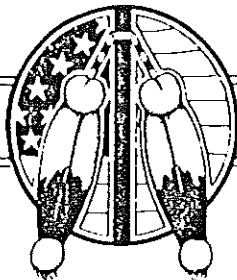


Dec 1

Ojibway • Oneida • Potawatomi • Stockbridge-Munsee • Winnebago



GLITC INC: GREAT LAKES INTER-TRIBAL COUNCIL INC.

POST OFFICE BOX 9, LAC DU FLAMBEAU, WISCONSIN 54538

PHONE (715) 588-3324

RECEIVED

OCT 25 1982

ONEIDA LAW OFFICE

MEMORANDUM

TO: Tribal Chairpersons, Attorneys

DATE: October 21, 1982

RE: Cigarette Committee Report

The Great Lakes Cigarette Committee was established by mandate of the Wisconsin tribal chairpersons to meet with the Wisconsin Department of Revenue to negotiate a mutually acceptable solution to the need for revenue derived from on-reservation cigarette sales to non-Indians. The Committee and the Department expected to establish an arrangement where the tribes and the state would share revenues created by these sales.

At the last meeting of the Committee with DOR, we reached an agreement with the state on how revenue will be shared. It will be done through a change in the state's tax law:

1. Instead of charging a blanket excise tax of \$2.50 per carton, the State will charge a tax of only \$.75 per carton on cigarettes delivered to reservation Indian sellers and will have the cigarettes stamped with a special tax stamp.
2. This tax break, however, will only happen on those reservations or trust lands where the tribe agrees to assess an additional charge, markup, or tax of \$.75 per carton.
3. Each tribe can enter into an agreement with the State concerning refunds for cigarettes stamped and taxed by the state that are bought by tribal members.
4. Tribes may then decide what to do with the tribal charge, markup, or tax and with the refunds for cigarettes purchased by members.

These features will be recommended for placement in the Governor's fall budget bill. The Department officials and the tribes will help in making sure these features get through the legislature in the next session and preventing opponents in tampering with the changes.

PRESIDENT
Dr. Rick St. Germaine

SECRETARY/TREASURER
Norbert Hill Sr.

VICE-PRESIDENT
William Wildcat

EXECUTIVE DIRECTOR
Robert Miller Jr.

The Committee is satisfied with the agreement that has been reached and feels that the directions from the tribal chairmen have been carried out. This is only the first hurdle. Tribes must now study the proposed state law changes and organize an educational effort to persuade legislators and counteract the efforts of people who oppose this exercise of tribal sovereignty and self determination.

For background, we refer you to the attached documents. We believe the attached recommendations are particularly important. Chairmen should review then discuss them at the meeting scheduled for October 29. Members of the Committee will be available to assist in explaining and discussing these matters.

