

1999 SENATE FINANCE AND TAXATION

SB 2103

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2103

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 01 /13/99

Tape Number	Side A	Side B	Meter #
# 2 Disc 1/26/99	X		2754-2242
Committee Clerk Signature <i>Shirley Muel</i>			

Minutes:

Sen. Urlacher opened the hearing on 2103, A BILL RELATING TO THE IMPOSITION OF PENALTY AND INTEREST UNDER THE TOBACCO PRODUCTS TAX LAW.

Gary Anderson-Tax Department submitted testimony.

Sen. Stenehjem-\$5.00 or less?

Gary Anderson-\$5.00 or greater.

Sen. Urlacher-I have been notified that there is a proposed amendment.

Sen. Stenehjem-Possibility of a proposed amendment, I would like to hear from the Tax Dept.

Tom Kelsch-United States Tobacco Co. testimony submitted. Making proposal to Bill 2103.

The amendment looks longer and more difficult than it is. Other tobacco tax, not cigarettes, is presently 28 cents on pack, cigarettes are presently 44 cents. The problem we run in to is if we sell a premium product we pay a much higher tax than the low grade product of the same

Hearing Date 01/13/99

amount. If you go to the gas station, you pay a higher tax better gasoline, than you do for a lower grade of gas. Same amount of snuff should pay the same amount of tax. If unit is separate pay less tax on bundles of cans. Changes only on smokeless tobacco. People who bundle cans of snuff must pay the tax on each can, so basically all we have done is take the high price of present tax and turned it into a unit. So each can is treated as a unit. Can not avoid tax on each unit.

Read through the amendments. (submitted) Smokeless products be treated one way and smoke products treated a different way. 2 Million in taxes, these products generate.

Sen. Wardner-Currently is the tax on the cost basis? What ever you sell for? Are most cans less than 1.5 oz.

Tom Kelsch-Anything under 1.5 is going to be 60cents. Most are 1.2. If its over 1.5 it would be \$1.20. We have to be revenue neutral, that is our goal. If we go by the oz., we would get a tax break, since we sell a large percentage of the product, it would not be neutral at all. These other people would have to come way up. Some products are under 1.5.

Sen. Stenehjem-There is an inflation grabbing ability of the taxes we are levying it now, so that if we put a per oz. tax on tobacco, we are not going to generate the dollars we are generating today. With a dramatic change in the way we tax cigarettes, why wasn't this introduced into a Bill all of its own?

Tom Kelsch- It very well could of been. We did go to the Tax Comm. If it does what we say it could, he does not have any objection to it.

Sen. Christmann-Cigarette tax, how big can a pack be? When does 1 pack become 2?

Gary Anderson- 20 cigarettes in a pack and the tax is on only 1 cigarette.

Sen. Wardner-What is cost per can? Can of Snuff?

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Tom Kelsch- \$2.16 a can.

Sen. Urlacher-This is a lengthy amendment.

Gary Anderson- We received the Bill yesterday, We have looked at it and administratively the matter of accommodating the additional rates that would apply now under this. In ND we have 68 Distributors, a few retailers that are reporting to us. We would have to have time to check on the fiscal effect.

Sen. Urlacher-Can we so direct you to proceed with the fiscal note?

Gary Anderson-Yes.

Sen Urlacher-Close hearing if no question or discussion on this.

DISCUSSION-01/26/99-SEN. STENEHJEM WITH DRAW AMENDMENT, REMOVE OBSOLETE LANGUAGE AND CLEAN UP THE BILL. MOTION TO DO PASS MADE BY SEN. STENEHJEM, SECONDED BY SEN. WARDNER, AND CARRIER OF THE BILL WILL BE SEN. STENEHJEM.

## FISCAL NOTE

(Turn original and 10 copies)

Bill/Resolution No.: SB 2103

Amendment to: \_\_\_\_\_

Requested by Legislative Council

Date of Request: 12-30-98

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

**Narrative:** SB 2103 provides uniformity in penalty provision and clarifies language. It is expected to have a fiscal impact of less than \$5,000 during the 1999-2001 biennium.

- State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						

What, if any, is the effect of this measure on the budget for your agency or department:

- For rest of 1997-99 biennium: \_\_\_\_\_  
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- For the 1999-2001 biennium: \_\_\_\_\_  
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- For the 2001-03 biennium: \_\_\_\_\_

- County, city, and school district** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed  
attach a supplemental sheet.

