

Chapter Tax 9

TOBACCO PRODUCTS

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Tax 9.06 Affixing of state revenue stamps. (1) Tax stamps of the proper denomination shall be affixed either to the top of each individual package of cigarettes or on the bottom thereof, excepting in the case of flat tins or other odd-sized containers when said tax stamps shall be affixed to some portion of the flat surface thereof. In no event shall any tax stamp be placed over or cover any part of the federal tax stamp.

(2) Tax revenue meter imprints shall be affixed at the bottom of each individual package of cigarettes, opposite the federal stamp.

Tax 9.11 Refunds. (1) Any manufacturer or wholesaler who has in his possession damaged tobacco products and who desires a refund on the stamps attached to such merchandise, shall notify the commissioner of taxation and furnish the department of taxation with an affidavit setting forth the kind and quantity of merchandise so damaged, location thereof, the amount of tax paid thereon, and the cause and type of damage thereto. These instructions must be followed or a refund will be refused. The stamps must be destroyed in the presence of a representative of such department, and a proper affidavit made up and returned to such department by said representative before refund will be allowed.

(2) Refund will be granted on all stamps unfit for use, or otherwise unused, returned to this department by duly authorized permittees, providing the sale thereof may be verified by the commissioner.

(3) On all refunds granted, the cost of printing and service charges will be deducted therefrom.

Tax 9.12 Refunds—military. The state tax paid on tobacco products sold to post exchanges of the armed forces of the United States and to federally operated veterans' hospitals may be refunded to the licensed manufacturer, wholesaler or subjobber making the sale under the following conditions and provisions:

(1) State stamps of the proper denomination must be affixed to each package before delivery.

(2) An invoice covering each sale must be executed in triplicate, the original to be retained at the office of the manager of the post

exchange or veterans' hospital and the other two copies to be receipted by the post exchange officer or the manager of the post exchange or veterans' hospital or his designated representative and retained by the firm making the sale.

(3) A claim for refund together with a copy of the receipted invoice or invoices should be filed with the division of beverage and cigarette taxes on or before the tenth day of each month covering all sales made to post exchanges or veterans' hospitals during the preceding month.

(4) In the event tobacco products sold or delivered under the provisions of section 139.50 (17), Wis. Stats., and this regulation are returned to the manufacturer, wholesaler or subjobber, a notation of such return, signed by the manager of the post exchange or veterans' hospital, or his designated representative, must be recorded on the original invoice and on both copies clearly indicating quantity and description of tobacco products returned.

(5) Under no consideration may any tobacco products upon which a tax refund has been paid or applied for, be returned to any manufacturer, wholesaler, or subjobber without special permission from the Division of Beverage and Cigarette Taxes.

Tax 9.16 Meter machines. (1) All meters are under the direct control of the commissioner of taxation, and all transfers or anything pertaining thereto must first be authorized by the department of taxation.

(2) Any wholesaler or manufacturer desiring to use a cigarette meter machine in lieu of affixing revenue stamps must apply to the commissioner of taxation for permission to have such machine installed for such purpose.

(3) All repairs to either the machine or the meter are strictly prohibited except by an authorized representative of Pitney-Bowes, Inc. Requests for service should be directed to the branch office of Pitney-Bowes, Inc., for your territory.

(4) Meter machine ink imprints on all packages must be clear and legible. All dyes and other equipment must be serviced and cleaned according to the instructions issued by Pitney-Bowes, Inc., otherwise this office shall reserve the right to refuse the continued use of the meter.

(5) All inks used in the stamping of cigarettes must be purchased from Pitney-Bowes, Inc., Stamford, Connecticut, and must be made up from the formula having the approval of the department of taxation.

Tax 9.17 Meter machine settings. (1) Meters may only be set by authorized representatives of the commissioner of taxation and all individuals doing so should be requested to show their credentials to the permittee requesting the setting.

(2) All requests for meter settings shall be in units of 100 and may not exceed 99,900.

(3) Permittees, if they so desire, may forward their meter direct to the office of Beverage and Cigarette Taxes for setting, accompanied by the proper permitance and the card titled "The Record of Meter Settings," form CT-3020. Express charges must be prepaid on meters

sent to the office of Beverage and Cigarette Taxes for setting and the machines will be returned by express collect after setting.

