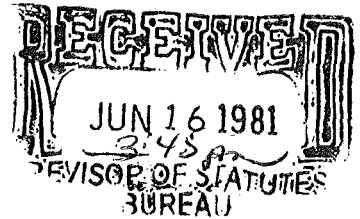


Tax 9

CERTIFICATE

STATE OF WISCONSIN)
DEPARTMENT OF REVENUE)



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Mark E. Musolf, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed rule relating to cigarette sales to and by Indians was duly approved and adopted by this department on June 8, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 8th day of June, 1981.



Mark E. Musolf
Secretary of Revenue

8-1-81

ORDER OF THE DEPARTMENT OF REVENUE

ADOPTING RULE TAX 9.08, CIGARETTE SALES TO AND BY INDIANS

Relating to the application of the cigarette occupational tax to cigarette sales to and by Indians.

Analysis by the Department of Revenue

Interpretations of various U.S. Supreme Court decisions indicate that Wisconsin has no jurisdiction to require an Indian or an Indian reservation to collect the state cigarette occupational tax. However, current Wisconsin law does not provide for an exemption from Wisconsin's occupational tax on cigarette sales to Indians by Wisconsin distributors, and no state can require Indians doing business on a reservation to obtain cigarette permits or licenses. Some Indians and Indian tribes are now buying untaxed cigarettes outside the state and selling them from reservation smoke shops and not collecting the tax.

A May 8, 1979 Opinion of the Attorney General (OAG 56-79) indicates that the state could provide procedures under which Wisconsin cigarette distributors could sell untaxed cigarettes to Indians. A clarification of this Opinion dated January 7, 1980 was received.

This rule establishes procedures under which Wisconsin distributors may sell untaxed cigarettes to Indians and indicates the proof that must be retained by the distributors in order to demonstrate that such sales are not subject to tax. The proof includes evidence that the sales were to a purchaser authorized to sell cigarettes on the reservation and that the cigarettes were delivered on the reservation.

Pursuant to authority vested in the Department of Revenue by section 139.39 (1), Wis. Stats., the Department of Revenue proposes to adopt a rule interpreting Subchapter II of Chapter 139, Wis. Stats., as follows:

Section Tax 9.08 of the Wis. Admin. Code is adopted to read:

Tax 9.08 Cigarette sales to and by Indians. (Subch. II, Ch. 139, Stats.)

(1) DEFINITIONS. (a) "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.

(b) "Indian corporation" means a corporation in which Indians own over 50% of the voting stock.

(c) "Indian partnership" means a partnership in which over 50% of the investment is made by Indians, over 50% of the equity is owned by Indians and over 50% of the profits or losses accrue to Indians.

(d) "Reservation" means all land within the boundaries of the Bad River, Forest County Potawatomi, Lac Courte Oreilles, Lac de Flambeau, Menominee, Mole Lake, Oneida, Red Cliff, St. Croix and Stockbridge-Munsee reservations and the Winnebago Indian Communities.

(e) "Untaxed cigarettes" means cigarettes not bearing valid Wisconsin tax stamps or meter imprints.

(2) SALES TO INDIANS. A Wisconsin cigarette distributor permittee may sell untaxed cigarettes to an Indian tribal council, or to an individual Indian, Indian partnership or Indian corporation authorized to sell cigarettes by the tribal council of the reservation where the purchaser's business is located.

(a) The cigarettes must be delivered by the distributor to the purchaser on the reservation.

(b) The Wisconsin cigarette distributor must retain, for two years, either proof as indicated in subd. 1 or 2 below, that all such untaxed cigarette sales were to qualified Indians.

1. Purchase order issued by an Indian tribal council on its letterhead.
2. Photocopy of written authorization to traffic in cigarettes issued by the tribal council of the reservation to which the cigarettes are to be delivered.

(c) The Wisconsin cigarette distributor shall list all sales of untaxed cigarettes to Indian purchasers on Form CT-103 as "Out-of-State Sales." (Note: Wisconsin cigarette distributor permittees must file a monthly tax return on Form CT-100. To the extent the distributor has exempt sales they are reported on Form CT-103, Schedule of Sales.)

(3) SALES BY INDIANS. An Indian tribal council or an individual Indian, Indian partnership or Indian corporation may sell untaxed cigarettes to any person on the reservation.

(4) RESTRICTIONS. (a) Possession limit. Untaxed cigarettes held by other than a resident tribal Indian on the reservation are subject to Wisconsin's statutory possession limit of 400 cigarettes (s. 139.32 (8)).


(b) Use Tax. All untaxed cigarettes other than those used by a resident tribal member on the reservation are subject to Wisconsin's use tax (s. 139.33, Stats.).

(c) Contraband. All untaxed cigarettes in excess of 400 held by anyone other than a resident tribal member on or off the reservation are contraband, as are untaxed cigarettes in excess of 400 removed from the reservation by a resident tribal member. Contraband cigarettes are subject to confiscation by any peace officer (s. 139.40, Stats.).

The rule contained in this order shall take effect as provided by s. 227.026 (1)(intro.), Stats.

Dated: June 8, 1981 .

DEPARTMENT OF REVENUE

By: 
Mark E. Musolf
Secretary of Revenue



State of Wisconsin \ DEPARTMENT OF REVENUE

Lee Sherman Dreyfus
Governor

Mark E. Musolf
Secretary

June 15, 1981

125 SOUTH WEBSTER STREET
MADISON, WISCONSIN 53702

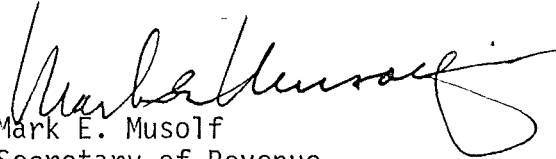
Ms. Vel Phillips
Secretary of State
13 West, State Capitol
Madison, WI 53702

Dear Ms. Phillips:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Rule Tax 9.08.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,


Mark E. Musolf
Secretary of Revenue

Enclosures

cc: Revisor of Statutes



State of Wisconsin \ DEPARTMENT OF REVENUE

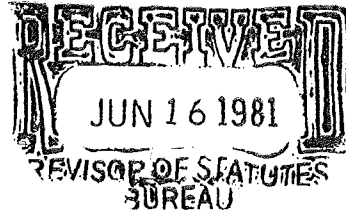
Lee Sherman Dreyfus
Governor

Mark E. Musolf
Secretary

June 15, 1981

125 SOUTH WEBSTER STREET
MADISON, WISCONSIN 53702

Orlan L. Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, WI 53702



Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue adopting Rule Tax 9.08.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,


Mark E. Musolf
Secretary of Revenue

Enclosures

cc: Ms. Vel Phillips, Secretary of State
Prentice Hall, Inc.
Commerce Clearing House, Inc.