

CHAPTER 139.

BEVERAGE, CIGARETTE AND OLEOMARGARINE TAXES.

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Revisor's Note, 1963: This is a consolidation and revision of the sections of Ch. 139 dealing with the tax on fermented malt beverages and intoxicating liquors. Only a few minor substantive changes have been made; each one is indicated in a note after the section changed.

This revision was prompted by the enactment of ss. 139.11 and 139.12 (Ch. 178, Laws 1953) which provide for the payment of the occupational tax on fermented malt beverages on a monthly basis instead of by affixing tax stamps. The provisions of Ch.

139 providing for such tax stamps were not repealed, since s. 139.27 made those provisions applicable to the tax on intoxicating beverages.

This change in 1953 made the statute confusing to anyone but a very careful reader. The revision separates the taxing sections so as to make their applicability clear and combines a number of overlapping provisions.

This bill is sponsored jointly by the beverage and cigarette tax division and the revisor of statutes. (Bill No. 213-S)

139.01 Definitions. In ss. 139.01 to 139.25 unless the context or the subject matter otherwise requires:

(1) "Brewer" means any person who manufactures fermented malt beverages for sale or transportation.

(2) "Bottler" means any person other than a brewer who places fermented malt beverages in bottles or similar containers.

(3) "License," and "fermented malt beverages" have the same meaning as in s. 66.054, and "licensed premises" are premises described in licenses issued by cities, villages or towns under the authority of said section.

(4) "Intoxicating liquors" includes all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use for beverage purposes, but does not include "fermented malt beverages" as defined in s. 66.054.

(5) A "manufacturer" is a person, other than a rectifier, who manufactures or distills intoxicating liquors, including selling at wholesale such intoxicating liquors manufactured or distilled by the licensee at the premises designated in the license.

(6) A "rectifier" is a person who rectifies, purifies or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort or wash, through continuous closed vessels or pipes, until the manufacture thereof is complete, or who has in his possession any still or leach tub or keeps any other apparatus for the purpose of refining in any manner distilled spirits or the other liquors, or who after rectifying and purifying distilled spirits, by mixing such spirits or liquors with any materials, manufactures any spurious, imitation or compound liquors for sale, and any person who, without rectifying, purifying or refining distilled spirits, by mixing such spirits with any materials, manufactures any spurious, imitation or compound liquors for sale under the name of "whiskey," "brandy," "gin," "rum," "spirits," "cordials" or any other name, and who is also a distiller or is under substantially the same management or control as a distiller. A rectifier may sell at wholesale intoxicating liquors rectified by him without any other license than that of a rectifier.

(7) "Wholesaler" as applied to a seller of fermented malt beverages has the same meaning as in s. 66.054, and as applied to a seller of intoxicating liquors is any person other than a manufacturer or rectifier who sells such liquors to licensed retailers or other permittees for the purpose of resale.

(8) "Retailer" as applied to a seller of fermented malt beverages has the same meaning as in s. 66.054, and as applied to a seller of intoxicating liquors is any person who sells such liquors to consumers.

(9) "Sell" or "sold" or "sale" or "selling" includes the transfer, gift, barter, trade or exchange of intoxicating liquor or fermented malt beverages; offering or exposing intoxicating liquor or fermented malt beverages for transfer, gift, barter, trade or exchange; possession of intoxicating liquor or fermented malt beverages with intent to transfer, give, barter, trade or exchange the same; or any shift, device, scheme or transaction whatever whereby intoxicating liquor or fermented malt beverages may be obtained; but excludes the solicitation of orders for, or the sale for future delivery.

(10) "Commissioner" means the commissioner of taxation.

History: 1963 c. 141.

Revisor's Note, 1963: (1) and (2) are from 66.054 (see present 139.02). (3) is from 139.02. (4) to (6) are from 139.25 (1) to (3). (7) and (8) are from 139.02 and 139.25 (4) and (5). (9) and (10) are new definitions put in to allow shortening language in other sections. (9) is patterned after 139.26 (1) and 176.01 (4). There are 2 minor changes: The definition of "sales company" now in 139.02 is omitted as obsolete. The definition of "wholesaler" in (7) is changed to specify that a wholesaler is a person who sells to "licensed retailers and permittees" rather than simply one who sells for resale. (Bill No. 218-S)

139.02 Fermented malt beverages tax. (1) An occupational tax is imposed upon the removing for consumption or sale or selling of fermented malt beverages at the rate of \$1 per barrel of 31 gallons and at a proportionate rate for any other quantity or fractional parts thereof. Not more than one occupational tax shall be required to be paid on any one container of fermented malt beverages.

(2) All occupational taxes on fermented malt beverages paid pursuant to this section shall conclusively be presumed to be a direct tax on the retail consumer, advanced and prepaid for the purpose of convenience and facility only.

History: 1963 c. 19, 141, 459 ss. 33, 34.

Revisor's Note, 1963: The first sentence from tax. The second sentence is from 139.01; see new 139.04 for exclusions 139.03 (2) (last sentence). (Bill No. 218-S)

139.03 Liquor tax. An occupational tax is imposed upon the selling of intoxicating liquor as follows:

(2a) The rate of such tax, effective August 15, 1963, and thereafter, is \$2.25 per wine gallon on intoxicating liquor containing one-half of one per cent or more of alcohol by volume, and is computed in accordance with the following table:

Quantity in Wine Gallons	Quantity in Ounces	Tax when alcoholic content is ½% or more by volume
Up to and including 1/64 of a gallon	Up to and including 2	\$.03515625
More than 1/64 of a gallon to and including 1/32 of a gallon	More than 2 to and including 4	\$.0703125
More than 1/32 gallon to and including 1/16 of a gallon	More than 4 to and including 8	\$.140625
More than 1/16 gallon and including 1/10 gallon	More than 8 to and including 12.8	\$.225
More than 1/10 gallon to and including 1 pint	More than 12.8 to and including 16	\$.28125
More than 1 pint to and including 1/5 gallon	More than 16 to including 25.6	\$.45
More than 1/5 gallon to and including 1 quart	More than 25.6 to including 32	\$.5625
More than 1 quart to and including ½ gallon	More than 32 to and including 64	\$1.125
More than ½ gallon to and including 1 gallon	More than 64 to and including 128	\$2.25

(2b) The rate of such tax effective August 15, 1963, and thereafter is 16⅔ cents per wine gallon on wine containing 14 percent or less of alcohol by volume, and 33¾ cents per wine gallon on wine containing more than 14 per cent of alcohol by volume, but not in excess of 21 per cent of alcohol by volume, and is computed in accordance with the following table:

Quantity in Wine Gallons	Quantity in Ounces	Tax when alcoholic content is more than 14% but not in excess of 21%	Tax when alcoholic content is 14% or less by volume
Up to and including 1/16 of a gallon	Up to and including 8	\$.02109375	\$.010546875
More than 1/16 gallon and including 1/10 gal- lon	More than 8 to and in- cluding 12.8	.03375	.016875
More than 1/10 gallon to and including 1 pint	More than 12.8 to and including 16	.0421875	.02109375
More than 1 pint to and including 1/5 gallon	More than 16 to and in- cluding 25.6	.0675	.03375
More than 1/5 gallon to and including 1 quart	More than 25.6 to and including 32	.084375	.0421875
More than 1 quart and including 1/2 gallon	More than 32 to and in- cluding 64	.16875	.084375
More than 1/2 gallon to and including 1 gallon	More than 64 to and in- cluding 128	.3375	.16875

(3) Not more than one occupational tax shall be required to be paid on any one container of intoxicating liquor.

(4) All occupational taxes on intoxicating liquors paid pursuant to this section shall conclusively be presumed to be a direct tax on the retail consumer, advanced and prepaid for the purpose of convenience and facility only.