Tax 9.19 Fuson machines and stamps. (1) The term fuson shall apply to all stamping processes whereby revenue stamps are fused to the outer wrapper of any tobacco product by a heat process.

(2) The use of fuson stamps and any machines or devices for their application by any distributor shall be subject to the approval of the commissioner of taxation and such approval may be withdrawn at any time at the discretion of the commissioner of taxation.

(3) To be properly stamped the full revenue stamp and at least 50% of the surrounding "field" must be clearly visible in a proper position on the tobacco product package.

(4) To be considered properly stamped an identifying code number must also be clearly affixed to the tobacco product package by the distributor in a method approved by the commissioner of taxation.

History: Cr. Register, February, 1967, No. 134, eff. 3-1-67.

Tax 9.21 Shipments to retailers. (1) Out-of-state permittees shipping tobacco products to Wisconsin retailers shall, prior to the entry of said merchandise into this state, have affixed to the containers thereof the proper Wisconsin revenue stamps.

(2) Wisconsin retailers purchasing tobacco products from without the state must purchase same only from out-of-state manufacturers and wholesalers who hold permits issued to them by the commissioner of taxation.

(3) All out-of-state manufacturers or wholesalers may ship tobacco products either stamped or unstamped directly to any Wisconsin manufacturers or wholesalers who hold the proper permit issued by the commissioner of taxation.

Tax 9.22 Drop shipments. (1) Drop shipments are strictly prohibited to retailers unless the tobacco products have affixed thereto the proper tax stamp prior to sale and delivery.

(2) All consignors of tobacco products, on drop shipments, must furnish a memo invoice to the wholesaler or the retailer receiving the merchandise direct, as well as an invoice to the wholesaler through whom the billing is serviced.

(3) The consignors must list on their regular monthly report form CT-3008 the name of the consignee actually receiving the merchandise, as well as the name of the wholesaler through whom it is billed.

(4) All wholesalers servicing drop shipments must declare same on their regular monthly purchase schedule CT-3007A, showing the name of the original consignor and the account actually receiving the merchandise.

Tax 9.26 Trade or transfer of unstamped tobacco products. (1) A licensed Wisconsin wholesaler may not stamp merchandise for another such wholesaler unless the merchandise is first shipped, invoiced, and billed directly to the wholesaler who is to stamp same, and is then invoiced, billed, and reshipped by him to the wholesaler for whom it was stamped.

(2) No manufacturer or wholesaler shall receive unstamped tobacco products from a retailer for stamping purposes.

(3) No unstamped tobacco products shall be transferred from one permittee to another for any reason whatsoever, except for interstate commerce. All tobacco products sold by one permittee to another for the purpose of interstate commerce shall have a label affixed to each case stating thereon, "For Interstate Commerce Only". The label shall be two inches by five inches in size. This merchandise shall be used for interstate commerce and must not be diverted in any manner for intrastate sale.

Tax 9.31 Sales out of Wisconsin. (1) The occupational tax imposed upon the sale of tobacco products within the state does not apply to merchandise which is shipped from within the state to a point outside the state. Manufacturers and wholesalers need not affix revenue stamps to the original containers of tobacco products that are sold and shipped outside the state. The burden of proof, however, is at all times upon the Wisconsin manufacturer or wholesaler to show that such merchandise actually went into interstate commerce.

(2) Wisconsin manufacturers and wholesalers claiming exemption from the occupational tax on tobacco products on the grounds that shipments or deliveries were made in interstate commerce shall certify under oath: (a) names and addresses of the persons receiving such shipments or deliveries in such foreign state; or (b) that they are in possession of bills of lading, waybills, or freight bills, or other evidence of shipment issued by common carriers.

Tax 9.36 Displaying of tobacco products. All cigarette retail outlets in the state of Wisconsin shall display all cigarettes, offered for sale at retail, in such a manner that the tax stamp or meter imprint is clearly and conveniently visible.

