

Chapter Tax 9

CIGARETTE TAX

Tax 9.01	Definitions (p. 129)	Tax 9.21	Shipments to retailers (p. 134)
Tax 9.06	Affixing of state revenue stamps (p. 129)	Tax 9.22	Drop shipments (p. 135)
Tax 9.08	Cigarette tax refunds to Indian tribes (p. 130)	Tax 9.26	Trade or transfer of unstamped cigarettes (p. 135)
Tax 9.09	Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department (p. 132)	Tax 9.31	Sales out of Wisconsin (p. 135)
Tax 9.11	Refunds (p. 133)	Tax 9.36	Displaying of cigarettes (p. 136)
Tax 9.12	Refunds—military (p. 133)	Tax 9.41	Vending machines (p. 136)
Tax 9.16	Meter machines (p. 133)	Tax 9.46	Purchases by the retailer (p. 136)
Tax 9.17	Meter machine settings (p. 134)	Tax 9.47	Invoicing of sales, including exchanges of cigarettes (p. 136)
Tax 9.19	Fuson machines and stamps (p. 134)	Tax 9.51	Samples (p. 137)
		Tax 9.56	Branch offices (p. 137)
		Tax 9.61	Warehousing of cigarettes (p. 137)
		Tax 9.67	Cigarette tax credit (p. 137)

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.

(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.

Register, June, 1991, No. 426

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) 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 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.

(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 sub. (1).

(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 sub. (1). 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 subs. (1) and (2) 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.

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 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.