(5) (a) No person who enters this state from another state may have in his possession and bring into the state any intoxicating liquor unless the state tax thereon is paid; but the foregoing shall not apply to intoxicating liquor consigned to any person having a permit from the commissioner of taxation to engage in the sale of such intoxicating liquor.

(b) Any person, except a minor, who leaves a foreign country, after spending at least 48 hours in such foreign country, with the purpose of entering this state, may have in his possession and bring into the state intoxicating liquor in sealed original containers in amounts not to exceed, in the aggregate, one gallon (128 ounces) without payment of the tax herein imposed.

(c) Any person who violates any provision of pars. (a) and (b) by having in his possession more than the amount specified may be fined not less than \$25 nor more than \$500 or imprisoned not more than 90 days or both. If any such person is convicted of a second or subsequent offense he may be fined not less than \$100 nor more than \$500 or imprisoned not more than 6 months or both.

(d) Any intoxicating liquor involved in a violation of this section is declared forfeit and upon confiscation by the department of taxation shall be disposed of in accordance with s. 176.62 (2) (b).

History: 1963 c. 19, 103, 141, 224, 459 ss. 35, 38, 39, 40; 1963 c. 561; 1965 c. 249.

Revisor's Note, 1963: Introductory para- for exclusions from tax. (3) is from 139.03 graph is from 139.26 (1). (1) is from 139.26 (2) (last sentence). (Bill No. 218-S) (1). (2) is from 139.26 (1b). See new 139.04

139.04 Exclusions. No tax is levied by ss. 139.02 and 139.03 in respect to:

(1) Making of wine, cider or fermented malt beverages at home solely for consumption therein and use thereof in such home by the family and guests without compensation.

(2) Furnishing by a brewer of fermented malt beverages to workmen employed in the brewery for consumption on the brewery premises without charge.

(3) Manufacture or sale of any beverage containing less than one-half of one per cent of alcohol by volume.

(4) Sale or shipment of fermented malt beverages by a brewer to a bottler or of intoxicating liquor in bulk between manufacturers, rectifiers and wineries.

(5) Sale, possession or removal of fermented malt beverages or intoxicating liquor for shipment in interstate or foreign commerce.

(6) Sale and use of wine for sacramental purposes.

(7) Sale of alcohol to industrial permittees to be used for industrial purposes.

(8) Sale of alcohol to medicinal permittees to be used for hospital or medicinal purposes.

History: 1963 c. 141.

Revisor's Note, 1963: (1) is from 139.26 (2); see also 176.45. (2) is from 139.03 (13). (3) is from 139.09 and 139.25 (1). (4) is from 139.01 and 139.26 (1). (5) is from 139.01 and 139.26 (1). (6), (7) and (8) are from 139.26 (1). There are 4 minor changes: (1) No reference is made to exclusion from tax for sales of malt beverages to sales companies, since there are no such companies and since such sales were only for interstate commerce. (2) Old 139.26 (1) permitted tax free sales only by manufacturers to rectifiers; the new 139.04 (4) adds "wineries" and per-

mits tax free sales both ways between such persons; such sales must be "in bulk". (3) The new 139.04 (1) is perhaps slightly more restrictive than the old 139.26 (2) in that it makes it clear that home made wine is tax free only for use in the home where made; this corresponds with 176.45; cider is added to this provision. (4) The new 139.04 (7) and (8) make it clear that to be tax exempt the sales of alcohol must be to industrial and medicinal permittees; the present provision reads "for industrial, hospital purposes." (Bill No. 213-S)

139.05 Payment of malt beverages tax. (1) The tax imposed in s. 139.02 shall be paid to the commissioner on or before the fifteenth day of the month following the month in which such malt beverages are first sold in this state or shipped into this state.

(2) Each brewer and bottler in this state and each wholesaler of malt beverages within this state to whom malt beverages are shipped from outside this state shall on or before the fifteenth day of each month file with the commissioner on forms prescribed by him a verified return containing such information as may be required to compute and show the amount of occupational tax payable by him or by the shipper for the next preceding calendar month on malt beverages.

(2a) For the purposes of subs. (1) and (2), the payments, reports, and returns therein referred to shall be considered furnished, reported, filed or made on time, and payments therein referred to shall be considered timely made, if mailed in a properly addressed envelope, with first class postage duly prepaid, which envelope is officially post-marked before midnight on the date prescribed for such furnishing, reporting, filing or making of such payment, provided such statement, report, return or payment is actually received by the commissioner of taxation within 5 days of the prescribed date.

(3) The amount of the occupational tax disclosed by the return shall accompany the return and shall be paid to the commissioner.

(4) In order to insure the payment of all state occupational taxes imposed by law on malt beverages together with all interest and penalties thereon, all persons required to make returns and payment of such tax shall first enter into a surety bond with corporate surety, both bond and surety to be approved by the commissioner. Subject to the limitations hereinafter specified, the amount of the bond required of any taxpayer shall be fixed by the commissioner and may be increased or reduced by him at any time. In fixing the amount the commissioner shall require a bond in total amount equal to twice the taxpayer's estimated maximum monthly excise tax, ascertained in such manner as the commissioner deems proper. In any event the amount of such bond required of any one taxpayer shall not be less than \$1,000 nor more than \$100,000. These bonds shall be filed with the commissioner.

(5) No person shall receive malt beverages in this state which have been shipped directly to him from outside this state by any person other than a holder of a permit issued by the commissioner. The commissioner may issue such permits to out-of-state shippers which allow the permittee to ship malt beverages to and only to holders of a wholesaler's license issued under s. 66.054 (5) (b). Such permits shall be issued free of charge. The application for the permit and the permit shall be in such form and contain such provisions as to the commissioner seem proper and necessary to effectuate the purpose of ss. 139.01 to 139.25 and shall include, but without limitation by reason of this special mention, a provision that the permittee in consideration of the issuance of a permit agrees:

(a) To comply with and be bound by the provisions of this section pertaining to the making and filing of a bond and the making and filing of returns, the payment of taxes and the keeping of records;

(b) That he will permit and be subject to all of the powers granted by s. 139.08 (4) to the commissioner or his duly authorized employes for inspection and examination of his premises and his records; and

(c) To pay the expenses reasonably attributable to such inspections and examinations made within the United States. If any such permittee violates any provision of his application or of ss. 139.01 to 139.25, the commissioner may revoke or suspend such permit for such period of time as he determines.

(6) If the occupational tax is not paid when due, there is added to the amount of the tax as a penalty a sum equal to 2 per cent thereof, and in addition thereto interest on the tax and penalty at the rate of one per cent per month or fraction of a month from the date the tax became due until paid. Nothing herein contained shall be construed to relieve any person otherwise liable from liability for payment of the occupational tax.

(7) (a) If any present or future law or regulation effective in any state prohibits a person from shipping into such state a fermented malt beverage produced outside thereof except upon condition that the person shipping such fermented malt beverage into such state first obtain a license therefor from such state and if such license or a renewal thereof may be refused for violation of any law of such state relating to fermented malt beverages, it is unlawful to ship into this state or to purchase or sell within this state any fermented malt beverage produced in such state, unless and until the brewer thereof is the holder of a valid subsisting license as provided in this subsection.

(b) Such license shall be issued by the commissioner for the period of one year and must be renewed annually. The application for such license shall be verified and shall contain an agreement on the part of the brewer that the brewer shall observe all laws of this state relating to fermented malt beverages, and such other information and statements as the commissioner may require. Any such brewer who has, directly or indirectly, violated any law of this state relating to fermented malt beverages shall not be entitled to such a license. No fee shall be required for any such license. The commissioner may require the applicant to furnish and file a bond to be approved by the commissioner payable to the state in an amount not less than \$1,000 nor more than \$5,000 conditioned upon the faithful compliance by the applicant with the undertakings set forth in the application for the license.