Respectfully submitted,



JAMES SCHLENDER

COMMITTEE MEMBERS

GARY METOXEN
FRANCIS SKENANDORE
GERALD HILL
HARRY STEINDORF
JAY FLETCHER

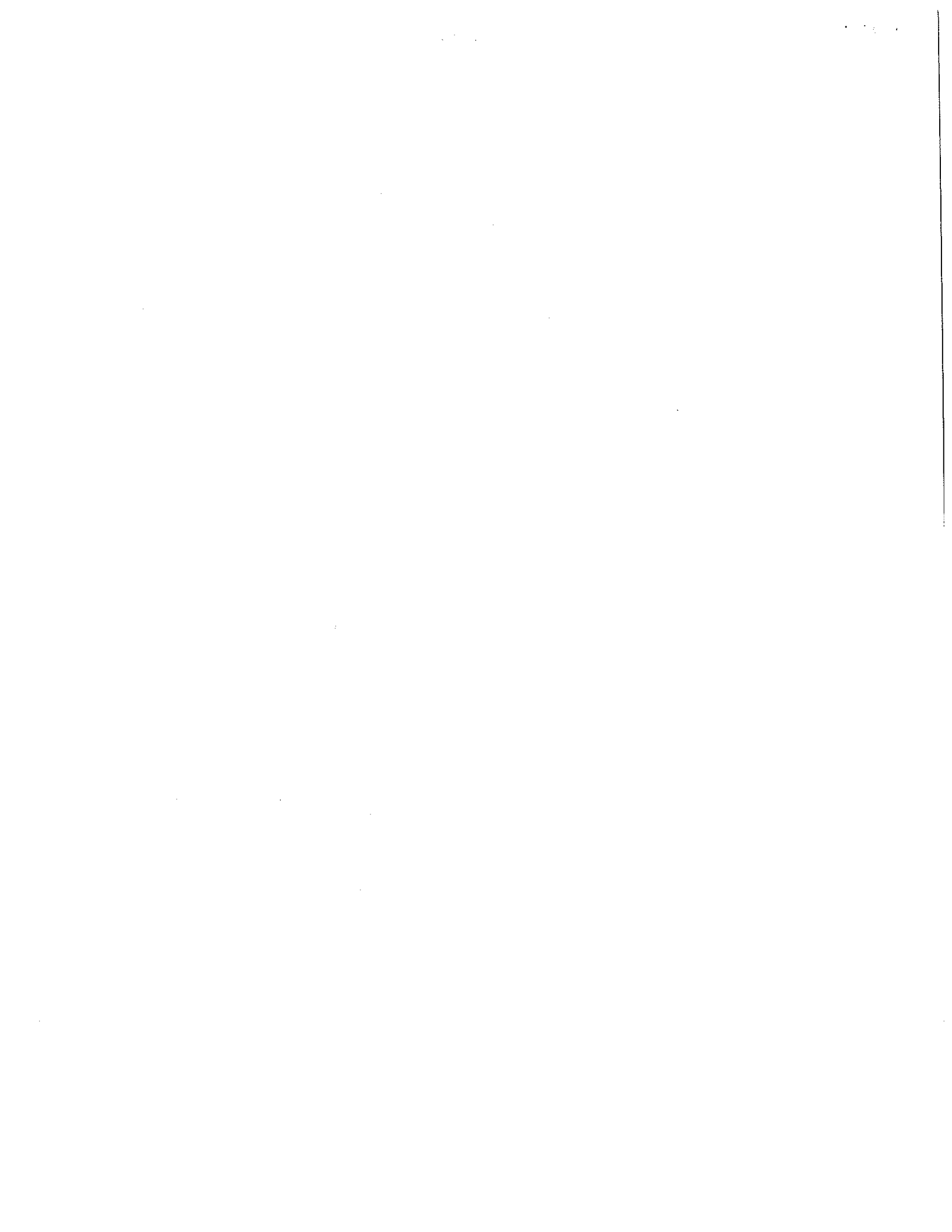
VICKIE ACKLEY
RITA KESHENA
ROBERT MILLER
JAMES MDR HAWKINS
KATHRYN TIERNEY

For your further information, see the attached memos and the agreed statutory changes as typed by the Department of Revenue.

RECOMMENDATIONS

It is the unanimous recommendation of the Cigarette Committee that:

1. The Cigarette Committee remain in existence.
2. The Cigarette Committee be authorized to develop a lobbying strategy, which includes:
 - a. Develop standard information to be provided to legislators.
 - b. Identify key legislators with whom support efforts can be coordinated;
 - c. Develop revenue figures with the Department of Revenue based on the passage of the legislation;
 - d. Identify and mobilize non-tribal supporters (setting up white smoke screen);
3. The primary contacts with Wisconsin legislators be made by tribally elected officials.
4. The Cigarette Committee be authorized to name a coordinator of all lobbying efforts in support of the legislation.
5. The Cigarette Committee identify and develop strategies based on non-passage of the legislation; which include:
 - a. How to handle sales of cigarettes to members;
 - b. Consequences of continued sales of untaxed cigarettes;
 - c. Continued ability to stay in business for reservation smokeshops.



QUESTIONS ABOUT THE CIGARETTE TAX

1. Why are Indian smokeshops so popular?

Because of a loophole in current Wisconsin law, Indian smokeshops do not have to charge the amount of Wisconsin's cigarette tax on sales to non-members. This means a price break of up to \$2.50 for cigarette consumers who are therefore willing to travel onto the reservations to save money. The Wisconsin legislature has tried to close this loophole and make sales by Indian smokeshops subject to the state tax. Governor Dreyfus vetoed this attempt last spring.

2. How can the state tax Indian cigarette sales?

The United States Supreme Court has already held that if a state tax is structured properly, the person who sells the cigarette doesn't make a difference. What matters is the person who buys, and if that person is a non-member, the state tax is valid on him or her. The Indian seller, even if the seller is the tribe, can be required to keep records and collect and forward the tax to the State. The court agreed that the state could not tax purchases by tribal members.