Tax 9.41 Vending machines. Each vending machine operator must place on the front of each vending machine operated or controlled by him a sticker with his name and address, and his vending machine operator's permit number as issued by the commissioner of taxation, in such a position that it will not become dislodged or detached. Such sticker may be placed back of the glass, provided that it is completely visible and readable from the front.

Tax 9.42 Vending machines—penny. Penny cigarette vending machines or similar devices used for dispensing individual cigarettes are herewith prohibited unless the cigarettes are enclosed in a standard package or container on which is affixed the proper tobacco products tax stamp or meter imprint.

Tax 9.46 Purchases by the retailer. (1) No firm, person, or corporation engaged in the retail sale of tobacco products shall purchase same except from a manufacturer or wholesaler who holds a permit from the commissioner of taxation.

(2) All retailers selling tobacco products shall retain invoices covering all purchases of tobacco products. Such invoices shall be retained on the licensed premises in groups covering a period of one month each, and shall be available for inspection at all reasonable times by any representative of the division of beverage and cigarette taxes.

Tax 9.51 Samples. (1) All tobacco products shipped into this state to any manufacturer's representative for the purpose of free samples shall have the Wisconsin tax stamp of the proper denomination affixed thereto prior to entry of that product into the state of Wisconsin, except that same may be shipped unstamped to Wisconsin manufacturers or wholesalers who hold proper permits issued by the commissioner of taxation; they shall then affix the tax stamp of the proper denomination prior to release of such merchandise to the manufacturer's representative.

(2) The stamp or stamps covering the tax due on free samples may be affixed to the original carton instead of to the individual package and shall be so affixed that when the original carton is opened, the tax stamps thereon shall become defaced or broken, evidencing cancellation. The carton containing said free samples shall not be destroyed until all free samples therein have been dispensed.

(3) All free samples should be properly covered by a memo invoice listing the name of the consignor and the consignee as well as the quantity and brand of cigarettes, and they must be listed in the wholesale purchase record.

Tax 9.56 Branch offices. Wholesalers having one or more branches and operating a wholesale business therefrom are required to maintain and keep a separate set of records for each branch, as prescribed by this department.

Tax 9.61 Warehousing of cigarettes. Out-of-state persons, firms, or corporations having permits to engage in the sale of tobacco products in the state of Wisconsin may warehouse either stamped or unstamped merchandise in properly licensed warehouses located in the state of Wisconsin. No such person, firm, or corporation shall affix stamps to merchandise while it is stored in such licensed warehouse.

Tax 9.67 Tobacco Tax Credit. (1) The term "tobacco tax stamp" shall be construed to mean any of the authorized indicia of tobacco tax payment including water transfer stamps, heat applied stamps and metered impressions. The term "tobacco tax stamp purchase" shall be construed to mean the purchase of any of such authorized indicia of tobacco tax payment, by a wholesale permittee, to be affixed or applied to cigarette packages.

(2) Each wholesale permittee desiring to make tobacco tax stamp purchases on credit shall file with the commissioner of taxation a bond drawn in favor of the State of Wisconsin in an amount equal to 125% of the gross value of the credit desired. The bond shall be executed by a surety company licensed to do business in this state and shall provide that the liability shall not be affected by the revocation of any license or by partial recovery upon the bond or by the execution of any new bond.

(3) The credit extended for any tobacco tax stamp purchase under a surety bond will become due and payable:

- (a) Upon request for another tobacco tax stamp purchase on credit.
- (b) Upon formal demand by the commissioner of taxation.

(c) In any event, not later than 30 days from the date on which credit was extended on any such tobacco tax stamp purchase.

(4) The commissioner of taxation reserves the right to investigate the financial stability of the applicant and his surety company, and the right to deny credit to any permittee when there is any question of ability to pay as herein required.

(5) The privilege granted to any wholesale permittee of making tobacco tax stamp purchases on credit may be cancelled or revoked at any time at the discretion of the commissioner of taxation.

History: Cr. Register, November, 1957, No. 23, eff. 12-1-57; am. Register, February, 1960, No. 50, eff. 3-1-60; r. and recr., Register, August, 1961, No. 68, eff. 9-1-61.