(c) The commissioner may suspend or revoke any such license for any false statement made in the application therefor and for any prior or subsequent violation by the licensee, directly or indirectly, or by any person affiliated with or in any way subject to the direction or control of the licensee, of any of the laws of this state relating to fermented malt beverages.

(d) Any such brewer and any other person who ships or causes or permits to be shipped into this state any such fermented malt beverage, and any person who knowingly receives within this state from outside this state any such fermented malt beverage, at a time when the brewer thereof is not the holder of a valid and subsisting license as herein provided, is guilty of a misdemeanor.

(e) The conditions and requirements of this subsection are in addition to and not in lieu of the conditions and requirements of subs. (1) to (6).

(f) If any law or regulation of any state specifies uniform or substantially uniform requirements with respect to any ingredient of fermented malt beverages produced in such state and fermented malt beverages produced outside thereof but sold within such state and if such state or its officials or agencies enforce or give effect to such provisions as against any malt beverage produced outside of such state without concurrently and to the same extent enforcing and giving effect to such provisions as against all malt beverages produced and sold within such state, and if the foregoing is found and determined by the commissioner after a public hearing, it shall thereafter be a misdemeanor for any person with knowledge of such finding and determination to ship into or receive or sell within this state any malt beverage produced in such state unless and until the commissioner finds and determines, after a public hearing, that such discriminatory treatment has been discontinued.

History: 1963 c. 141.

Revisor's Note, 1963: From 139.11. Old (4) omitted because covered by new 139.11 (f). Old (8) omitted because covered by new 139.10. In (2) the return on which the malt beverage tax is based must now include information as to shipments coming in from outside the state so that the department can be sure of collecting taxes from the shipper. (Bill No. 218-S)

139.06 Liquor tax stamps; exceptions. (1) The taxes imposed in s. 139.03 shall be paid, at or before the time of sale, delivery or gift of intoxicating liquor except as provided in sub. (2), by affixing, in such manner as the commissioner prescribes by rule, to each bottle in which intoxicating liquor is placed, received, stored, warehoused, shipped, delivered or sold, tax stamps of the proper amount purchased from the commissioner.

(2) It is not necessary to affix tax stamps to individual bottles of wine containing not in excess of 21 per cent of alcohol by volume, but such stamps shall be affixed to the original container in which the bottles are packed as prescribed by the commissioner by rule.

(3) In shipping intoxicating liquor in bulk for the purpose of bottling or rectifying to a rectifier located within the state, the manufacturer shall not be required to place

stamps upon the container in which shipment is made, but shall securely affix thereto a label or statement, in such form as is prescribed by the commissioner, reciting that the shipment is made for the purpose of bottling or rectifying. Each manufacturer making such shipments shall file with the commissioner on or before the fifteenth day of each calendar month a report for the preceding calendar month, in the form the commissioner prescribes, showing the dates and quantities of shipments and the name and address of each consignee. Stamps shall be affixed by said rectifier on all containers on which a tax is required before sale or delivery to any permittee or licensee within this state.

(4) When intoxicating liquor is stored in a public warehouse licensed as provided in ch. 176, by a Wisconsin manufacturer or rectifier as a pledge for the loan of money, it is not necessary to affix to the containers either front labels or tax stamps until the liquor is sold or removed from the warehouse. When it becomes necessary for a pledgee to sell such intoxicating liquor in good faith pursuant to the terms of the pledge, and not for the purpose of avoiding the provisions of ss. 139.01 to 139.25 or ch. 176, it shall be sold to a Wisconsin manufacturer, rectifier or wholesaler for the purpose of affixing front labels and tax stamps. All such sales shall be reported to the commissioner by the pledgee.

(5) Vendors of intoxicating liquor without this state having Wisconsin permits may purchase tax stamps from the commissioner and affix the proper amount thereof in the manner prescribed by him to containers of intoxicating liquor to be sold in this state and the affixing thereof shall constitute payment of such tax so that the recipient of such intoxicating liquor within this state and all persons who deal with the same thereafter shall not be required to affix stamps thereon.

(6) No retailer shall sell or remove any intoxicating liquor from any container, unless it has affixed thereto tax stamps of the proper amount. Every manufacturer, rectifier and wholesaler who is liable for the payment of the tax on sales made for resale or consumption within this state is required to affix stamps of the proper amount on every container containing intoxicating liquor, including intoxicating liquor imported from without the state, which is sold, delivered or given to any purchaser or consumer within this state, unless the proper amount of stamps has been previously affixed thereto.

(7) Except as otherwise herein provided, no person shall sell intoxicating liquor without having affixed to the container the stamps required. A manufacturer or rectifier may have upon his premises intoxicating liquor in unstamped containers, but the same shall not be removed from his premises except for shipment in interstate commerce or for shipment in bulk to a rectifier without stamps being affixed thereto.

(8) No person shall sell, give or lend any stamps; no person shall purchase, accept, receive or borrow any stamps from any person. Sales and transfers of stamps may be made only by the commissioner. He shall not sell or issue any stamps to any person other than a licensed manufacturer, rectifier or wholesaler. This subsection does not prevent the pledging of any stamps legally secured to any banking institution in Wisconsin as security for a loan.

History: 1963 c. 141.

Revisor's Note, 1963: (1) is from 139.03 (2) and 139.26 (3) (a), (c). (2) is from 139.03 (3) and 139.27 (2). (3) is from 139.03 (14); the last sentence is new. (4) is from 176.75. (5) is from 139.26 (3) (d). (6) is from 139.03 (5). (7) is from 139.03 (8) and (12). (8) is from 139.03 (1) and (6).
There are 3 changes: (1) In (4), which is taken from old 176.75, the reference to wholesalers is omitted; this means that wholesalers will not be permitted to store unlabeled and unstamped liquor except as such liquor is tax exempt. (4) also requires reports of sales by pledgees. (2) (5) is changed to make it clear that only out-of-state vendors who have Wisconsin permits may buy stamps. (3) (6) is clarified in that it removes the implication in the old 139.03 (5) that retailers may affix stamps; retailers are not allowed to purchase unstamped liquor. (Bill No. 218-S).

139.061 Return payment of liquor tax. (1) In lieu of the method prescribed by s. 139.06 for payment of the tax on intoxicating liquor by stamp, the commissioner may by rule provide for the payment of such tax by a monthly return filed with the commissioner on or before the 15th day of the month following the month in which such intoxicating liquors are first sold in this state or shipped into this state. Payment of the tax shall accompany the return.

(2) In the event of the institution of such return method of payment of the tax on intoxicating liquor, all persons required to make returns and payment of such tax, shall first enter into a surety bond with corporate surety to secure payment of the tax, both bond and surety to be approved by the commissioner. Such bond shall be equal to twice the taxpayer's estimated maximum monthly tax liability but shall not be less than \$1,000 nor more than \$100,000. The bonds shall be filed with the commissioner.

(3) To further secure the payment of the tax on intoxicating liquor, the commissioner may require all persons liable for payment of such tax to maintain advance payment of

estimated tax liabilities in an amount equal to 1½ times the estimated maximum monthly tax liability. Such advance payments shall be paid to the commissioner.

(4) The exercise by the commissioner of the authority vested in him by this section shall be without prejudice to his authority to rescind such action and repeal the rule by which such authority shall have been exercised, in which event the taxes on intoxicating liquor shall be paid by stamp as provided in s. 139.06.

History: 1963 c. 561.

139.07 Failure to pay liquor tax. If the tax imposed in s. 139.03 is not paid when due, a penalty of 2% thereof shall immediately accrue and in addition thereto interest on the tax and penalty at the rate of one per cent per month or fraction of a month from the date the tax became due until paid. If any person liable for such tax files a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded or attempted to be evaded.

History: 1963 c. 141, 561.