3. How did tribes respond to Governor Dreyfus' veto?

Acting through Great Lakes Inter-Tribal Council, the tribes set up a committee to meet with the State. The meetings have resulted in some proposed changes in state law that depend on tribal cooperation:

- a) For Indian smokeshop sales, the state tax will be \$.75, not \$2.50.
- b) This tax break will only exist if tribes enact their own surcharge of an additional \$.75 per carton.
- c) Tribes can decide what to do about sales to members.

4. How does the cigarette agreement affect tribal sovereignty?

Both the state and the tribe are sovereign. If a tribe has the constitutional power, it can tax non-members and members who buy cigarettes on the reservation. The state definitely has the power to tax non-members who buy cigarettes anywhere including on Indian reservations. If both the tribe and the state exercised all their taxing power over cigarettes, Indian cigarettes would be more

expensive on reservation than off. Under the agreed changes, both the state and the tribe would hold back on their tax power to create a tax advantage that makes cigarettes sold on the reservation about one dollar cheaper than non-discounted cigarettes purchased off reservation. Only sovereign governments could negotiate an agreement like this.

5. Won't this make Indian cigarettes more expensive than they are now?

Yes. The Indian seller will have to pay more to get the cigarettes from the distributor, and will have to pass on the higher price to the consumer. If the base cost to the distributor is \$4.30 a carton, the state tax will add \$.75 and the tribal charge will add \$.75, so the Indian retailer would have to pay \$5.80 per carton. After the retailer's markup, the consumer would have to pay something more than that.

6. What about tribal members?

The proposed state tax changes are only concerned with cigarette sales to non-members. Since all cigarettes from in-state distributors will be stamped and taxed, the retailer would only be able to buy stamped and taxed cigarettes from them. A tribe and the state will have to decide what is to be done with the state and/or tribal taxes on cigarettes sold to members.

7. Will Indian sellers still be able to get unstamped cigarettes from out of state?

Once the cigarette law is changed, it may be that the only unstamped cigarettes allowed in Wisconsin will be those headed for another state. The Revenue agents will therefore try to stop and seize shipments of unstamped cigarettes that are headed for Indian smokeshops in Wisconsin. If they fail to intercept a shipment, they may complain to the U.S. Attorney who might then indict the smokeshop owner, operator, manager, or clerk for violation of federal criminal laws. This is not altogether clear, but it is probable that Indian smokeshops that try to get around the state law will face harassment and litigation.

8. What if a tribe doesn't go along with the tax law provisions and agreements?

The State can and will require stamps and tax on all cigarettes that are to be sold in Wisconsin. If the special Indian cigarette tax does not apply, then the regular cigarette tax will apply. Again, if the distributor's cost is \$4.30 per carton, plus the regular cigarette tax of \$2.50 per carton, the retailer will have to pay \$6.80 per carton rather than \$5.80. After the retailer's markup, the consumer will have to pay somewhat more. Tribal members will be able to apply to the Department of Revenue for a refund for each carton bought. If the retailer chose not to pass the tax along, he could apply for the refund.

9. What about a tribe's constitutional power?

Each tribal government will have to examine its constitution and decide:

- a) Does the tribe have the power to tax non-members?
- b) Does the tribe have the power to tax members or establish minimum mark-up?
- c) Does the tribe have the power to regulate or tax business transactions on the reservation?
- d) If it has these constitutional powers, how does the tribe have to exercise the power?

