

Chapter Tax 9

CIGARETTE TAX

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Tax 9.01 Definitions. In this chapter:

(1) "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 that fact by the tribal council.

(2) "Indian corporation" means a corporation in which Indians own at least 51% of the voting stock.

(3) "Indian partnership" means a partnership in which at least 51% of the investment is made by Indians, at least 51% of the equity is owned by Indians and at least 51% of the profits or losses accrue to Indians.

(4) "Indian retailer" means an individual Indian, Indian partnership, Indian corporation or other person authorized to sell cigarettes by the tribal council of the reservation where the retailer's business is located.

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

(6) "Stamped cigarettes" means cigarettes bearing valid Wisconsin tax stamps.

(7) "Untaxed cigarettes" means cigarettes not bearing valid Wisconsin tax stamps.

Note: Section Tax 9.01 interprets subch. II, ch. 139, Stats.

History: Cr. Register, April, 1984, No. 339, eff. 4-1-84; am. (1), (5) to (7), Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.06 Affixing of state revenue stamps. Tax stamps of the proper denomination shall be affixed to either the top or the bottom of each individual package of cigarettes, except that in the case of flat tins or other odd-sized containers the tax stamps shall be affixed to some portion of the flat surface of the container.

Note: Section Tax 9.06 interprets s. 139.32, Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; renum. (1) to be Tax 9.06 and am., r. (2), Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.08 Cigarette tax refunds to Indian tribes.

(1) **SCOPE.** This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who on behalf of their resident enrolled members have entered into agreements under s. 139.325, Stats., with the department for refunds of taxes on stamped cigarettes.

(2) **LAW.** (a) Section 139.323, Stats., directs the department to refund to Indian tribal councils 70% of the cigarette taxes collected under s. 139.31 (1), Stats., in respect to "... sales on reservations or trust lands of an Indian tribe to the tribal council of the

tribe having jurisdiction over the reservation or trust land on which the sale is made if all the following conditions are fulfilled:

(1) The tribal council has filed a claim for the refund with the department.

(2) The tribal council has approved the retailer.

(3) The land on which the sale occurred was designated a reservation or trust land on or before January 1, 1983.

(4) The cigarettes were not delivered by the retailer to the buyer by means of a common carrier, a contract carrier or the U.S. postal service.

(5) The retailer has not sold the cigarettes to another retailer or to a jobber."

(b) Section 139.325, Stats., allows the department to "... enter into agreements with Indian tribes to provide for the refunding of the cigarette tax imposed under s. 139.31 (1) on cigarettes sold on reservations to enrolled members of the tribe residing on the tribal reservation."

(3) **SALES TO INDIANS.** (a) Except as provided in s. Tax 9.09 (2) and (4), Wisconsin cigarette distributors shall sell only stamped cigarettes to federally recognized Indian tribes within Wisconsin, or to persons authorized by the Indian tribe to purchase and sell cigarettes.

(b) The Indian tribal council may authorize retailers on its reservations or trust land to purchase and sell cigarettes on which the tribal government may be entitled to a tax refund by providing the department and the cigarette distributor a certified letter stating that the retailer has tribal authorization to purchase and sell cigarettes on the reservation.

(c) The Wisconsin cigarette distributor shall retain, for a period of 2 years from the date of sale, records substantiating sales to federally recognized Indian tribes or their authorized retailers.

(d) The Wisconsin cigarette distributor shall include with its monthly cigarette tax returns a list of all sales of cigarettes to federally recognized Indian tribes or their authorized retailers on a separate form prescribed by the department.

(4) **REFUNDS.** (a) Upon receipt of a proper claim for refund, the department shall reimburse the Indian tribal council 70% of the amount of tax paid under s. 139.31, Stats., on all cigarettes purchased by the Indian tribal council or person authorized to purchase and sell cigarettes by the tribal council of the reservation where the purchaser's business is located.

(b) Claims shall be filed upon forms prescribed and furnished by the department.

(c) Claims may not be filed more than twice per month.

(d) 1. The Wisconsin cigarette distributor shall, upon request, furnish each purchaser with the original invoice prepared at the time of delivery, and the purchaser shall send the original invoice to the department when making a claim for refund. In this para-

graph, "original invoice" means the top copy and not a duplicate original or carbon copy of the original invoice.

