

State of Wisconsin



1999 Senate Bill 122

Date of enactment: **May 8, 2000**
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1999 WISCONSIN ACT 122

AN ACT to amend 814.04 (intro.); and to create 895.10 of the statutes; relating to: an agreement between the state and tobacco product manufacturers and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 814.04 (intro.) of the statutes is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m), 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed, costs shall be as follows:

SECTION 2. 895.10 of the statutes is created to read:
895.10 Tobacco product agreement. (1) DEFINITIONS. In this section:

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C of the master settlement agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with, another person. Solely for the purposes of this definition, "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(d) 1. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subd. 1. a.

2. The term "cigarette" includes "roll-your-own" tobacco, which is tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

3. For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco constitutes one individual "cigarette".

(e) "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and the leading U.S. tobacco product manufacturers.

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(f) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000, which arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as is consistent with sub. (2) (b) 2.

(g) "Released claims" means released claims as that term is defined in the master settlement agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(i) 1. "Tobacco product manufacturer" means an entity that after the effective date of this subdivision [revisor inserts date], directly, and not exclusively through any affiliate:

a. Manufactures cigarettes anywhere, which the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; except that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered a tobacco product manufacturer under this paragraph if those cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to those cigarettes as a result of the provisions of subsection II (mm) of the master settlement agreement and that pays the taxes specified in subsection II (z) of the master settlement agreement, and the manufacturer of those cigarettes does not market or advertise those cigarettes in the United States;

b. Is the first purchaser anywhere, for resale in the United States, of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

c. Becomes a successor of an entity described in subd. 1. a. or b.

2. "Tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within subd. 1. a., b. or c.

(j) "Units sold" means the number of individual cigarettes sold in this state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer or similar intermediary, during the year in question, as measured by the excise taxes collected by this state on containers of "roll-your-own" tobacco and on packs of cigarettes bearing the excise tax stamp of this state.

(2) REQUIREMENTS. Any tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, retailer or simi-

lar intermediary, after the effective date of this subsection [revisor inserts date], shall do one of the following:

(a) Become a participating manufacturer, as that term is defined in section II (jj) of the master settlement agreement, and generally perform its financial obligations under the master settlement agreement; or

(b) 1. Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as those amounts are adjusted for inflation:

a. For 2000: \$.0104712 per unit sold after the effective date of this subd. 1. a. [revisor inserts date].

b. For each of 2001 and 2002: \$.0136125 per unit sold.

c. For each of 2003 to 2006: \$.0167539 per unit sold.

d. For each year after 2006: \$.0188482 per unit sold.

2. A tobacco product manufacturer that places money into escrow under subd. 1. shall receive the interest or other appreciation on that money as earned. The money placed into escrow shall be released from escrow only under the following circumstances:

a. To pay a judgment or settlement on any released claim brought against that tobacco product manufacturer by this state or any releasing party located or residing in this state. Moneys shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement.

b. To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement had it been a participating manufacturer, as those payments are determined under section IX (i) (2) of the master settlement agreement and before any of the adjustments or offsets described in section IX (i) (3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert to that tobacco product manufacturer.

c. To the extent not released from escrow under subd. 2. a. or b., money shall be released from escrow and revert to the tobacco product manufacturer twenty-five years after the date on which the money was placed into escrow.

3. Each tobacco product manufacturer that elects to place money into escrow under subd. 1. shall annually certify to the attorney general by each April 15 that the tobacco product manufacturer is in compliance with subds. 1. and 2. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the moneys required under this subsection. Any tobacco product manufacturer that fails in any year to place into escrow the money required under subd. 1. shall:

a. Be required within 15 days to place money into escrow as shall bring the tobacco product manufacturer into compliance with this subsection. The court, upon a finding of violation of this paragraph, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

b. In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this subsection. The court, upon a finding of a knowing violation of this paragraph, may impose a civil penalty in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow.

c. In the case of a second or subsequent knowing violation, be prohibited from selling cigarettes to consumers within this state directly or through a distributor, retailer or similar intermediary for a period not to exceed 2 years.

4. Each failure to make an annual deposit required under this subsection shall constitute a separate violation.

(3) AWARDS OF COSTS AND ATTORNEY FEES. If the attorney general is the prevailing party in an action under this section, the court shall award the attorney general costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(4) PROMULGATION OF RULES. The department of revenue shall promulgate the rules necessary to ascertain the amount of Wisconsin excise tax paid on the cigarettes of each tobacco product manufacturer that elects to place funds into escrow under this section for each year.

SECTION 3. Nonstatutory provisions.

(1) COPIES OF THE MASTER SETTLEMENT AGREEMENT. The department of administration shall provide a copy of

the master settlement agreement to each public library system, as defined in section 43.01 (5) of the statutes. "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and the leading U.S. tobacco product manufacturers.

(2) ADMINISTRATIVE REGISTER. The revisor of statutes shall, within 60 days after the effective date of this subsection, publish a copy of the master settlement agreement in the Wisconsin Administrative Register. "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and the leading U.S. tobacco product manufacturers.

(3) EXCISE TAX PAID ON CIGARETTES; RULES.

(a) Using the procedure under section 227.24 of the statutes, the department of revenue shall submit in proposed form the rules required under section 895.10 (4) of the statutes, as created by this act, to the legislative council under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this paragraph.

(b) Using the procedure under section 227.24 of the statutes, the department of revenue may promulgate rules required under section 895.10 (4) of the statutes, as created by this act, for the period before the effective date of the rules submitted under paragraph (a), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.