

Assembly Bill 422

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**CHAPTER 179, LAWS OF 1967**

AN ACT to amend 139.31 (1), 139.32 (1), 139.33 (1) and (3) and 139.34 (1); to repeal and recreate 139.32 (8); and to create 139.44 (8) of the statutes, relating to cigarette tax liability, possession of unstamped cigarettes and providing penalties.

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

SECTION 1. 139.31 (1) of the statutes is amended to read:

139.31 (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.~~ *All cigarettes received in this state for sale or distribution within this state, except cigarettes actually sold as provided in sub. (3), shall be subject to such tax. Any person licensed under chs. 100 and 139 to have untaxed cigarettes in his possession which are lost, stolen, destroyed or which have mysteriously disappeared shall be liable for and shall pay the tax thereon. The tax shall be at the following rates:*

SECTION 2. 139.32 (1) of the statutes is amended to read:

139.32 (1) The tax imposed by s. 139.31 shall be paid by 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. *First sale does not include a sale by a manufacturer to a distributor or by a distributor to a permittee who has obtained department approval as provided for in sub. (8) (a) 2.* The tax shall be paid only once on each package or container.

SECTION 3. 139.32 (8) of the statutes is repealed and recreated to read:

139.32 (8) It is unlawful for any person to possess in excess of 400 cigarettes unless the required stamps are properly affixed as provided in sub. (1) and s. 139.33 (4).

(a) This subsection shall not apply to the following:

1. Manufacturers, distributors or warehouse operators possessing valid permits issued by the commissioner.

2. Any permittee under s. 139.34 having department approval or person authorized to acquire, possess or sell unstamped cigarettes under s. 139.31 (3) provided that said permittee or person maintains a separate inventory thereof and records pertaining thereto in such manner and form as the department prescribes by rule.

3. Common carriers licensed by the interstate commerce commission to carry such commodities in interstate commerce who are in possession of proper bills of lading covering each such shipment. The department may by rule require that copies of all such bills of lading, clearly indicating thereon the quantities of cigarettes transported, be furnished to it.

(b) Any person violating this subsection shall be punished as provided in s. 139.44 (8).

SECTION 4. 139.33 (1) and (3) of the statutes are amended to read:

139.33 (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).

(3) ~~Any~~ *No person who imports other than a licensed distributor shall import into this state more than 2 cartons of 400 cigarettes on which the occupational tax imposed by s. 139.31 has not been paid ~~or~~ and the container of which does not bear proper stamps shall.* Within 3 days, *such person shall* file with the department a declaration of such cigarettes *imported* and shall remit therewith the amount of the tax on such cigarettes

as herein imposed. The commisisoner shall then issue a receipt for such taxes so paid identifying the taxpayer and the cigarettes, *except that members of the armed forces shall not be required to report or pay the tax on cigarettes in their possession if such cigarettes are issued to them by the U. S. government or any of its subdivisions or were purchased in any armed forces post exchange or service store.*

SECTION 5. 139.34 (1) of the statutes is amended to read:

139.34 (1) ~~No~~ *It is unlawful for any person shall to 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 the proper permit to perform such operations from the commissioner. The application for a permit and the permit shall be in the form prescribed by the commissioner.*

SECTION 6. 139.44 (8) of the statutes is created to read:

139.44 (8) Penalties for violation of s. 139.32 (8) shall be as follows:

(a) If the number of cigarettes does not exceed 20,000, a fine of not more than \$200 or imprisonment for not more than 6 months or both.

(b) If the number of cigarettes exceeds 20,000, a fine of not more than \$1,000 or imprisonment for not more than one year in the county jail or both.

Approved November 4, 1967.