2. The original invoice shall be printed or rubber stamped with the words "original invoice" and shall in addition contain the following information:

- a. Date of sale.
- b. Name and address of seller.
- c. Name and address of purchaser.
- d. Number of cigarettes purchased.
- e. Amount of Wisconsin cigarette tax paid as a separate item.

3. Double-faced carbon paper shall be used between the original paper or product approved in advance by the department as affording protection equivalent to double-faced carbon paper.

4. A separate original invoice shall be used for each sale and delivery and shall be legible.

5. If an original invoice has been lost or destroyed, a duplicate original invoice shall be used to support a claim for refund and accompanied by an affidavit by the purchaser that the original invoice has been lost or destroyed. The distributor when issuing the duplicate original invoice, shall indicate on the face of the invoice that it is a duplicate original invoice. The duplicate invoice shall contain the same information as on the original invoice.

(e) On the filing of a claim, the department shall determine the amount of refund due. The department may investigate the correctness of the facts stated in a claim and may require a claimant to submit records to substantiate the claim. When the department has approved a claim, it shall pay the claimant the reimbursement provided in this subsection, out of the monies collected under s. 139.31 (1), Stats.

(f) An Indian tribe that has entered into an agreement with the department under s. 139.325, Stats., shall file its claim for refund of the remaining 30% of the precollected tax on cigarettes sold on the reservation to enrolled members of the tribe residing on the tribal reservation on forms prescribed by the department.

(g) The penalties provided in s. 139.44, Stats., for filing a false or fraudulent claim apply to all refund claimants.

(h) The right of any tribal council to a refund under s. 139.323, Stats., is not assignable, and the application for a refund shall be made by the same tribal council who purchased or authorized the purchase of the cigarettes, and by no other person, and the proceeds or amount of the refund as determined by the department shall be paid to the tribal council whose name appears on the invoice and to no other person.

(i) Refunds under ss. 139.323 and 139.325, Stats., and this section shall be of tax only and may not include interest.

Note: Section Tax 9.08 interprets ss. 139.323 and 139.325, Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; emerg. r. and recr., eff. 10-1-83; r. and recr. Register, March, 1984, No. 339, eff. 4-1-84; am. (2), (3), (4) (a), (c), (d) 1. and (i), Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.09 Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department. (1) SCOPE. This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who have not entered into agreements under s. 139.325, Stats., with the department for refunds of precollected taxes on stamped cigarettes.

(2) SALES TO INDIANS FOR SALE TO RESIDENT TRIBAL MEMBERS.

(a) A Wisconsin cigarette distributor permittee may sell untaxed cigarettes to an Indian retailer if the untaxed cigarettes are to be sold to resident tribal members on the reservation. If this occurs:

1. The cigarettes shall be delivered by the distributor to the purchaser on the reservation.

2. The Wisconsin cigarette distributor shall retain, for a period of 2 years from the date of sale, proof that all of the sales were to a qualified Indian retailer. Either of the following types of proof shall be retained:

a. A purchase order issued by an Indian tribal council on its letterhead.

b. A photocopy of the written authorization to traffic in cigarettes issued to the Indian retailer by the tribal council of the reservation to which the cigarettes are to be delivered.

3. The Wisconsin cigarette distributor shall list all sales of untaxed cigarettes to Indian purchasers on form CT-103 as "Out-of-State Sales."

(b) The Wisconsin cigarette distributor may not sell untaxed cigarettes to an Indian retailer if the department has notified the distributor that the untaxed cigarettes are being sold to persons other than resident tribal members.

(3) SALES TO INDIANS FOR SALE TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. A Wisconsin cigarette distributor shall sell only stamped cigarettes to an Indian retailer if the cigarettes are to be sold to persons other than resident tribal members.

(4) SALES BY INDIANS TO RESIDENT TRIBAL MEMBERS. An Indian retailer may sell untaxed cigarettes to resident tribal members on the reservation.

(5) SALES BY INDIANS TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. An Indian retailer shall sell only stamped cigarettes to persons other than resident tribal members.

(6) RECORDS FOR SALES BY INDIANS. The Indian retailer shall keep detailed records of both taxable and nontaxable transactions and shall record the number and dollar amounts of taxable sales to nonmembers of the tribe. With respect to nontaxable sales, the retailer shall record and retain for state inspection the names of all Indian purchasers, their tribal affiliations, the Indian reservation within which sales are made, and the number, dollar amounts and dates of sales. In addition, unless the Indian purchaser is personally known to the retailer, he or she shall present a tribal identification card.

