

## 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) A refund shall be granted to any cigarette distributor for stamps which were applied to packages of cigarettes when the distributor supplies documentation to the department that the packages of cigarettes to which stamps have been affixed were damaged or otherwise unsalable and have been returned to the manufacturer thereof. A distributor who has unsalable cigarettes in his possession must file a written notice to the department of intent to return such cigarettes to the manufacturer thereof at least 10 days prior to shipping such cigarettes. If the department, upon receipt of this notice of intent, desires to exercise its right to inspect such cigarettes prior to shipment, it must so notify the distributor prior to the expiration of the 10 day period. If the department does not notify the distributor of its intent to inspect before the end of the 10 day period, the distributor may ship the cigarettes to the manufacturer and make application for refund. The distributor shall make application for such refund on a form to be furnished by the department. The application for refund must be accompanied by a copy of the signed bill of lading for said shipment. A copy of the credit memo for each shipment from the manufacturer must be forwarded to this department prior to processing the refund. The department may also require an affidavit from the manufacturer attesting to the number of cigarettes received in each shipment.

(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 department.

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

**History:** 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

Register, November, 1971, No. 191

**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 remittance 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 9.47 Invoicing of sales, including exchanges of cigarettes. (1)**

A true and correct invoice must accompany the cigarettes at the time of any sale, including exchanges, between permittees or between permittees and retailers. Permittees include cigarette salesmen, distributors, jobbers, vending machine operators or multiple retailers. A true and correct invoice must contain the following information:

(a) Names and business addresses of both parties as shown on the permit or license of each.

(b) Date of sale or exchange.

(c) Number of packs or cartons of cigarettes by brand and pack.

(d) Unit price per pack or carton. (The unit price of the cigarettes alone may be shown with the Wisconsin cigarette tax stated as a separate item.)

(e) Signature of the person receiving the cigarettes. (In an exchange, both parties must sign the invoice.)

(2) When a salesman, acting as a representative of a cigarette manufacturer, exchanges fresh cigarettes for dried or damaged cigarettes, he shall accept and receive only dried or damaged cigarettes of the brands manufactured by his employer and he shall prepare and deliver with the fresh cigarettes a true and correct invoice as set forth in (1) above.

(3) When a salesman, acting as a representative of a cigarette manufacturer, or when a permittee exchanges dried or damaged cigarettes to a distributor for return to the manufacturer and receives fresh cigarettes in exchange therefor, he shall prepare a true and correct invoice as set forth in (1) above. Each carton of such dried or damaged cigarettes shall contain only cigarettes of one brand and pack. Such cartons shall be packed so that the tax stamps on the dried or damaged cigarettes are exposed for inspection and the distributor shall refuse to receive or accept any cigarettes not so packed.

(4) A clearly legible copy of all invoices evidencing a sale or exchange of cigarettes must be retained by each of the parties to the transaction for a period of at least two years from the date of the invoice, in groups covering a period of one month each.

**History:** Cr. Register, November, 1971, No. 191, eff. 12-1-71.

**9.51 Samples.** (1) Cigarettes shipped into this state by manufacturers to their representatives, including advertising agencies and airlines, for the purpose of free samples must be accompanied by a memo invoice stating brands and number of cigarettes. Such memos must be retained by the representative for the statutory period of 2 years.

(2) Manufacturers may ship free sample cigarettes in quantities of 400 or less to consumers, such as employes or stockholders.

(3) All such sample cigarettes described in (1) and (2) above must bear the legend: "Applicable state tax paid. Not for resale." All such cigarettes are subject to Wisconsin cigarette use tax. Such tax paid by the manufacturer shipping or causing such cigarettes to be shipped into this state shall be remitted no later than the 15th day of the month following such shipment. Along with the applicable tax remitted each manufacturer shall submit a list of persons to whom cigarettes were shipped indicating the amount of cigarettes shipped to each person.

**History:** 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

**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. 63, eff. 9-1-61.