

Chapter Tax 9

CIGARETTE TAX

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Tax 9.01 Definitions. (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.

History: Cr. Register, April, 1984, No. 339, eff. 4-1-84.

Tax 9.06 Affixing of state revenue stamps. (s. 139.32, Stats.) (1) Tax stamps of the proper denomination shall be affixed either to the top of each individual package of cigarettes or on the bottom thereof, excepting in the case of flat tins or other odd-sized containers when said tax stamps shall be affixed to some portion of the flat surface thereof.

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(2) Tax revenue meter imprints shall be affixed at the bottom of each individual package of cigarettes.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.08 Cigarette tax refunds to Indian tribes. (ss. 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 70% 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 ciga-

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rettes 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 as 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.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; emerg. r. and recr., eff. 10-1-83; r. and recr. Register, March, 1984, No. 339, eff. 4-1-84.

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, and 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.

History: Emerg. cr. eff. 10-1-83; cr. Register, March, 1984, No. 339, eff. 4-1-84.

Tax 9.11 Refunds. (s. 139.36, Stats.) (1) A refund shall be granted to any cigarette distributor for stamps which were applied to packages of cigarettes when the distributor supplies documentation to the department that the packages of cigarettes to which stamps have been affixed were damaged or otherwise unsalable and have been returned to the manufacturer thereof. A distributor who has unsalable cigarettes in his possession must file a written notice to the department of intent to return such cigarettes to the manufacturer thereof at least 10 days prior to shipping such cigarettes. If the department, upon receipt of this notice of intent, desires to exercise its right to inspect such cigarettes prior to shipment, it must so notify the distributor prior to the expiration of the 10 day period. If the department does not notify the distributor of its intent to inspect before the end of the 10 day period, the distributor may ship the cigarettes to the manufacturer and make application for refund. The distributor shall make application for such refund on a form to be furnished by the department. The application for refund must be accompanied by a copy of the signed bill of lading for said shipment. A copy of the credit memo for each shipment from the manufacturer must be forwarded to this department prior to processing the refund. The department may also require an affidavit from the manufacturer attesting to the number of cigarettes received in each shipment.

(2) Refund will be granted on all stamps unfit for use or otherwise unused, returned to this department by duly authorized permittees, providing the sale thereof may be verified by the department.

(3) On all refunds granted, the cost of printing and service charges will be deducted therefrom.

History: 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

Tax 9.12 Refunds—military. (s. 139.31 (3), Stats.) If the state tax has been paid on cigarettes sold to post exchanges of the armed forces of the United States or to federally or state operated veterans hospitals, the tax may be refunded to the distributor or jobber if:

(1) The cigarettes were actually sold and delivered to an exempt organization, and

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(2) The distributor or jobber can provide evidence that the cigarette taxes were paid.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; r. and recr. Register, June, 1983, No. 330, eff. 7-1-83.

Tax 9.16 Meter machines. (s. 139.32 (4), Stats.) (1) All meters are under the direct control of the department of revenue, and all transfers or anything pertaining thereto must first be authorized by the department.

(2) Any distributor or manufacturer desiring to use a cigarette meter machine in lieu of affixing revenue stamps must apply to the department of revenue for permission to have such machine installed for such purpose.

(3) All repairs to either the machine or the meter are strictly prohibited except by an authorized representative of Pitney-Bowes, Inc. Requests for service should be directed to the branch office of Pitney-Bowes, Inc., for your territory.

(4) Meter machine ink imprints on all packages must be clear and legible. All dies and other equipment must be serviced and cleaned according to the instructions issued by Pitney-Bowes, Inc.; the department of revenue may refuse the continued use of the meter.

(5) All inks used in the stamping of cigarettes must be purchased from Pitney-Bowes, Inc., Stamford, Connecticut, and must be made up from the formula having the approval of the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (4), Register, December, 1977, No. 264, eff. 1-1-78.

Tax 9.17 Meter machine settings. (s. 139.32 (4), Stats.) (1) Meters may only be set by authorized representatives of the department of revenue and all individuals doing so should be requested to show their credentials to the permittee requesting the setting.

(2) All requests for meter settings shall be in units of 100 and may not exceed 99,900.

(3) Permittees, if they so desire, may forward their meter direct to the department of revenue, Madison, for setting, accompanied by the proper remittance and the card titled "The Record of Meter Settings," form CT-623. Express charges must be prepaid on meters sent to the department of revenue, Madison, for setting and the machines will be returned by express collect after setting.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.19 Fuson machines and stamps. (ss. 139.32 (2) and (3) and 139.34 (7), Stats.) (1) The term fuson shall apply to all stamping processes whereby revenue stamps are fused to the outer wrapper of any cigarette package by a heat process.

(2) The use of fuson stamps and any machines or devices for their application by any distributor shall be subject to the approval of the secretary of revenue and such approval may be withdrawn at any time at the discretion of the secretary of revenue.