(7) REFUNDS. If all the statutory requirements of s. 139.323, Stats., are fulfilled in accordance with s. Tax 9.08 (2), (3) and (4), the department shall refund 70% of the tax collected under s. 139.31 (1), Stats., to the tribal council.

Note: Section Tax 9.09 interprets subch. II, ch. 139, Stats.

History: Emerg. cr. eff. 10-1-83; cr. Register, March, 1984, No. 339, eff. 4-1-84; am. (2) (b), (6) and (7), Register, August, 1996, No. 488, eff. 9-1-96.

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. A distributor who has possession of unsalable cigarettes may ship the cigarettes to the manufacturer and make application for refund. The distributor shall make application for refund on a form to be furnished by the department. The application for refund shall be accompanied by a copy of the signed bill of lading for the shipment. A copy of the credit memo for each shipment from the manufacturer shall be forwarded to the department prior to processing the refund. The department also requires an affidavit from the manufacturer attesting to the number of cigarettes received in each shipment.

(2) A refund shall be granted on all stamps unfit for use or otherwise unused and returned to the department by duly authorized permittees, providing the sale of the stamps can be verified by the department.

Note: Section Tax 9.11 interprets s. 139.36, Stats.

History: 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1995, No. 478; am. (1) and (2), r. (3), Register, August, 1996, No. 488, eff. 9-1-96.

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 cigarette package 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 secretary of revenue and the approval may be withdrawn at any time at the discretion of the secretary of revenue.

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

(4) To be considered properly stamped an identifying code number shall also be clearly affixed to the cigarette package by the distributor or in a method approved by the secretary of revenue.

Note: Section Tax 9.19 interprets ss. 139.32 (2) and (3) and 139.34 (7), Stats.

History: Cr. Register, February, 1967, No. 134, eff. 3-1-67; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, August, 1996, No. 488, eff. 9-1-96.

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

(2) Wisconsin retailers purchasing cigarettes from outside the state shall purchase them only from out-of-state manufacturers and distributors who hold permits issued to them by the department.

(3) All out-of-state manufacturers or distributors may ship cigarettes either stamped or unstamped directly to any Wisconsin manufacturers or distributors who hold the proper permit issued by the department.

Note: Section Tax 9.21 interprets ss. 139.31, 139.32 (1) and 139.34, Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.22 Drop shipments. (1) Drop shipments are prohibited to retailers unless the proper tax stamps are affixed to the cigarette containers prior to sale and delivery.

(2) All consignors of cigarettes, on drop shipments, shall furnish a memo invoice to the distributor or the retailer receiving the merchandise directly, as well as an invoice to the distributor through whom the billing is serviced.

(3) The consignors shall list on their regular schedule CT-107 the name of the consignee actually receiving the merchandise, as well as the name of the distributor through whom it is billed.

Note: Section Tax 9.22 interprets ss. 139.32 (1) and 139.38, Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (3), Register, December, 1977, No. 264, eff. 1-1-78; am. (1) to (3), r. (4), Register, August, 1996, No. 488, eff. 9-1-96.

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

(2) No manufacturer or distributor may receive unstamped cigarettes from a retailer for stamping purposes.

(3) No unstamped cigarettes may be transferred from one permittee to another for any reason whatsoever, except for interstate commerce. All cigarettes sold by one permittee to another for the purpose of interstate commerce shall have a label affixed to each case stating "For Interstate Commerce Only." The label shall be 2 inches by 5 inches in size. This merchandise shall be used for interstate commerce and may not be diverted in any manner for intrastate sale.

Note: Section Tax 9.26 interprets s. 139.32 (1), Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1995, No. 478; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.31 Sales out of Wisconsin. (1) The excise tax imposed upon the sale of cigarettes within the state does not apply to merchandise which is shipped from within the state to a point outside the state. Manufacturers and distributors need not affix revenue stamps to the original containers of cigarettes that are sold and shipped outside the state. The burden of proof, however, is at all times upon the Wisconsin manufacturer or distributor to

show that the merchandise actually went into interstate commerce.

(2) Wisconsin manufacturers and distributors claiming exemption from the excise tax on cigarettes on the grounds that shipments or deliveries were made in interstate commerce shall certify under oath either of the following:

(a) Names and addresses of the persons receiving the shipments or deliveries in the foreign state.

(b) That they are in possession of bills of lading, waybills, freight bills or other evidence of shipment issued by common carriers.