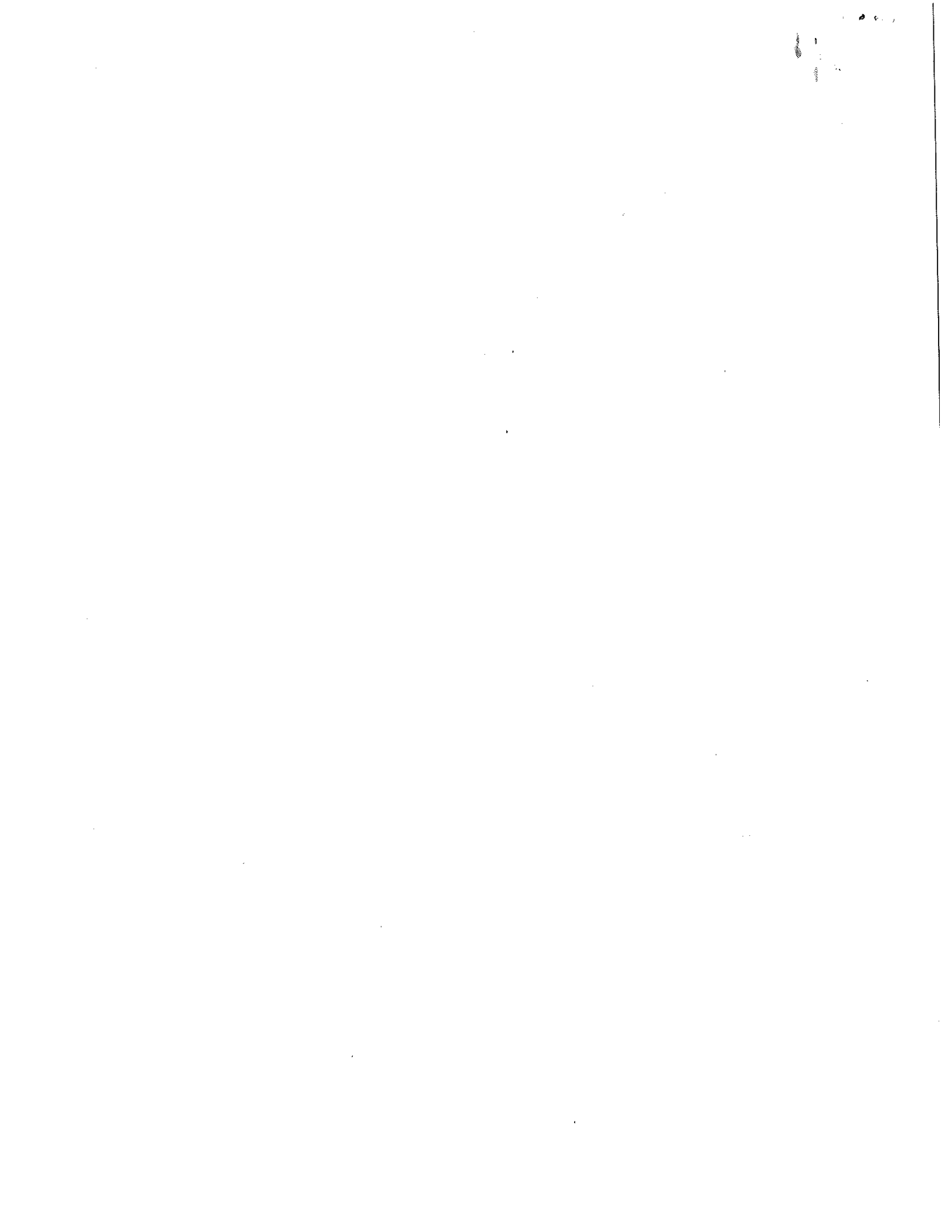
A tribe may wish to amend its constitution to make its powers clear.

10. What tribal policy decisions need to be made?

The policy question is whether a tribe wants to encourage Indian smokeshops or not. If it does want to encourage them, the State has agreed to give Indian smokeshops a substantial state tax advantage on sales to non-members as long as the tribe agrees to exercise some of its own sovereign power by enacting its own ordinances regulating sales and putting a minimum tribal markup on cigarettes of \$.75. A decision not to go along with the agreement will mean that sales to non-members will have to cost the same as off-reservation cigarette sales and Indian smoke-shops will be discouraged from being in business.

11. What needs to be done?

So far, the Wisconsin Department of Revenue has agreed to these special cigarette provisions. They will be recommended to Governor Dreyfus for his budget proposal. That proposal goes to the Legislature on January 3, 1983. Tribes who support these provisions will then have to lobby and persuade the legislature that these special tax breaks for Indian smokeshops are not only in the Indian interests but also the State interest and make sure the provisions stay in the budget bill. If the provisions pass the legislature and the next governor, then each tribe will have to enter into the agreements and procedures discussed above.