Revisor's Note, 1963: From last sentence of old 139.27 (3). (Bill No. 218-S)

139.08 Powers and duties of commissioner. (1) ADMINISTRATION; PERSONNEL, STAMPS. The commissioner shall enforce and administer ss. 139.01 to 139.25. He shall design, procure and sell the stamps herein provided for and shall prescribe the manner in which stamps are affixed and canceled. He shall collect and keep a record of all taxes collected. He shall keep a record of the sale of all stamps which shall show the dates of the sale thereof and the names of the purchasers.

(2) RULES. The commissioner shall make rules necessary to carry out this chapter.

(3) POLICE POWERS. The duly authorized employes of the commissioner have all necessary police powers to prevent violations of ss. 66.054, 139.01 to 139.25 and ch. 176.

(4) INSPECTION FOR ENFORCEMENT. The commissioner or his duly authorized employes, and any sheriff, policeman, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter in and upon any licensed premises, and examine the books, papers and records of any brewer, manufacturer, bottler, rectifier, wholesaler or retailer, for the purpose of inspecting the same and determining whether the tax imposed by ss. 139.01 to 139.25 has been fully paid, and have power to inspect and examine, according to law, any premises where fermented malt beverages or intoxicating liquors are manufactured, sold, exposed for sale, possessed or stored, for the purpose of inspecting the same and determining whether the tax imposed by said sections has been fully paid, and whether said sections are being complied with. Any refusal to permit such examination of such premises shall constitute sufficient reason for the refusal of the commissioner to furnish to such person so refusing any stamps. Such refusal shall automatically operate as a revocation of any license or permit granted for the sale of any fermented malt beverages or intoxicating liquors and in addition shall be deemed a misdemeanor, punishable as provided in s. 139.25 (5).

History: 1963 c. 141.

Revisor's Note, 1963: (1) is from 139.03 139.03 (11). (3) is from 139.27 (3). (4) is (7), (11) and 139.26 (3) (b), (c). (2) is from from 139.06. (Bill No. 218-S)

139.09 Registration. Every brewer, bottler, manufacturer, rectifier, wholesaler or retailer liable for payment of the occupational tax imposed in ss. 139.01 to 139.25 shall upon making application therefor be assigned a registration number by the commissioner. The form of the application shall be prescribed by the commissioner.

History: 1963 c. 141.

Revisor's Note, 1963: From 139.03 (1). (Bill No. 218-S)

139.10 Refunds by state treasurer. (1) On the certificate of the commissioner the state treasurer shall refund to any purchaser or any banking institution in Wisconsin the money paid for any unused stamps returned, the tax paid on intoxicating liquor or on whole cases or full kegs of fermented malt beverages which are spoiled or unfit to drink and the tax paid on fermented malt beverages sold to the armed forces of the United States, or the commissioner may make allowance of the amount of the tax.

(2) When the tax has been paid on intoxicating liquor supplied to hospitals (for hospital or medicinal purposes), or on alcohol supplied to institutions of learning or museums for non-beverage purposes, this purchaser shall, upon application to the commissioner, be entitled to a refund of the tax.

(3) The commissioner shall prescribe the method of proof and the forms of application for refund or allowance.

History: 1963 c. 141.

Revisor's Note, 1963: (1) is from 139.03 (3) is from 139.03 (7), 139.11 (8) and 139.26 (7) and 139.11 (8). (2) is from 139.26 (1a). (1a). (Bill No. 218-S)

139.11 Records and reports. (1) **PRESERVATION OF RECORDS.** Every person who manufactures, rectifies, distributes, imports, transports, stores, warehouses or sells intoxicating liquor or fermented malt beverages shall keep complete and accurate records of all such liquor or malt beverages purchased, sold, manufactured, rectified, brewed, fermented, distilled, produced, stored, warehoused, imported or transported within this state. Such records shall be of a kind and in the form prescribed by the commissioner and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the commissioner.

(2) **REPORT.** Each brewer, bottler, manufacturer, rectifier and wholesaler shall on or before the fifteenth day of each calendar month make a verified return to the commissioner of all fermented malt beverages or intoxicating liquor manufactured, received, sold, delivered or shipped by him during the preceding calendar month. Such return shall be made upon forms furnished by the commissioner and shall contain such information as he deems necessary for the collection and enforcement of the tax.

(3) **COMMISSIONER'S POWERS.** When the commissioner finds that the records kept by any brewer, bottler, manufacturer, rectifier, wholesaler or retailer are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, he may give notice of such fact to such person and may require the records to be kept in such form as he prescribes. If such requirements are not complied with within 30 days after the date of the notice, the brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall pay the expenses reasonably attributable to the determination of tax at the rate of \$30 per day for each auditor. The commissioner shall render a bill therefor by registered mail to the person charged with payment at the conclusion of the audit, which bill shall constitute notice of assessment and demand of payment thereof. The brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall, within 10 days after the mailing of the bill, pay its amount, and such payment shall be credited to the appropriation made in s. 20.800 (1) (a).

History: 1963 c. 134, 141, 459 s. 36; 1965 c. 433 s. 121.

Revisor's Note, 1963: (1) is from 139.295 keep records under (1). (2) The reports (1). (2) is from 139.03 (15a). (3) is from made under (2) must show malt beverages and liquor received as well as that manufactured, etc. (Bill No. 218-S)

There are 2 changes: (1) "Rectifiers" are added to the list of persons who must

139.12 Collection not to be restrained. No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in ss. 139.01 to 139.25. The aggrieved taxpayer shall pay the tax when due, and, if he pays under protest, may at any time within 90 days from the date of such payment, sue the state to recover the tax so paid, the summons and complaint to be served by delivering a copy to the attorney general or leaving it at his office in the capitol with one of his assistants or clerks. If it is determined that the tax, or any part thereof, was wrongfully collected, the department of administration shall issue a warrant on the state treasurer for the amount adjudged to have been wrongfully collected, and the treasurer shall pay the warrant out of the general fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made.

History: 1963 c. 141.

Revisor's Note, 1963: From 139.04. The provision for service of the summons on the attorney general is new to this chapter, but is a standard requirement of other chapters of the statutes. (Bill No. 218-S)

139.13 Distribution of revenues. After an amount equal to the sum of 70% of the estimated costs to be incurred from the appropriation made by s. 20.800 (1) for beverage tax division administration and the estimated cost under s. 20.670 (1) for administering alcohol studies as certified July 1 for the current fiscal year by the commissioner and the director of public welfare, respectively, has been set aside 45.72% of the balance of all revenues derived from the occupational tax on intoxicating liquors for the period July 1, 1963 to December 31, 1963 and 44.45% of such balance at 6-month periods thereafter shall be distributed to the cities, towns and villages and shall be used by them to reduce the tax on general property. Such distribution to local units of government shall be made semiannually and all cities, towns and villages shall share therein in proportion to their population in the last federal census. The estimated costs of administering the liquor tax law from s. 20.800 (1) and alcohol studies from s. 20.670 (1) shall be adjusted to actual costs on the cash basis per records of the department of administration as of June 30 following, and such adjustment shall be reflected in the liquor tax apportionment made immediately after the close of the state's fiscal year pursuant to this section. This section shall be effective as to revenues col-

lected beginning with July 1, 1963. The advance payments under s. 139.061 (3) shall be treated as liquor tax revenues for apportionment purposes.

History: 1963 c. 141, 561, 563; 1965 c. 249.

139.18 Presumptions from possession. (1) The possession of any fermented malt beverages on any licensed premises, other than upon the premises of a brewer or bottler, shall be deemed prima facie evidence that such products are kept with intent to sell and that such products are subject to the tax herein imposed.

(2) The possession of unstamped intoxicating liquor, other than wine or unadulterated apple cider, except upon the premises of a manufacturer, rectifier or wholesaler, or any licensed public warehouse shall be deemed prima facie evidence that such liquor is possessed with the intent to sell the same contrary to law.

History: 1963 c. 141.