Note: Section Tax 9.31 interprets s. 139.31 (3), Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.36 Displaying of cigarettes. All cigarette retail outlets in the state of Wisconsin shall display all cigarettes offered for sale at retail in a manner permitting verification that they are stamped cigarettes.

Note: Section Tax 9.36 interprets ss. 139.32 (1) and 139.39, Stats.

History: 1-2-56; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.41 Vending machines. Each vending machine operator shall place on the front of each vending machine operated or controlled by the operator a sticker listing the operator's name, address and vending machine operator's permit number as issued by the department, in such a position that it will not become dislodged or detached. The sticker may be placed behind the glass, provided it is completely visible and readable from the front.

Note: Section Tax 9.41 interprets s. 139.32 (1) and (2), Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; correction, made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1995, No. 478; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.46 Purchases by the retailer. (1) No firm, person or corporation engaged in the retail sale of cigarettes may purchase cigarettes except from a manufacturer, distributor or jobber who holds a permit from the department.

(2) All retailers selling cigarettes shall retain invoices covering all purchases of cigarettes. The 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 department.

Note: Section Tax 9.46 interprets ss. 139.34 and 139.38, Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.47 Invoicing of sales, including exchanges of cigarettes. (1) A true and correct invoice shall accompany the cigarettes at the time of any sale, including exchanges, between permittees or between permittees and retailers. Permittees include cigarette sellers, distributors, jobbers, vending machine operators or multiple retailers. A true and correct invoice shall 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 shall sign the invoice.

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

(3) When a seller, acting as a representative of a cigarette manufacturer, or when a permittee returns dried or damaged cigarettes

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to a distributor for return to the manufacturer and receives fresh cigarettes in exchange, the seller or permittee shall prepare a true and correct invoice as set forth in sub. (1). Each carton of dried or damaged cigarettes shall contain only cigarettes of one brand and pack. The distributor shall verify that all of the cigarettes are stamped cigarettes.

(4) A clearly legible copy of all invoices evidencing a sale or exchange of cigarettes shall be retained by each of the parties to the transaction for a period of at least 2 years from the date of the invoice, in groups covering a period of one month each.

Note: Section Tax 9.47 interprets s. 139.38, Stats.

History: Cr. Register, November, 1971, No. 191, eff. 12-1-71; correction in (2) and (3) made under s. 13.93 (2m) (b) 5., Stats., Register, February, 1994, No. 458; correction in (1) (intro.) made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1995, No. 478; am. (1) (intro.), (d), (e), (3) and (4), Register, August, 1996, No. 488, eff. 9-1-96.

Tax 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 shall be accompanied by a memo invoice stating brands and number of cigarettes. The memos shall be retained by the representative for the statutory period of 2 years.

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

(3) All sample cigarettes described in subs. (1) and (2) shall bear the legend: "Applicable state tax paid. Not for resale." The cigarettes are subject to Wisconsin cigarette use tax. The tax paid by the manufacturer shipping or causing the cigarettes to be shipped into this state shall be remitted no later than the 15th day of the month following the 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.

Note: Section Tax 9.51 interprets ss. 139.31 and 139.33, Stats.

History: 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.56 Branch offices. Separate sets of records are required for each branch or place at which a wholesale cigarette business is operated.

Note: Section Tax 9.56 interprets s. 139.34 (4), Stats.

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

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

Note: Section Tax 9.61 interprets s. 139.34 (8), Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.67 Cigarette tax credit. (1) PAYMENT FOR CIGARETTE TAX STAMPS. Under s. 139.32 (6), Stats., manufacturers and distributors having obtained a permit from the secretary of revenue may purchase cigarette tax stamps on credit. The credit extended by the department for any cigarette tax stamp purchase shall become due and payable upon the earlier of:

(a) Formal demand by the department.

(b) Fifteen days after the close of the month in which the indicia were received by the manufacturer or distributor.

(2) INVESTIGATION. The department may investigate the financial stability of the applicant and may deny credit to any permittee when there is any question of ability to pay as required in this section.

(3) REVOCATION OF PRIVILEGE. The privilege granted to any manufacturer or distributor of making cigarette tax stamp pur-

chases on credit may be revoked at any time at the discretion of the department.

Note: Section Tax 9.67 interprets s. 139.32 (6), Stats.