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(3) To be properly stamped the full revenue stamp and at least 50% of the surrounding "field" must be clearly visible in a proper position on the cigarette package.

(4) To be considered properly stamped an indentifying code number must also be clearly affixed to the cigarette package by the distributor in a method approved by the secretary of revenue.

History: Cr. Register, February, 1967, No. 134, eff. 3-1-67; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.21 Shipments to retailers. (ss. 139.31, 139.32 (1) and 139.34, Stats.) (1) Out-of-state permittees shipping cigarettes to Wisconsin retailers shall, prior to the entry of said merchandise into this state, have affixed to the containers thereof the proper Wisconsin revenue stamps.

(2) Wisconsin retailers purchasing cigarettes from without the state must purchase same only from out-of-state manufacturers and distributors who hold permits issued to them by the department of revenue.

(3) All out-of-state manufacturers or distributors may ship cigarettes either stamped or unstamped directly to any Wisconsin manufacturers or distributors who hold the proper permit issued by the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.22 Drop shipments. (ss. 139.32 (1) and 139.38, Stats.) (1) Drop shipments are strictly prohibited to retailers unless the cigarettes have affixed thereto the proper tax stamp prior to sale and delivery.

(2) All consignors of cigarettes, on drop shipments, must furnish a memo invoice to the distributor or the retailer receiving the merchandise direct, as well as an invoice to the distributor through whom the billing is serviced.

(3) The consignors must list on their regular schedule CT-107 the name of the consignee actually receiving the merchandise, as well as the name of the distributor through whom it is billed.

(4) All distributors servicing drop shipments must declare same on their regular monthly purchase schedule CT-101, showing the name of the original consignor and the account actually receiving the merchandise.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (3), Register, December, 1977, No. 264, eff. 1-1-78.

Tax 9.26 Trade or transfer of unstamped cigarettes. (s. 139.32 (1), Stats.) (1) A licensed Wisconsin distributor may not stamp merchandise for another such distributor unless the merchandise is first shipped, invoiced and billed directly to the distributor who is to stamp same, and is then invoiced, billed, and reshipped by him to the distributor for whom it was stamped.

(2) No manufacturer or distributor shall receive unstamped cigarettes from a retailer for stamping purposes.

(3) No unstamped cigarettes shall be transferred from one permittee to another for any reason whatsoever, except for interstate commerce. All cigarettes sold by one permittee to another for the purpose of inter-

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state commerce shall have a label affixed to each case stating thereon, "For Interstate Commerce Only". The label shall be 2 inches by 5 inches in size. This merchandise shall be used for interstate commerce and must not be diverted in any manner for intrastate sale.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.31 Sales out of Wisconsin. (s. 139.31 (3), Stats.) (1) The occupational tax imposed upon the sale of cigarettes within the state does not apply to merchandise which is shipped from within the state to a point outside the state. Manufacturers and distributors need not affix revenue stamps to the original containers of cigarettes that are sold and shipped outside the state. The burden of proof, however, is at all times upon the Wisconsin manufacturer or distributor to show that such merchandise actually went into interstate commerce.

(2) Wisconsin manufacturers and distributors claiming exemption from the occupational tax on cigarettes on the grounds that shipments or deliveries were made in interstate commerce shall certify under oath:

(a) Names and addresses of the persons receiving such shipments or deliveries in such foreign state; or

(b) That they are in possession of bills of lading, waybills, or freight bills, or other evidence of shipment issued by common carriers.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.36 Displaying of cigarettes. (ss. 139.32 (1) and 139.39, Stats.) All cigarette retail outlets in the state of Wisconsin shall display all cigarettes, offered for sale at retail, in such a manner that the tax stamp or meter imprint is clearly and conveniently visible.

Tax 9.41 Vending machines. (s. 139.39 (1) and (2), Stats.) Each vending machine operator must place on the front of each vending machine operated or controlled by him a sticker with his name and address, and his vending machine operator's permit number as issued by the department of revenue, in such a position that it will not become dislodged or detached. Such sticker may be placed back of the glass, provided that it is completely visible and readable from the front.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.46 Purchases by the retailer. (ss. 139.34 and 139.38 Stats.) (1) No firm, person, or corporation engaged in the retail sale of cigarettes shall purchase same except from a manufacturer, distributor or jobber who holds a permit from the department of revenue.

(2) All retailers selling cigarettes shall retain invoices covering all purchases of cigarettes. Such invoices shall be retained on the licensed premises in groups covering a period of one month each, and shall be available for inspection at all reasonable times by any representative of the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.47 Invoicing of sales, including exchanges of cigarettes. (s. 139.38, Stats.) (1) A true and correct invoice must accompany the cigarettes at the time of any sale, including exchanges, between permittees or between permittees and retailers. Permittees include cigarette salesmen, distributor, Register, July, 1987, No. 379

tors, jobbers, vending machine operators or multiple retailers. A true and correct invoice must contain the following information:

(a) Names and business addresses of both parties as shown on the permit or license of each.

