seventy percent of the amount of tax paid under s. 139.31, Stats., on all cigarettes purchased by the Indian tribal council or person authorized to purchase and sell cigarettes by the tribal council of the reservation where the purchaser's business is located.

(b) Claims shall be filed upon forms prescribed and furnished by the department.

(c) Claims may not be filed more than twice a month.

(d) 1. The Wisconsin cigarette permittee upon request, shall furnish each purchaser with the original invoice prepared at the time of delivery, and the purchaser shall send the original invoice to the department when making a claim for a refund. In this paragraph, "original invoice" means the top copy and not a duplicate original or carbon copy of the original invoice.

2. The original invoice shall be printed or rubber stamped with the words "original invoice" and shall in addition contain the following information:

- a. Date of sale.
- b. Name and address of seller.
- c. Name and address of purchaser.
- d. Number of cigarettes purchased.
- e. Amount of Wisconsin cigarette tax paid as a separate item.

3. Double-faced carbon paper shall be used between the original invoice and the first carbon copy unless the invoice is upon special paper or product approved in advance by the department as affording protection equivalent to double-faced carbon paper.

4. A separate original invoice shall be used for each sale and delivery and shall be legible.

5. If an original invoice has been lost or destroyed, a duplicate original invoice shall be used to support a claim for refund and accompanied by an affidavit by the purchaser that the original invoice has been lost or destroyed. The distributor when issuing the duplicate original invoice, shall indicate on the face of the invoice that it is a duplicate original invoice. The duplicate invoice shall contain the same information as on the original invoice.

(e) On the filing of a claim, the department shall determine the amount of refund due. The department may investigate the correctness of the facts stated in a claim and may require a claimant to submit records to substantiate the claim. When the department has approved a claim, it shall pay the claimant the reimbursement provided in this subsection, out of the monies collected under s. 139.31(1), Stats.

(f) An Indian tribe that has entered into an agreement with the department under s. 139.325, Stats., shall file its claim for refund of the remaining 30% of the precollected tax on cigarettes sold on the reservation to enrolled members of the tribe residing on the tribal reservation on forms prescribed by the department.

(g) The penalties provided in s. 139.44, Stats., for filing a false or fraudulent claim apply to all refund claimants.

(h) The right of any tribal council to a refund under s. 139.323, Stats., is not assignable, and the application for a refund shall be made by the same tribal council who purchased or authorized the purchase of the cigarettes, and by no other person, and the proceeds or amount of the refund as determined by the department shall be paid to the tribal council whose name appears on the invoice and to no other person.

(i) Refunds under ss. 139.323 and 139.325, Stats., and this section shall be of tax only and shall not include interest.

SECTION 3. Tax 9.09 is created to read:

TAX 9.09. CIGARETTE SALES TO AND BY INDIANS ON RESERVATIONS OF TRIBES THAT HAVE NOT ENTERED INTO A REFUND AGREEMENT WITH THE DEPARTMENT.

(Subch. II, Ch. 139, Stats.) (1) SCOPE. This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who have not entered into agreements under s. 139.325, Stats., with the department for refunds of precollected taxes on stamped cigarettes.

(2) SALES TO INDIANS FOR SALE TO RESIDENT TRIBAL MEMBERS. (a) A Wisconsin cigarette distributor permittee may sell untaxed cigarettes to an Indian retailer if the untaxed cigarettes are to be sold to resident tribal members on the reservation. If this occurs:

1. The cigarettes shall be delivered by the distributor to the purchaser on the reservation.

2. The Wisconsin cigarette distributor shall retain, for a period of 2 years from the date of sale, proof that all of the sales were to a qualified Indian retailer. Either of the following types of proof shall be retained:

a. A purchase order issued by an Indian tribal council on its letterhead.

b. A photocopy of the written authorization to traffic in cigarettes issued to the Indian retailer by the tribal council of the reservation to which the cigarettes are to be delivered.

3. The Wisconsin cigarette distributor shall list all sales of untaxed cigarettes to Indian purchasers on Form CT-103 as "Out-of-State Sales."

(b) The Wisconsin cigarette distributor may not sell untaxed cigarettes to an Indian retailer if the department of revenue has notified the distributor that the untaxed cigarettes are being sold to persons other than resident tribal members.

(3) SALES TO INDIANS FOR SALE TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. A Wisconsin cigarette distributor shall sell only stamped cigarettes to an Indian retailer if the cigarettes are to be sold to persons other than resident tribal members.

(4) SALES BY INDIANS TO RESIDENT TRIBAL MEMBERS. An Indian retailer may sell untaxed cigarettes to resident tribal members on the reservation.

(5) SALES BY INDIANS TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. An Indian retailer shall sell only stamped cigarettes to persons other than resident tribal members.

(6) RECORDS FOR SALES BY INDIANS. The Indian retailer shall keep detailed records of both taxable and nontaxable transactions and shall record the number and dollar volume of taxable sales to nonmembers of the tribe. With respect to nontaxable sales, the retailer shall record and retain for state inspection the names of all Indian purchasers, their tribal affiliations, the Indian reservation within which sales are made, and the dollar amounts and dates of sales. In addition, unless the Indian purchaser is personally known to the retailer, he or she shall present a tribal identification card.

(7) REFUNDS. If all the statutory requirements of s. 139.323, Stats., are fulfilled in accordance with s. Tax 9.08(3) and (4), the department will refund 70% of the tax collected under s. 139.31(1), Stats., to the tribal council.

The rules contained in this order shall take effect on the first day of the month following publication as provided in s. 227.026(1), Stats.

Dated: March 9, 1984

WISCONSIN DEPARTMENT OF REVENUE

By: Michael Ley
Michael Ley
Secretary of Revenue



State of Wisconsin \

DEPARTMENT OF REVENUE

OFFICE LOCATED AT
125 SOUTH WEBSTER STREET

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MADISON, WISCONSIN 53708

March 9, 1984

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MAR 9 1984

Orlan L. Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Revisor of Statutes
Bureau

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue adopting rules Tax 9.01, 9.08 and 9.09.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,

Michael Ley
Secretary of Revenue

ML:em
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Enclosures

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearing House, Inc.