Revisor's Note, 1963: (1) is from 139.05. (2) is from 139.35. (Bill No. 218-S)

139.20 Compulsory testimony. Any person may be compelled to testify in regard to any violation of this chapter of which he may have knowledge, even though such testimony may tend to incriminate him, upon being granted immunity from prosecution in connection therewith, and upon the giving of such testimony, such person shall not be prosecuted for or because of the violation relative to which he has testified.

History: 1963 c. 141.

Revisor's Note, 1963: From 139.07. (Bill No. 218-S)

139.22 Confiscation. Whenever the commissioner or any sheriff, policeman, marshal or constable, within his respective jurisdiction, discovers any fermented malt beverages upon any premises other than the premises of a brewer or bottler, or any intoxicating liquor upon any premises other than the premises of a manufacturer, rectifier, winery or wholesaler, and upon which the tax has not been paid or which was possessed, kept, stored, manufactured, sold, distributed or transported in violation of ss. 139.01 to 139.25 and chs. 66 and 176, the commissioner or any such officer may forthwith seize said fermented malt beverages or intoxicating liquors. Any such fermented malt beverages or intoxicating liquors so seized shall be held by the commissioner and disposed of through the department of administration as provided in s. 176.62 (2) (b).

History: 1963 c. 141.

Revisor's Note, 1963: From 139.03 (10). (Bill No. 218-S)

139.25 Penalties. (1) **COUNTERFEIT STAMP.** Any person who falsely or fraudulently makes, forges, alters or counterfeits any stamp prescribed by s. 139.06, or procures or causes to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or who knowingly possesses, utters, publishes, passes or tenders as true any false, altered, forged or counterfeited stamp, or affixes the same to any container, or uses any container upon which the stamp or stamps have been canceled, for the purpose of placing therein for sale, any intoxicating liquor without placing thereon stamps in the amount and of the kind and character herein provided, except for shipment in interstate commerce, or for shipment by a manufacturer to a rectifier shall be imprisoned in the state prison not less than one year nor more than 10 years.

(2) **FALSE REPORTS.** Any person required to make, render, sign or verify any report who makes any false or fraudulent return, or who attempts to evade the tax imposed by this chapter, or any person who aids or abets in the evasion or attempted evasion of such tax, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned for not less than 90 days nor more than one year, or both.

(3) **FAILURE TO FILE REPORTS.** Failure to file a report when due shall subject the person to a \$10 late filing fee.

(4) **FAILURE TO KEEP RECORDS.** Failure to comply with s. 139.11 (1) shall carry a penalty of revocation by the commissioner of taxation of the license issued together with a fine of not less than \$100 nor more than \$500 for each offense.

(5) **MISCELLANEOUS.** Any person who violates any provision of ss. 139.01 to 139.22 for which specific penalty is not provided shall be fined not more than \$500 nor less than \$50, or imprisoned not more than 90 days nor less than 10 days or both, and any license or permit issued to him shall be subject to revocation. The license of any licensee convicted of evading payment of the tax on intoxicating liquor, or any attempt to evade payment of such tax, shall be deemed forfeited immediately upon conviction.

(6) **SECOND OFFENSES.** If any person is convicted of a second offense under the provisions of ss. 139.01 to 139.22, he shall, in addition to the penalties herein provided, forfeit the right to purchase any stamps from the commissioner, and all rights conferred

upon him by any license issued to him by any city, village or town shall without notice be deemed forthwith forfeited.

History: 1963 c. 141, 561.

Revisor's Note, 1963: (1) is from 139.03 provided a penalty for a failure to keep accurate records. This bill incorporates the (9), (2) and (3) are from 139.03 (16). (4) is from 139.295 (2). (5) and (6) are from lighter penalty of 139.295 (2) for this offense, which is in accordance with the 139.08. Under the old provisions there was a conflict between the last sentence of policy of the commissioner. (Bill No. 213-S) 139.03 (16) and 139.295 (2), both of which

139.30 Cigarette tax; definitions. In ss. 139.30 to 139.44, unless the context otherwise requires:

(1) "Cigarette" means any roll of tobacco wrapped in paper or any substance other than tobacco.

(2) "Department" means the state department of taxation.

(3) "Commissioner" means the commissioner of taxation.

(4) "Sell" or "sale" includes the transfer, gift, barter, trade or exchange or any shift, device, scheme or transaction whereby cigarettes may be obtained, but does not include the solicitation of orders for or the sale for future delivery of cigarettes.

(5) "Vending machine" is any mechanical device which automatically dispenses cigarettes upon the deposit therein of specified coins in payment for such cigarettes.

(6) "Manufacturer" means any person who manufactures cigarettes for the purpose of sale.

(7) "Distributor" means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages or other containers, stores them and sells them to other permittees or to retailers for resale. He may also acquire stamped cigarettes from another permittee for such sales.

(8) "Jobber" means any person who acquires stamped cigarettes from manufacturers or distributors, stores them and sells them to retailers for resale.

(9) "Vending machine operator" means a person who acquires stamped cigarettes from manufacturers or permittees, stores them, and sells them through the medium of vending machines which he owns, operates or services and which are located on premises owned or under the control of other persons.

(10) "Multiple retailer" means any person who acquires stamped cigarettes from manufacturers or permittees, stores them and sells them to consumers through 10 or more retail outlets which he owns and operates within or without this state.

(11) "Retailer" means any person who sells, exposes for sale or possesses with intent to sell to consumers any cigarettes.

(12) "Warehouse" means the premises where any person is lawfully engaged in the business of storing cigarettes for profit but shall not include the premises where common carriers store cigarettes which are received by them as common carriers and are in transit in interstate commerce.

(13) "Stamp" means the authorized indicia of cigarette tax payment including water transfer stamps, heat applied stamps and meter impressions. In provisions relating to the sale or transfer of stamps the term also includes meter settings.

History: 1965 c. 67.

Revisor's Note, 1965: This section is important. The definitions have been redrawn to more clearly reflect trade functions. The person who performs more than one function will have to obtain a permit for each. This is not clearly stated in the old law.

Any person who acquires unstamped cigarettes and stamps them (except for exempt

sales) will have to get a distributor's permit even though he may also have to have another permit for other types of operations.

The definition of vending machine operator has been changed to eliminate the old exemption of persons operating less than 5 machines. (Bill 112-S)

139.31 Tax imposed; exceptions. (1) An occupational tax is imposed on the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale of cigarettes or other disposition for any purpose whatsoever at the following rates:

(a) On cigarettes weighing not more than 3 pounds per thousand, 5 mills on each cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 10 mills on each cigarette.

(2) One-tenth of all taxes imposed by sub. (1) shall be paid into the general fund and appropriated to the state recreation committee under s. 20.703.

(3) Cigarettes sold to post exchanges of the armed forces of the United States and to federally or state operated veterans hospitals in this state and cigarettes sold to an interstate carrier of passengers for hire to be resold to bona fide passengers actually being transported and cigarettes sold for shipment outside this state in interstate commerce are not subject to the tax.

History: 1965 c. 67, 163, 433 s. 121.

139.32 Payment of taxes. (1) The tax imposed by s. 139.31 shall be paid by the purchase of stamps from the commissioner. To evidence the payment, stamps of the proper denomination shall be affixed to each package or other container in which cigarettes are packed, prior to the first sale within this state. The tax shall be paid only once on each package or container.

(2) The commissioner shall prepare and have available for sale stamps of such denominations and quantities as he deems necessary for the payment of the taxes imposed by s. 139.31. The stamps shall be of such designs and materials as to make the removal and reuse thereof impossible after being once affixed.

(3) Stamps shall be affixed in the manner prescribed by the commissioner.

(4) In lieu of stamps the commissioner may authorize impressions applied by the use of meter machines. He shall prescribe by rule the type of impression and the kind of machines which may be used.

