

State of Wisconsin



2023 Assembly Bill 910

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2023 WISCONSIN ACT 150

AN ACT *to renumber* 139.75 (1); *to amend* 139.75 (12), 139.76 (1), 139.78 (1), 139.82 (1), 139.82 (2) (a), 139.82 (6) and 139.82 (8); and *to create* 139.75 (1d), 139.75 (1p), 139.75 (5u), 139.75 (6c), 139.75 (6g), 139.76 (1p), 139.78 (1p), 139.795 and 139.815 of the statutes; **relating to:** remote sellers of cigars and pipe tobacco.

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

SECTION 1. 139.75 (1) of the statutes is renumbered 139.75 (1h).

SECTION 2. 139.75 (1d) of the statutes is created to read:

139.75 (1d) "Actual cost" means the total price of cigars or pipe tobacco charged by the manufacturer or other seller to an unrelated distributor or remote retail seller. The total price includes all charges by the manufacturer or other seller that are necessary to complete the sale. The total price does not include a reduction for any cost or expense, regardless of whether the cost or expense is separately stated on an invoice, that is incurred by the manufacturer or other seller, including fees, delivery, freight, transportation, packaging, handling, or marketing costs, federal excise taxes, import fees, or duties. The total price does not include a reduction for the value or cost of discounts or free promotional or sample products. For purposes of this subsection, a manufacturer or other seller is related to a distributor or remote retail seller if the 2 parties have significant common purposes and substantial common membership or, directly or indirectly, substantial common direction or control.

SECTION 3. 139.75 (1p) of the statutes is created to read:

139.75 (1p) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco but does not include a cigarette.

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

139.75 (5u) "Pipe tobacco" means any 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 to be smoked in a pipe.

SECTION 5. 139.75 (6c) of the statutes is created to read:

139.75 (6c) "Remote retail sale" means any sale of cigars or pipe tobacco to a consumer that satisfies any of the following:

(a) The consumer submits the order for the sale by telephone, a method of voice transmission, mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the consumer when the order or request for purchase is made.

(b) The cigars or pipe tobacco are delivered to the consumer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the

* Section 991.11, WISCONSIN STATUTES: 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."

physical presence of the consumer when the consumer obtains possession of the cigars or pipe tobacco.

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

139.75 (6g) “Remote retail seller” means a person located inside or outside of this state who makes remote retail sales.

SECTION 7. 139.75 (12) of the statutes is amended to read:

139.75 (12) “Tobacco products” means cigars; pipe tobacco; 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).

SECTION 8. 139.76 (1) of the statutes is amended to read:

139.76 (1) ~~Except as provided in sub. (1p), 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 ~~and~~, vapor products, cigars, and pipe tobacco, of 71 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 100 percent of the manufacturer’s established list price to distributors without diminution by volume or other discounts on domestic products. ~~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 ~~and~~, vapor products, cigars, and pipe tobacco, the rate of tax is 71 percent of the amount obtained by adding the manufacturer’s list price to the federal tax, duties and transportation costs to the United States. On moist snuff imported from another country, the rate of the tax is 100 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 Except as provided in sub. (1p), 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.

SECTION 9. 139.76 (1p) of the statutes is created to read:

139.76 (1p) 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 cigars and pipe tobacco by any person engaged as a distributor or remote retail seller of them at the rate of 71 percent of the actual cost to the distributor or remote retail seller. The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 cents for each cigar. The tax attaches at the time the cigars or pipe tobacco are received by the distributor in this state, except that for cigars and pipe tobacco sold by a remote retail seller, the tax attaches at the time the remote retail seller makes a remote retail sale of cigars or pipe tobacco to a consumer. The tax shall be passed on to the ultimate consumer of the cigars and pipe tobacco. All cigars and pipe tobacco 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.

SECTION 10. 139.78 (1) of the statutes is amended to read:

139.78 (1) ~~A~~ Except as provided in sub. (1p), 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 ~~and~~, vapor products, cigars, and pipe tobacco, of 71 percent of the cost of the tobacco products and, for moist snuff, at the rate of 100 percent of the manufacturer’s established list price to distributors without diminution by volume or other discounts on domestic products. 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).

SECTION 11. 139.78 (1p) of the statutes is created to read:

139.78 (1p) A tax is imposed upon the use or storage by consumers of cigars and pipe tobacco in this state at the rate and basis under s. 139.76 (1p). The tax does not apply if the tax imposed by s. 139.76 (1p) on the cigars or pipe tobacco has been paid or if the cigars or pipe tobacco are exempt from the tax under s. 139.76 (2).

SECTION 12. 139.795 of the statutes is created to read:

139.795 Permits; remote retail seller. (1) No person may engage in the business of a remote retail seller at any place of business, including a legal location in any state at which records are kept or accessed by the remote retail seller, 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) and (9) applies to the permit under this section.

SECTION 13. 139.815 of the statutes is created to read:

139.815 Remote retail sales. No person may make remote retail sales to consumers unless all of the following apply:

(1) The person obtains a remote retail seller permit under s. 139.795.

(2) The person registers with the department and collects the taxes administered or imposed under s. 77.52 or 77.53.

(3) The person collects and remits the tax under s. 139.76.

(4) The person uses an independent, 3rd-party age verification service that compares information available from a commercially available database or aggregate of databases that are regularly used by government agencies and business for age and identity verification to determine whether a prospective consumer has attained the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act based on the personal information provided by the prospective consumer during the ordering process.

SECTION 14. 139.82 (1) of the statutes is amended to read:

139.82 (1) Every manufacturer located out of the state shall keep records of all sales of tobacco products and vapor products shipped into this state. Every manufacturer located in this state shall keep records of production, sales and withdrawals of tobacco products and vapor products. Every distributor and remote retail seller shall keep records of purchases and sales of tobacco products and vapor products. Every subjobber shall keep records of all purchases and disposition of tobacco products and vapor products. Every warehouse operator shall keep records of receipts and withdrawals of tobacco products and vapor 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.

SECTION 15. 139.82 (2) (a) of the statutes is amended to read:

139.82 (2) (a) Except as provided in par. (b), every permittee shall render a true and correct invoice of every sale of tobacco products and vapor products at wholesale, or, if the permittee is a remote retail seller, at retail, and shall on or before the 15th day of each calendar month file a verified report of all tobacco products and vapor products purchased, sold, received, warehoused or withdrawn during the preceding calendar month.

SECTION 16. 139.82 (6) of the statutes, as affected by 2023 Wisconsin Act 73, is amended to read:

139.82 (6) Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m., relating to confidentiality of income and franchise 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 return, report, schedule, exhibit, or document, except that the department shall publish on its Internet site, at least quarterly, a current list of permits issued to remote retail sellers, distributors, and jobbers under s. 139.34 and include on the list the name and address of the permit holder and the date on which the department issued the permit.

SECTION 17. 139.82 (8) of the statutes is amended to read:

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

SECTION 18. Effective date.

(1) This act takes effect on January 1, 2025.