

Chapter Tax 9

CIGARETTE TAX

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Tax 9.06 Affixing of state revenue stamps. (s. 139.32, Stats.) (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.

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

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

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.

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(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."

(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.).

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Tax 9.11 Refunds. (s. 139.36, Stats.) (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.

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

History: 1-2-66; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

Tax 9.12 Refunds—military. (s. 139.31 (3), Stats.) The state tax paid on cigarettes 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 2 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 department of revenue 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 cigarettes sold or delivered under the provisions of s. 139.50 (17), Stats., and this rule 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 cigarettes returned.

(5) Under no consideration may any cigarettes upon which a tax refund has been paid or applied for, be returned to any manufacturer, wholesaler, or subjobber without special permission from the department of revenue.

History: 1-2-66; am. Register, June, 1976, No. 234, eff. 7-1-76.

Tax 9.16 Meter machines. (s. 139.32 (4), Stats.) (1) All meters are under the direct control of the department of revenue, and all transfers or anything pertaining thereto must first be authorized by the department.

(2) Any distributor or manufacturer desiring to use a cigarette meter machine in lieu of affixing revenue stamps must apply to the department of revenue 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 dies and other equipment must be serviced and cleaned according to the instructions issued by Pitney-Bowes, Inc.; the department of revenue may refuse the continued use of the meter.

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(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 revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (4), Register, December, 1977, No. 264, eff. 1-1-78.