

State of Misconsin 2021 - 2022 LEGISLATURE

LRB-0386/1 EKL:amn

2021 BILL

1	AN ACT to amend 139.323 (3) and 139.803 (3) of the statutes; relating to:
2	removing the tribal lands designation deadline for cigarette, tobacco products,
3	and vapor products tax refunds.

Analysis by the Legislative Reference Bureau

This bill is explained in the Notes provided by the Joint Legislative Council in the bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

Under current law, the Wisconsin cigarette tax, which is an excise tax charged on cigarettes, does not apply to cigarettes sold on tribal land by a tribe or its authorized retailer to Native Americans who reside on their tribal land. All other cigarettes sold by a tribe or its authorized retailers are required to be sold with the Wisconsin tax stamp properly affixed to each package. Tribes in Wisconsin may purchase untaxed cigarettes for sales to Native Americans who reside on their tribal land, or they may enter into an agreement with the Department of Revenue (DOR) to receive cigarette tax refunds. For the second option, a tribe may enter into an agreement with DOR to receive a refund of 70 percent of the Wisconsin cigarette taxes paid on cigarettes purchased by the tribe or

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its authorized cigarette retailers for sale on its tribal land over which the tribe has jurisdiction. To qualify for the 70 percent refund, all of the following conditions must be met:

- 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, or on a later date as determined by an agreement between the department and the tribal council.
- 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.
 - 5. The retailer has not sold the cigarettes to another retailer or to a jobber.

State law also provides for the refund of certain taxes from the sale of tobacco and vapor products, except that the law allows, but does not require, DOR to enter into a refund agreement with a tribe. Within such refund agreements, DOR provides a refund of 50 percent of the tobacco and vapor products taxes paid on such products purchased by tribe or its authorized tribal retailers. The conditions that must be met in order for a tobacco and vapor product refund to be issued are nearly identical to the conditions in the cigarette tax refund law.

As it relates to the condition for cigarette, tobacco, and vapor product refunds that the land on which the sale occurs must have been designated a reservation or trust land on or before January 1, 1983, the bill modifies the condition so that the land on which the sale occurs must be designated a reservation or trust land, without reference to any date limitation.

- **SECTION 1.** 139.323 (3) of the statutes is amended to read:
- 139.323 (3) The land on which the sale occurred was is designated a reservation or trust land on or before January 1, 1983, or on a later date as determined by an agreement between the department and the tribal council.
 - **Section 2.** 139.803 (3) of the statutes is amended to read:
 - 139.803 (3) The land on which the sale occurred was is designated a reservation or trust land on or before January 1, 1983, or on a later date as determined by an agreement between the department and the tribal council.

9 (END)