History: Cr. Register, November, 1957, No. 23, eff. 12-1-57; am. Register, 68, eff. 9-1-61; am. Register, June, 1975, No. 234, eff. 7-1-75; emerg. r. and recr. eff. 9-1-93; r. and recr. Register, February, 1994, No. 458, eff. 3-1-94.

Tax 9.68 Ownership and name changes. (1) GENERAL. Under s. 139.34 (4), Stats., a cigarette permit is not transferable to another person. This section clarifies when a new cigarette permit is required, as the result of an ownership or name change, or both.

(2) OWNERSHIP CHANGE. (a) When there is a change in ownership of a business, the new owner shall apply for a new permit using form CTP-129, except as provided in par. (c). The new owner shall notify the department not later than 10 days prior to the change.

(b) A new permit shall be obtained by using form CTP-129 when there is a change in ownership of a sole proprietorship, partnership, corporation or other form of ownership, except as provided in par. (c).

Examples. A new permit is required if: 1) A sole proprietorship or partnership incorporates.

2) A sole proprietorship is sold to a different sole proprietor.

3) A sole proprietorship becomes a partnership.

4) A partner in a partnership leaves the partnership or a partner is added to the partnership.

5) The federal employer identification number of a business changes.

(c) A new permit is not required for a change in the ownership of a corporation unless either of the following occurs:

1. A corporation is merged with another corporation, the merged corporation ceases to exist, and the surviving corporation does not have a valid permit.

2. The federal employer identification number of a corporation changes.

(3) NAME CHANGE. (a) A permittee shall notify the department of a name change at least 10 days prior to the change and the permittee shall retain the same permit number.

(b) A rider, verifying the name change, such as one filed by a permittee's insurance company at the request of the permittee, shall be submitted and attached to the security documents on file with the department. If no security is on file, or if a rider is not filed with the department, new security shall be deposited under the new name as required, and any old security shall be returned to the permittee.

Note: Copies of Form CTP-129 may be obtained by writing or calling Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-8772.

Note: Section Tax 9.68 interprets s. 139.34 (4), Stats.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; am. (2) (b) and (3) (b), Register, August, 1996, No. 488, eff. 9-1-96.

Tax 9.69 Master settlement agreement with tobacco product manufacturers. (1) PURPOSE. This section describes requirements and methods relating to collecting, maintaining and reporting data regarding the number of Wisconsin state cigarette excise tax stamps affixed to packages of cigarettes, and the amount of "roll-your-own" cigarette tobacco, sold in Wisconsin each year.

Note: The data collected, maintained and reported under this section shall be used to ascertain the amount of Wisconsin excise tax paid on the cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund under s. 995.10, Stats., for each year, or, if the department deems it appropriate, is a participating manufacturer under the master settlement agreement between the state and tobacco product manufacturers, pursuant to 1999 Wis. Act 122.

(2) DEFINITIONS. In this section:

(a) "Cigarette" has the same meaning as in s. 995.10 (1) (d), Stats., and includes "roll-your-own" cigarette tobacco.

(b) "Master settlement agreement" has the same meaning as in s. 995.10 (1) (e), Stats.

(c) "Qualified escrow fund" has the same meaning as in s. 995.10 (1) (f), Stats.

(d) "Sell" or "sale" has the same meaning as in s. 139.30 (12), Stats.

(e) "Tobacco product manufacturer" has the same meaning as in s. 995.10 (1) (i), Stats., and includes both a cigarette manufacturer under subch. II of ch. 139, Stats., and a tobacco products manufacturer under subch. III of ch. 139, Stats., that sells "roll-your-own" cigarette tobacco.

(f) "Wisconsin consumer" means a consumer within this state, including a direct consumer, distributor, retailer or intermediary similar to a distributor or a retailer.

(3) REPORTING REQUIREMENT. (a) Every tobacco product manufacturer that elects to sell cigarettes to Wisconsin consumers shall, by the 15th day of each month, file a schedule with the department that reconciles the number of Wisconsin state cigarette excise tax stamps affixed to packages of cigarettes sold to Wisconsin consumers and the amount of "roll-your-own" cigarette tobacco sold to Wisconsin consumers in the previous calendar month.

(b) The schedule required under par. (a) shall contain all of the following information that is applicable:

1. A listing of each sale of cigarettes other than "roll-your-own" cigarette tobacco manufactured, or the name of the manufacturer of the cigarettes that were delivered to Wisconsin consumers, onto which state cigarette excise tax stamps were affixed.