(5) Manufacturers and distributors having a permit from the commissioner may purchase stamps at a discount of 2.4%. No part of this discount shall be charged against that part of the taxes imposed and appropriated to the state recreation committee under s. 20.703.

(6) Manufacturers and distributors having a permit from the commissioner may purchase stamps on credit upon filing a payment guarantee bond in the amount and under the conditions prescribed by the commissioner by rule.

(7) If the tax imposed by s. 139.31 is not paid when due, a penalty of 2% thereof shall immediately accrue and in addition thereto interest on the tax and penalty shall accrue at the rate of one per cent per month or a fraction of a month from the date the tax became due.

(8) It is unlawful for any person except a manufacturer or a distributor having a permit from the commissioner, to receive or possess cigarettes unless the required stamps are properly affixed to the package, but any permittee may, upon obtaining department approval, acquire and have possession of unstamped exempt cigarettes for sales under s. 139.31 (3) if he maintains a separate inventory thereof and records pertaining thereto in such manner and form as the department prescribes by rule.

History: 1965 c. 67, 163, 433 s. 121.

139.33 Use tax. (1) A use tax is imposed and levied upon the use of cigarettes in this state by any person for any purpose if the occupational tax imposed by s. 139.31 has not been paid on such cigarettes. Such tax is levied and shall be collected at the same rates as provided for in s. 139.31. Such tax shall be imposed but once with respect to the same cigarettes whether the possession continues with the person paying the tax or is transferred to another. The tax imposed by this section is not applicable to cigarettes subject to the occupational tax imposed by s. 139.31 nor to cigarettes exempt from that tax under s. 139.31 (3).

(2) One-tenth of all taxes imposed by sub. (1) shall be paid into the general fund and appropriated to the state recreational committee under s. 20.703.

(3) Any person who imports into this state more than 2 cartons of cigarettes on which the occupational tax imposed by s. 139.31 has not been paid or the container of which does not bear proper stamps shall, within 3 days, file with the department a declaration of such cigarettes and shall remit therewith the amount of the tax on such cigarettes as herein imposed. The commissioner shall then issue a receipt for such taxes so paid identifying the taxpayer and the cigarettes.

(4) Sections 139.30 to 139.44 relating to collection and enforcement of the tax shall apply with like effect to the occupational tax imposed by s. 139.31 and the use tax imposed by this section.

Revisor's Note, 1965: This is a restatement of old s. 139.51. It has been shortened and modernized. (Bill 112-S)

History: 1965 c. 67, 163, 433 s. 121.

139.34 Permits required. (1) No person shall manufacture cigarettes in this state or sell cigarettes in this state as a distributor, jobber, vending machine operator or multiple retailer and no person shall operate a warehouse in this state for the storage of cigarettes for another person without first obtaining a permit from the commissioner. The application for a permit and the permit shall be in the form prescribed by the commissioner.

(2) Each permit shall expire on June 30 of each year.

(3) The annual fee for each such permit shall be \$50.

(4) A separate permit shall be required of and issued to each class of permittee and the holder of any permit shall perform only the operations thereby authorized. Such permit shall not be transferable from one person to another or from one premises to

another. A separate permit shall be required for each place where cigarettes are stamped or where cigarettes are stored for sale at wholesale or through vending machines or multiple retail outlets.

(5) The ownership and operation of a retail outlet shall not preclude a person from receiving a permit as a distributor or jobber. No permit shall be issued to a person who owns or operates such a retail outlet unless a substantial part of his sales of cigarettes are at wholesale.

(6) A vending machine operator or a multiple retailer may acquire unstamped cigarettes from the manufacturers thereof and affix the stamps to packages or other containers only if he also holds a permit as a distributor.

(7) The commissioner may require by rule that stamps affixed to cigarette packages be identified by a permit or code number assigned to the person affixing them.

(8) The holder of a warehouse permit is entitled to store cigarettes on the premises described in the permit. The warehouse permit shall not authorize the holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a manufacturer or distributor may be delivered only to a person holding a permit as a manufacturer or distributor.

(9) The applicant for a permit, if a nonresident or foreign corporation, shall file proof that he has appointed the secretary of state his agent for the service of process on any matter arising under ss. 139.30 to 139.44. A foreign corporation without a place of business in this state need not obtain a certificate of authority under s. 180.801.

(10) Every vending machine operator shall in his application for a permit list each county in which he operates such machines and state the number of such machines he is then operating in each such county.

History: 1965 c. 67, 218.

Revisor's Note, 1965: Since warehouse permits are combined with the other types, the warehouse permit fee is raised from \$10 to \$50 a year.

The revision makes it clear that permits are needed for each place of business and

no permit is transferable.

Subsection (10) eliminates the old requirement that vending machine operators inform the department of the location of each machine and its number. This requirement was unworkable. (Bill 112-S)

139.35 Stamps. (1) **TRANSFERS.** No person may give, sell or lend any stamps to another and no person may accept, purchase or borrow any stamps from another. All sales and transfers of stamps may be made only by the commissioner to permit holding manufacturers and distributors.

(2) **RECORDS.** The commissioner shall keep a record of the sale of all stamps including the names of the purchasers and the date of sale.

History: 1965 c. 67.

139.36 Refunds. The commissioner shall refund to any purchaser the money paid for any stamps returned unfit for use or otherwise unused or which have been affixed to packages which are unsalable. He shall prescribe by rule the proof required to obtain such refund. The permittee shall pay the expenses of determining the amount of such refund. Refunds of taxes collected and paid into the general fund and appropriated to the state recreation committee under s. 20.703 (41) shall be charged against that appropriation.

History: 1965 c. 67.

139.37 Salesmen. (1) No person shall sell or take orders for cigarettes for resale in this state for any manufacturer or permittee without first being registered with the department by his employer. No manufacturer or permittee shall authorize any person to sell or take orders for cigarettes in this state without first registering such person with the department as a salesman. The fee for such registration is \$2. Each application for registration shall disclose the name and address of the employer and such registration shall remain effective only while the registrant represents such named employer. If such salesman is thereafter employed by another manufacturer or permittee he shall be registered by his new employer. Each manufacturer and permittee shall notify the department within 10 days after the resignation or dismissal of any such registered salesman.

(2) No representative of any manufacturer shall sell more than 3 cartons of any one kind of cigarettes to any retailer at one time.

History: 1965 c. 67.

139.38 Records, returns. (1) Every manufacturer located out of the state shall keep records of all sales of cigarettes shipped into this state. Every manufacturer located in the state shall keep records of production, sales and withdrawals of cigarettes. Every distributor shall keep records of purchases and sales of cigarettes. Every manufacturer and distributor holding a permit from the commissioner with the right to purchase and apply stamps shall also keep records of purchases and disposition of

stamps. Every jobber, multiple retailer and vending machine operator shall keep records of all purchases and disposition of cigarettes. Every warehouse operator shall keep records of receipts and withdrawals of cigarettes. All such records shall be accurate and complete and be kept in a manner prescribed by the commissioner. These records shall be preserved on the premises described in the permit or license for 2 years in such a manner as to insure permanency and accessibility for inspection at reasonable hours by authorized personnel of the department.

(2) Every permittee shall render a true and correct invoice of every sale of cigarettes at wholesale and shall on or before the 15th day of each calendar month make a verified report to the commissioner of all cigarettes purchased, sold, received, warehoused or withdrawn during the preceding calendar month.

(3) The commissioner shall prescribe reasonable and uniform methods of keeping records and making reports. He shall prescribe and furnish the necessary report forms.

(4) If the commissioner finds that the records of any permittee are not kept in the prescribed form or are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, he shall give notice of such fact to such permittee and, in such notice, require that the records be revised and kept in the prescribed form. If such permittee fails to comply within 30 days he shall pay the expenses reasonably attributable to a proper examination and tax determination at the rate of \$30 per day of each auditor. The commissioner shall send a bill for such expenses and the permittee shall pay the amount of such bill within 10 days.