(b) Date of sale or exchange.

(c) Number of packs or cartons of cigarettes by brand and pack.

(d) Unit price per pack or carton. (The unit price of the cigarettes alone may be shown with the Wisconsin cigarette tax stated as a separate item.)

(e) Signature of the person receiving the cigarettes. (In an exchange, both parties must sign the invoice.)

(2) When a salesman, acting as a representative of a cigarette manufacturer, exchanges fresh cigarettes for dried or damaged cigarettes, he shall accept and receive only dried or damaged cigarettes of the brands manufactured by his employer and he shall prepare and deliver with the fresh cigarettes a true and correct invoice as set forth in (1) above.

(3) When a salesman, acting as a representative of a cigarette manufacturer, or when a permittee exchanges dried or damaged cigarettes to a distributor for return to the manufacturer and receives fresh cigarettes in exchange therefor, he shall prepare a true and correct invoice as set forth in (1) above. Each carton of such dried or damaged cigarettes shall contain only cigarettes of one brand and pack. Such cartons shall be packed so that the tax stamps on the dried or damaged cigarettes are exposed for inspection and the distributor shall refuse to receive or accept any cigarettes not so packed.

(4) A clearly legible copy of all invoices evidencing a sale or exchange of cigarettes must be retained by each of the parties to the transaction for a period of at least 2 years from the date of the invoice, in groups covering a period of one month each.

History: Cr. Register, November, 1971, No. 191, eff. 12-1-71.

Tax 9.51 Samples. (ss. 139.31 and 139.33, Stats.) (1) Cigarettes shipped into this state by manufacturers to their representatives, including advertising agencies and airlines, for the purpose of free samples must be accompanied by a memo invoice stating brands and number of cigarettes. Such memos must be retained by the representative for the statutory period of 2 years.

(2) Manufacturers may ship free sample cigarettes in quantities of 400 or less to consumers, such as employees or stockholders.

(3) All such sample cigarettes described in (1) and (2) above must bear the legend: "Applicable state tax paid. Not for resale." All such cigarettes are subject to Wisconsin cigarette use tax. Such tax paid by the manufacturer shipping or causing such cigarettes to be shipped into this state shall be remitted no later than the 15th day of the month following such shipment. Along with the applicable tax remitted each manufacturer shall submit a list of persons to whom cigarettes were shipped indicating the amount of cigarettes shipped to each person.

History: 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

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Tax 9.56 Branch offices. (s. 139.34 (4), Stats.) Separate sets of records are required for each branch or place at which a wholesale cigarette business is operated.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.61 Warehousing of cigarettes. (s. 139.34 (8), Stats.) Out-of-state persons, firms, or corporations having permits to engage in the sale of cigarettes in the state of Wisconsin may warehouse either stamped or unstamped merchandise in properly licensed warehouses located in the state of Wisconsin. No such person, firm, or corporation shall affix stamps to merchandise while it is stored in such licensed warehouse.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

Tax 9.67 Cigarette tax credit. (s. 139.32 (6), Stats.) (1) The term "cigarette tax stamp" shall be construed to mean any of the authorized indicia of cigarette tax payment including water transfer stamps, heat applied stamps and metered impressions. The term "cigarette tax stamp purchase" shall be construed to mean the purchase of any of such authorized indicia of cigarette tax payment, by a distributor, to be affixed or applied to cigarette packages.

(2) Each distributor desiring to make cigarette tax stamp purchases on credit shall file with the department of revenue a bond drawn in favor of the state of Wisconsin in an amount equal to 125% of the gross value of the credit desired. The bond shall be executed by a surety company licensed to do business in this state and shall provide that the liability shall not be affected by the revocation of any license or by partial recovery upon the bond or by the execution of any new bond.

(3) The credit extended for any cigarette tax stamp purchase under a surety bond will become due and payable:

(a) Upon request for another cigarette tax stamp purchase on credit.

(b) Upon formal demand by the department of revenue.

(c) In any event, not later than 30 days from the date on which credit was extended on any such cigarette tax stamp purchase.

(4) The department of revenue reserves the right to investigate the financial stability of the applicant and his surety company, and the right to deny credit to any permittee when there is any question of ability to pay as herein required.

(5) The privilege granted to any distributor of making cigarette tax stamp purchases on credit may be cancelled or revoked at any time at the discretion of the department of revenue.

History: Cr. Register, November, 1957, No. 23, eff. 12-1-57; am. Register, February, 1960, No. 50, eff. 3-1-60; r. and recr., Register, August, 1961, No. 68, eff. 9-1-61; am. Register, June, 1975, No. 234, eff. 7-1-75.