2. A listing of each sale of "roll-your-own" cigarette tobacco manufactured, or the name of the manufacturer of the "roll-your-own" cigarette tobacco, that was delivered to Wisconsin consumers.

3. For each manufacturer listed pursuant to subd. 1., a listing of all brands of cigarettes sold and the number of Wisconsin state cigarette excise tax stamps affixed to cigarette packages with respect to each brand.

4. For each brand of cigarettes listed for each manufacturer pursuant to subd. 3., the following additional information, if known:

a. The name of the manufacturer of the cigarettes.

b. The name of the person or entity first responsible for the cigarettes being designated or identified for sale in the United States.

5. For each sale of "roll-your-own" cigarette tobacco listed for each manufacturer pursuant to subd. 2., the following additional information, if known:

a. The name of the manufacturer of the "roll-your-own" cigarette tobacco.

b. The name of the person or entity first responsible for the "roll-your-own" cigarette tobacco being designated or identified for sale in the United States, by brand.

6. Any other information the department may deem necessary to administer the provisions of this section.

(4) ESCROW FUND CERTIFICATION REQUIREMENTS. (a) Every tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement shall by April 15 of each year certify to the department and to the attorney general that the amounts required under s. 995.10 (2) (b), Stats., have been placed into a qualified escrow fund that is designated for Wisconsin judgments or release payments.

(b) The certification required under par. (a) shall include all of the following:

1. The name of the qualified financial institution where the escrow fund is maintained.

2. The amount of funds placed into the escrow fund since the last reporting period, based on Wisconsin sales.

3. The amounts, if any, paid out of the escrow fund in judgments or release payments and the purpose of the disbursements.

4. The balance in the escrow fund as of March 31 of each year.

5. A copy of the escrow fund balance statement as of March 31 of each year.

(5) RECORDKEEPING REQUIREMENTS. Every tobacco product manufacturer required to file a schedule under sub. (3) shall maintain complete and accurate records to support the information reported on the required schedule. These records shall be maintained for a period of 4 years from the date of sale into Wisconsin and shall include all of the following:

(a) Purchase records indicating the tobacco product manufacturer of the cigarettes, the date of purchase and the number of cigarettes by brand or amount of "roll-your-own" cigarette tobacco purchased, by brand.

(b) Sales records indicating to whom the sale was made, the tobacco product manufacturer of the cigarettes, the date of sale and the number of cigarettes by brand or amount of "roll-your-own" cigarette tobacco sold.

(c) The number of Wisconsin cigarette tax stamps placed on packages of cigarettes for sale in the state of Wisconsin.

(d) Any additional records deemed necessary by the secretary.

(6) REMEDIES FOR NONCOMPLIANCE. The failure of a tobacco product manufacturer to either become a participating manufacturer under the terms of the master settlement agreement or place funds into a qualified escrow fund, as provided in s. 995.10 (2) (b) 1., Stats., shall be subject to civil action and penalties under s. 995.10 (2) (b) 3., Stats.

Note: Section Tax 9.69 interprets subchs. II and III of ch. 139, Stats., and s. 995.10, Stats.

History: Emerg. cr., eff. 8-17-00; cr. Register, December, 2000, No. 540, eff. 1-1-01; corrections in (2) (a) to (e), (4) (a) and (6) made under s. 13.93 (2m) (b) 7., Stats., Register September 2006 No. 609.

Tax 9.70 Cigarette and tobacco products tax bad debt deductions. (1) PURPOSE.

This section clarifies when and how a person who pays cigarette taxes or a distributor who pays tobacco taxes may claim a deduction under ss. 139.362 and 139.801, Stats., for cigarette and tobacco products tax attributable to bad debt.

(2) DEFINITIONS. In this section:

(a) "Bad debt" has the meaning given in ss. 139.362 (1) and 139.801 (1), Stats.

(b) "Cigarette" has the meaning given in s. 139.30 (1m), Stats.

(c) "Distributor" has the meaning given in s. 139.75 (4), Stats.

(d) "Tobacco products" has the meaning given in s. 139.75 (12), Stats.