(5) If any permittee fails to file a report when due he shall be required to pay a late filing fee of \$10. A report shall be considered filed in time if it is mailed in a properly addressed envelope with first class postage duly prepaid, which envelope is officially postmarked on the date due, and if the report is actually received by the commissioner within 5 days of the due date.

History: 1965 c. 67, 218.

Revisor's Note, 1965: Monthly reports misson to mail reports on the due date is will be required from all permittees, not new but is the standard provision now used just manufacturers and wholesalers. Per- as to most tax returns. (Bill 112-S)

139.39 Administration and enforcement. (1) The commissioner shall administer and enforce ss. 139.30 to 139.44 and enforce s. 134.65. He shall adopt rules necessary to do so.

(2) The commissioner or authorized personnel of the department, and any sheriff, policeman, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter the premises of any permittee or retailer and examine the books and records to determine whether the tax imposed by s. 139.31 has been fully paid and may enter and inspect any premises where cigarettes are made, sold or stored to determine whether ss. 139.30 to 139.44 are being complied with.

(3) The commissioner may suspend or revoke the permit of any permittee who violates ss. 100.30 or 139.30 to 139.44 or any rules adopted by the commissioner.

(4) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in s. 139.31. The aggrieved taxpayer shall pay the tax when due and, if paid under protest, may at any time within 90 days from the date of payment, sue the state to recover the tax paid. If it is finally determined that any part of the tax was wrongfully collected, the department of administration shall issue a warrant on the state treasurer for the amount wrongfully collected, and the treasurer shall pay the same out of the general fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made.

(5) Any person may be compelled to testify in regard to any violation of ss. 134.65 and 139.30 to 139.44 of which he may have knowledge, even though such testimony may tend to incriminate him, upon being granted immunity from prosecution in connection therewith, and upon the giving of such testimony, he shall not be prosecuted because of the violation relative to which he has testified.

History: 1965 c. 67.

139.40 Seizure and confiscation. (1) All cigarettes owned, possessed, kept, stored, made, sold, distributed or transported in violation of this chapter, and all personal property used in connection therewith is unlawful property and subject to seizure by the commissioner or any peace officer.

(2) If cigarettes which do not bear the proper tax stamps or on which the tax has not been paid are so seized they may be sold to qualified buyers by the commissioner, without notice, and after deducting the costs of the sale and the keeping of the property, the proceeds of the sale shall be paid into the state treasury. When the commissioner finds that such cigarettes may deteriorate or become unfit for sale or that such sale

would otherwise be impractical he may order them destroyed or give them to a charitable or penal institution for free distribution to patients or inmates.

(3) If cigarettes on which the tax has been paid and which bear the proper tax stamps are seized they shall be returned to the true owner if ownership can be ascertained and such owner or his agent is not involved in the violation resulting in such seizure. If such ownership cannot be ascertained or if the owner or his agent was guilty of a violation of any of the provisions of ss. 139.30 to 139.44, which resulted in the seizure of such cigarettes, they may be sold or otherwise disposed of as provided in sub. (2).

(4) If personal property other than cigarettes is so seized the commissioner shall advertise the same for sale by publication of a class 2 notice under ch. 985. If no claimant, either of lien or ownership, has notified the commissioner within 10 days after last insertion of such notice, the property shall be sold. If such sale is not practical the property may be destroyed. If a claimant of a lien or ownership notifies the commissioner within the prescribed time, the commissioner may apply to a court of record in the county where the property was seized for an order directing disposition of said property or the proceeds thereof. If a sale of such seized property is ordered, all liens, if any, may be transferred from the property to the proceeds of such sale. Neither the property seized nor the proceeds from the sale thereof shall be turned over to any claimant of lien or ownership unless such claimant first establishes that the property was not used in connection with any violation of ss. 139.30 to 139.44 or that, if so used, it was done without his knowledge or consent and without his knowledge of such facts as should have given him reason to believe it would be put to such use. If no claim of lien or ownership is so established the property may be ordered destroyed. In case of sale, the net proceeds after deducting costs, expenses and established claims shall be paid into the state treasury.

History: 1965 c. 67, 433.

Revisor's Note: Old s. 139.50 (33) and confusing, and in some particulars con-(35) restated. They overlapped and were flicted. (Bill 112-S)

139.41 Place to place delivery. No person shall peddle any cigarettes from house to house, where the sale is consummated and delivery made concurrently.

History: 1965 c. 67.

139.42 Nuisance. Any building or place of any kind where cigarettes are sold, possessed, stored or manufactured without a lawful permit in violation of ss. 139.30 to 139.41 is declared a public nuisance and may be closed and abated as such.

History: 1965 c. 67.

139.43 State-wide concern. This section shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of tobacco products.

History: 1965 c. 67.

139.44 Penalties. (1) Any person who falsely or fraudulently makes, alters or counterfeits any stamp or procures or causes the same to be done, or who knowingly utters, publishes, passes or tenders as true any false, altered or counterfeit stamp, or who affixes the same to any package or container of cigarettes, or who possesses with the intent to sell any cigarettes in containers to which false, altered or counterfeit stamps have been affixed shall be imprisoned for not less than one year nor more than 10 years.

(2) Any permittee who makes or verifies any false or fraudulent report or who attempts to evade the tax imposed by s. 139.31, or who aids in or abets the evasion or attempted evasion of that tax shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 90 days nor more than one year or both.

(3) Any permittee who fails to keep the records required by ss. 139.30 to 139.42 shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 6 months or both.

(4) Any person who refuses to permit the examination or inspection authorized in s. 139.38 (2) shall be fined not more than \$500 or imprisoned not more than 90 days or both. Such refusal shall be cause for immediate suspension or revocation of permit by the commissioner.

(5) Any person who violates any of the provisions of ss. 139.30 to 139.41 for which no other penalty is prescribed shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 10 days nor more than 90 days or both.

(6) Any person who violates any of the rules of the department shall be fined not less than \$100 nor more than \$500 or be imprisoned not more than 6 months or both.

(7) In addition to the penalties imposed for violation of ss. 139.30 to 139.41 or any of the rules of the department, the permit of any person convicted shall be automatically

revoked and he shall not be granted another permit for a period of 2 years following such revocation.

History: 1965 c. 67.

139.60 Oleomargarine regulations. (1) (a) An occupational tax is hereby assessed, imposed and levied, as hereinafter provided, upon the sale, offering or exposing for sale, or giving or delivering or use of oleomargarine, butterine and similar substances, in this state. The purpose of this section is declared to be the raising of revenue, and the regulations herein imposed are for the purpose of securing the full collection of such revenue, and punishing evasion or attempted evasion of the payment thereof. Oleomargarine, butterine and similar substances include all fats and fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily to use as an alternative to butter, but this section shall not apply to lard as defined in s. 97.02 (4), cream cheese, cheese food compounds as defined in s. 97.50, nor to any other dairy product made exclusively of milk solids, with or without added vitamins, if such product is sold or distributed in such manner and form as will clearly distinguish it from butter. Nor shall this section apply to shortenings not churned or emulsified in milk or cream and having a melting point of 112 degrees Fahrenheit or more as determined by the capillary tube method unless there is sold or given away with such shortening any compound which when mixed with such shortening makes oleomargarine, butterine or similar substances as defined by this section.

(b) No person shall by himself, or by his servant or agent, manufacture, sell, exchange, offer or expose for sale, have in possession with intent to sell, or serve to guests, patrons or boarders for compensation in a hotel, restaurant or boarding house, or use in the preparation of food to be sold or offered for sale or to be served or to be offered to guests, patrons or boarders for compensation in a hotel, restaurant or boarding house oleomargarine, butterine, or similar substance, without first securing a license from the commissioner of taxation.