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RESOLUTION

DRAFT

WHEREAS, the Oneida Tribe of Indians of Wisconsin is a duly recognized Indian Tribe with full rights of sovereignty, and

WHEREAS, the Oneida Tribe of Indians of Wisconsin is a constituent member of the Great Lakes Inter-Tribal Council and has committed itself to the support of laws enacted for benefit of Indian people in Wisconsin, and

WHEREAS, the Oneida Tribe through its participation in the Great Lakes Inter-Tribal Council has determined that an agreement with the State of Wisconsin by the Department of Revenue will avoid repressive legislation that would close its cigarette sales, and

WHEREAS, the Oneida Tribe has successfully operated its cigarette operation for the benefit of all Oneida Tribal members and is a valuable source of revenue to the Oneida Tribe in its governmental operations and provision of services, and

WHEREAS, the following attached agreement arrived at between the Ad Hoc Cigarette Committee of the Great Lakes Inter-Tribal Council and officials of the State Department of Revenue, hereby incorporated by reference, reflects an equitable solution to matters that mutually concern the Oneida Tribe and the State of Wisconsin.

NOW THEREFORE BE IT RESOLVED, that the agreement arrived at by the Ad Hoc Cigarette Committee of Great Lakes Inter-Tribal Council and the Department of Revenue, referred to above, is fully supported by the Oneida Tribe through its Business Committee.

CERTIFICATION

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put in copy file

Section 139.31(4) is created to read:

139.31(4) Cigarettes sold to Indian tribal councils or to tribal council authorized individual Indians, Indian partnerships or Indian corporations for resale on an Indian reservation are not subject to 70% of the excise tax imposed under s. 139.31(1) provided the following conditions exist:

- (a) The cigarettes purchased for resale on the reservation are subject to a tribal cigarette tax or charge levied at a minimum of 30% of the excise tax imposed in s. 139.31(1)(a) and (b).
- (b) The imposition of the Indian cigarette tax is evidenced by the presence of a stamp on each package of cigarettes.

Section 139.32(1) of the statutes is amended to read:

139.32 Payment of Taxes. (1) The tax is imposed by s. 139.31(1) shall be paid by purchase of stamps from the secretary. To evidence the payment, stamps of the proper denomination shall be affixed to each package or other container in which cigarettes are packed, prior to the first sale within this state. First sale does not include a sale by a manufacturer to a distributor or by a distributor to a permittee who has obtained department approval as provided for in sub. (8)(a).

Section 139.32(2) is amended and renumbered to read:

139.32(2)(a) The tax shall be paid only once on each package or container. Stamps for cigarettes sold under s. 139.31(4) shall be purchased from the secretary at an amount equal to 30% of the tax imposed under s. 139.31(1).

Section 139.30(14) of the statutes is created to read:

139.30(14) "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.

Section 139.30(15) of the statutes is created to read:

139.30(15) "Indian Tribe" means a federally recognized Indian Tribe in this state.

Section 139.31(1) of the statutes is amended to read:

139.31 Tax imposed: exceptions. (1) An ~~occupational~~ excise tax is imposed on the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale of cigarettes or other disposition for any purpose whatsoever. The tax is imposed at the time and place of the first taxable event occurring in this state. The tax should be passed on to the ultimate consumer of cigarettes. All cigarettes received in this state for sale or distribution within this state, except cigarettes actually sold as provided in sub. (3) shall be subject to such tax. Any person licensed under chs. 100 and 139 to have untaxed cigarettes in his possession which are lost, stolen, destroyed or which have mysteriously disappeared shall be liable for and shall pay the tax thereon. The tax shall be at the following rates:

(a) On cigarettes weighing not more than 3 pounds per thousand, 12.5 mills on each cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 25 mills on each cigarette.

Section 139.32(2)(b) is created to read:

139.32(2)(b) The department shall have authority to enter into agreements with Indian tribes to provide for the refunding of the state's share of the cigarette excise tax paid and collected under s. 139.32(2) on cigarettes sold on reservations to tribal reservation resident members.

Section 139.32(7) of the statutes is amended to read:

139.32(7) If the tax imposed by s. 139.31(1) is not paid when due, interest shall accrue at the rate of 1.5% per month or a fraction of a month from the date the tax became due until paid.

Section 139.32(9) is created to read:

139.32(9) It is unlawful for any person other than an authorized Indian, Indian partnership or Indian corporation whose business is located on an Indian reservation to offer or expose for sale, or possess with intent to sell cigarettes bearing stamps sold under the provisions of s. 139.31(4).

Section 139.33(6) is created to read:

139.33(6) Cigarettes sold under the provisions of s. 139.31(4) are not subject to the tax imposed by this section.