(3) BAD DEBTS. (a) *Deduction from measure of tax.* Using form CT-117, titled "Cigarette Distributor Bad Debt Deduction for Uncollectible Wisconsin Cigarette Tax," or form TT-117, titled "Tobacco Products Distributor Bad Debt Deduction for Uncollectible Wisconsin Tobacco Products Tax," a person who pays cigarette taxes or a distributor who pays tobacco taxes may claim a deduction on the monthly tax report for the cigarette and tobacco products tax attributable to bad debt that is written off as uncollectible in their books and records and that is eligible to be deducted as bad debt under s. 166 of the internal revenue code.

(b) *When to report the deduction.* The deduction under par. (a) shall be claimed on the monthly tax report that is submitted for the month in which the amount of the deduction is written off as uncollectible and in which such amount is eligible to be deducted as a bad debt under s. 166 of the internal revenue code.

Example: A distributor writes off a debt attributable to tobacco products tax on September 10, 2005. At the time the debt is written off it is eligible to be deducted as a bad debt under s. 166 of the internal revenue code. The distributor may claim a bad debt deduction by attaching a completed form TT-117 to the monthly tobacco products tax report filed for the month of September 2005.

(c) *Recovery of bad debt.* If a person who pays cigarette taxes or a distributor who pays tobacco taxes subsequently collects in

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whole or in part any bad debt for which a deduction is claimed under par. (a), they shall include the amount collected in the monthly tax report filed for the month in which the amount is collected and shall pay the tax with the report.

(d) *Payments and credits.* Payments and credits applied to a debt before it is written off as uncollectible shall be apportioned to the amount of such debt attributable to cigarette or tobacco products tax on the basis of the ratio of the cigarette or tobacco products tax to be paid per the invoice to the total amount to be paid per the invoice. The amount so apportioned shall reduce the amount of debt attributable to cigarette or tobacco products tax to arrive at the deduction under par. (a).

Examples: 1) At a time when the cigarette tax rate is 3.85¢ per stick, Person A sells cigarettes to Customer B. The amount of the invoice is \$10,000, consisting of cigarette tax of \$1,540, cost of cigarettes of \$6,000 and sundries of \$2,460. Customer B defaults and discontinues operations, leaving a balance due to Person A of \$2,100, which includes interest of \$200 not included in the original invoice amount. The deductible tax is \$292.60, computed as follows:

Tax per invoice	.....	\$1,540.00
Invoice amount	.....	\$ 10,000.00
Unpaid invoice amount -	....	<u>-1,900.00</u>
Paid invoice amount	.....	\$ 8,100.00
Portion constituting tax*		<u> x.154</u>
Tax paid	.....	<u>- \$1,247.40</u>
Tax that may be deducted	.....	\$ 292.60

*\$1,540 tax ÷ \$10,000 invoice amount = .154.

2) At a time when the tobacco products tax rate is 25% of the manufacturer's wholesale list price, Distributor A sells tobacco

products to Customer B. The amount of the invoice is \$9,500, consisting of tobacco products tax of \$1,250, cost of tobacco products of \$5,000 and sundries of \$3,250. Customer B defaults and discontinues operations, leaving a balance due to Distributor A of \$3,000, which includes interest of \$200 not included in the original invoice amount. The deductible tax is \$365.60, computed as follows:

Tax per invoice	.....	\$1,250.00
Invoice amount	.....	\$9,500.00
Unpaid invoice amount -	....	<u>-2,800.00</u>
Paid invoice amount	.....	\$6,700.00
Portion constituting tax*		<u> x.132</u>
Tax paid	.....	<u>- \$ 884.40</u>
Tax that may be deducted	.....	\$ 365.60

*\$1,250 tax ÷ \$9,500 invoice amount = .132.

(e) *Tax rate change.* If the deduction under par. (a) is claimed for a month when the cigarette or tobacco products tax rate is different from the tax rate in effect when the cigarettes or tobacco products were sold, the tax rate in effect when the cigarettes or tobacco products were sold shall be used to determine the amount of the deduction.

(f) *Illegal sales.* No deduction under par. (a) shall be allowed for cigarette and tobacco products tax attributable to bad debt incurred on sales of cigarettes or tobacco products sold in violation of state or federal law.

Example: Sales of banned products sold in violation of the directory of certified manufacturers and brands, s. 995.12, Stats.

Note: Section Tax 9.70 interprets ss. 139.362 and 139.801, Stats.

Note: Sections 139.362 and 139.801, Stats., were created by 2005 Wis. Act 25, and took effect on September 1, 2005.

History: CR 06-107: cr. Register April 2007 No. 616, eff. 5-1-07.