(2) Application for such license shall be made in such form as may be prescribed by the commissioner of taxation. Such application shall contain an accurate description of the place where the proposed business is intended to be carried on, the name and style under which it is proposed to conduct the said business, and such other information as the commissioner of taxation may require. If from such application the commissioner of taxation is satisfied that the name and style of the business is not calculated to deceive or mislead the public, and upon payment of the tax specified in sub. (3), the commissioner of taxation shall issue to the applicant an annual license authorizing him to manufacture, sell, or serve, as the case may be, oleomargarine, butterine, and similar substances. A separate license shall be required for each separate place of business.

(3) The tax for an annual license issued pursuant to this section shall be as follows:

- (a) To a manufacturer, \$1,000;
- (b) To a wholesale dealer, \$500;
- (c) To a retail dealer, \$25;
- (d) To a proprietor of a hotel or restaurant, \$25;
- (e) To a proprietor of a boarding house having 3 or more boarders at any time during the license period, \$5;
- (f) To a proprietor of a bakery, \$5;
- (g) To a proprietor of a confectionery, \$5.

(4) All licenses issued under this section shall expire on the thirty-first day of December of each year, but licenses may be granted to commence on the first day of July for the remainder of the license year, upon payment of one-half the annual license fee. Such licenses shall be transferable upon application in writing to the commissioner of taxation.

(5) A license issued under this section shall not authorize the manufacture, sale, offering or exposing for sale, having in possession with intent to sell, or serving to guests or patrons or boarders for compensation, any oleomargarine, butterine or similar substance at any other place than that designated in the application and license.

(6) Every licensee shall display his license or duplicate thereof in a conspicuous place on the walls of each room in which oleomargarine, butterine, or other substance is manufactured, sold, exposed for sale, or served to guests, patrons or boarders. Duplicate licenses shall be furnished by the commissioner of taxation for 50 cents.

(7) Every licensed manufacturer, and every licensed wholesale dealer in oleomargarine, butterine or other similar products shall file with the commissioner of taxation the name and address of each person to whom such products are sold. Such information shall be filed not later than January 20, May 20 and September 20 and shall in each case cover sales made during the preceding 4 months' period.

(8) (a) An occupational tax to be collected as a stamp tax is assessed, imposed and

levied upon the sale, exchange, offering or exposing for sale or exchange, having in possession with intent to sell or exchange, or removal for consumption, exchange or sale other than for shipment in interstate or foreign commerce, of oleomargarine, butterine and other similar substances. The rate of such tax shall be 15 cents per pound on such oleomargarine, butterine or other similar substance.

(b) The payment of the tax herein imposed shall be evidenced by the affixing of oleomargarine tax stamps to the containers in which all oleomargarine, butterine or other similar substances are placed, received, stored, warehoused, shipped or delivered for sale.

(c) The commissioner of taxation shall prescribe, prepare and have available for sale, stamps of such denominations and quantities as it may deem necessary for the payment of the tax imposed by this subsection.

(d) Stamps shall be affixed in such a manner as the commissioner of taxation promulgates by order. Manufacturers and wholesalers within or without this state may be permitted to purchase stamps and affix them, in the manner prescribed by the commissioner of taxation, to containers for oleomargarine to be sold in this state.

(e) No manufacturer or wholesaler shall sell any oleomargarine within this state to any person, except a licensed wholesaler, unless the proper tax stamps have been affixed thereto. No licensee under this section, except a wholesaler or manufacturer, shall purchase, sell, or have in his possession for the purpose of sale or use within this state, any oleomargarine unless the proper tax stamps have been affixed thereto.

(9) (a) In order to prevent evasion of the per pound tax imposed by this section, a tax is hereby assessed, imposed and levied, as hereinafter in this subsection provided, upon the use of oleomargarine, butterine, and similar substances in this state. No person shall in any manner use any oleomargarine, butterine, or similar substances not purchased from a retail dealer in this state, unless he be licensed as hereinbefore provided, without first securing a license from the commissioner of taxation. Applications for such license shall be made in the form to be prescribed by the commissioner of taxation and shall designate the place at which such oleomargarine, butterine or similar substance is to be used. Such license shall expire on the thirty-first day of December of each year and shall not be transferable. The tax for such annual license shall be one dollar. Upon the receipt of the application and the payment of such tax, the commissioner of taxation shall issue to the applicant an annual license authorizing said applicant to use oleomargarine, butterine, or similar substances. On all oleomargarine, butterine or similar substances so used the licensee shall pay a tax in the amount of 6 cents per pound.

(b) All licensees under this section shall keep records, upon forms to be prescribed by the commissioner of taxation, stating the date of the receipt of all oleomargarine, butterine or similar substances so used, and from whom purchased. Not later than the tenth day of January, April, July and October, each such licensee shall file such records for the quarter year ending on the last day of the preceding month, verified, with the commissioner of taxation, retaining a copy thereof, open to inspection by the commissioner of taxation. Mailing by registered mail shall be equivalent to filing.

(c) With the filing of such records, the licensee shall pay the tax levied and required herein, to the commissioner of taxation, by mail order, certified check, or draft. Payments not made at the time required shall be increased by one cent per pound.

(10) The commissioner of taxation or any of his authorized agents may at all reasonable times inspect the premises and examine the records of any licensee.

(11) The doing of any act herein forbidden to be done without license, if done without such license in full force and effect, or the keeping, making or filing of any false record under this section shall subject the person to a forfeiture of \$100 for each quarter year or part thereof during which any such act shall be done. Such forfeiture shall be recoverable at the suit of the state as for a debt.

(12) Conviction of any licensee for any violation of this section shall operate automatically as a revocation of his license issued under this section, and no new license shall be issued to such person for one year thereafter.

(13) No suit shall be maintained in any court to restrain or delay the collection or payment of any tax herein levied at the suit of the person required to pay such tax, but the aggrieved taxpayer shall pay the tax as and when due, and if paid under protest may at any time within 2 years from the date of such payment sue the state in an action at law to recover the tax so paid, with legal interest thereon from the date of payment. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the department of administration to issue its warrant on the treasurer for the amount of such tax so adjudged to have been wrongfully collected, together with interest thereon, and the treasurer shall pay same out of the general fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a

recovery may be had in one suit for as many payments as may have been made, and which are not barred by the limitation of 2 years herein imposed.

(14) As used in this section:

(a) "Wholesale dealer" means any person, firm or corporation who sells or offers for sale to a retail dealer.

(b) "Retail dealer" means any person, firm or corporation who sells or offers for sale to a user or consumer.

(c) "Hotel" or "restaurant" includes all places wherein meals or lunches are served transients for compensation.

(d) "Boarding house" includes places where meals are furnished as part compensation for services other than domestic labor.

(e) "Bakery" means bakery as defined in s. 97.10.

(f) "Confectionary" means confectionary as defined in s. 97.11.

(15) For the purpose of securing information as to any violation of this section, the commissioner of taxation shall give as wide publicity as possible to the names of licensees hereunder and taxes paid by them and to such other information with reference to compliance or noncompliance with this law as shall contribute to the purpose of this subsection, and it shall be the duty of any person becoming aware of a violation of this section to notify the commissioner of taxation thereof, but the said commissioner of taxation shall not disclose the source of such information unless it becomes necessary in enforcing the law, and no penalty shall attach to a failure to perform such duty.

(20) Any person who violates any of the provisions of this section shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months, or both and for each subsequent offense, shall be fined not less than \$500 nor more than \$1,000 or imprisoned for not less than 6 months nor more than one year. No person shall be prosecuted under this subsection for the doing of any act for which he has paid a forfeiture under sub. (11) and any person accused under this subsection may upon payment of the forfeiture provided in sub. (11), and the costs of prosecution, have such prosecution dismissed, and the court shall have jurisdiction to determine the amount of such forfeiture.