Signed: *Kathryn L. Strombeck*

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: 1-5-99

Phone Number: 328-3402

Date: 1-26-99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2103

Senate Senate Finance and Taxation Committee  
Finance & Tax

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken No Pass

Motion Made By Sen Stenehjem Seconded By Sen. Wardner

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Stenehjem

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

SB 2103: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2103 was placed on the Eleventh order on the calendar.

1999 HOUSE FINANCE AND TAXATION

SB 2103



1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2103

House Finance and Taxation Committee

Conference Committee

Hearing Date March 1, 1999

Tape Number	Side A	Side B	Meter #
1		x	10.9
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

GARY ANDERSON, DIRECTOR, SALES & SPECIAL TAXES, OFFICE OF STATE TAX

COMMISSIONER, Testified in support of the bill, see written testimony.

REP. GROSZ Asked whether the tribes have to pay North Dakota taxes on cigarettes?

GARY ANDERSON The only tribe that is collecting taxes is the Standing Rock Tribe, and our department helps administer that for them. The other tribes do not apply.

REP. GROSZ They do sell them tax free?

GARY ANDERSON Yes

REP. BELTER That is only state tax, they do charge federal tax?

GARY ANDERSON No, I can't answer that, it may be incorporated in on the manufacturer level.

Page 2

House Finance and Taxation Committee

Bill/Resolution Number Sb 2103

Hearing Date ~~March 1, 1999~~

3-1-99

With no further testimony, the hearing was closed.

COMMITTEE ACTION 3-1-99, Tape #2, Side A, Meter #4

REP. GROSZ Made a motion for a DO PASS.

REP. RENNER Second the motion. MOTION CARRIED.

14 Yes 0 No 1 Absent

REP. SCHMIDT Was given the floor assignment.

Please type or use black pen to complete

Date 3-1-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2103

House HOUSE FINANCE & TAX Committee

Subcommittee on \_\_\_\_\_

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Grosz Seconded By Rep. Renner

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 14 0  
(Yes) (No)

Absent 1

Floor Assignment Rep. Schmidt

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

**REPORT OF STANDING COMMITTEE (410)**  
**March 1, 1999 3:25 p.m.**

**Module No: HR-36-3807**  
**Carrier: Schmidt**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2103: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2103 was placed on the Fourteenth order on the calendar.**

1999 TESTIMONY

SB 2103

## SB 2103

Testimony by  
Gary L. Anderson  
Director, Sales & Special Taxes,  
Office of State Tax Commissioner

Chairman Urlacher, Committee Members. I am here today, representing the Office of State Tax Commissioner, asking for your support of Senate Bill 2103.

Senate Bill 2103 provides for the removal of obsolete language and creates uniformity in the tobacco products tax law:

Section 1 and Section 3 of the bill removes the language requiring a special stamp to be affixed to each package of cigarettes sold to an enrolled tribal member. In 1991, legislation was approved removing the requirement that cigarettes sold in this state contain tax stamps. Since that date, the requirement to place a stamp on cigarettes sold to an enrolled tribal member has not been applied.

Section 2 provides for the application of penalty and interest for failure to file a tax return or to pay the applicable tax due on sales of cigarettes.

Section 4 references two changes. The first change, covered in subsection 1, provides for a due date on filing tobacco tax return information and making payment of tax. To be consistent with the requirement for cigarette tax, the due date has been extended to fifteen days instead of ten days. The second change, covered in subsection 2, cleans up the language regarding the application of penalty and interest charges for failure to file a tax return or to pay the applicable tax due on sales of tobacco products.

We would ask your consideration and support for Senate Bill 2103.

*Testimony  
Tom Kellech  
2103*

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2103**

Page 1, line 1, remove "to create and enact a new subsection to section 57-36-09 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "law; and ", after "sections" insert "57-36-01, 57-36-02, 57-36-04, 57-36-05,", after "57-36-07," insert ",57-36-09, 57-36-09.1,", after "57-36-11.1" insert ",57-36-24", and remove "and subsections 1 and 2 of"

Page 1, line 4, remove "section", after "57-26-25" insert ", 57-36-26, 57-36-28 and 57-36-29", after "tobacco" insert "products tax definitions, distributor and dealers license, tobacco product taxes, tobacco"

Page 1, line 7, after "law" insert "; and to provide an effective date"

Page 1, after line 8, insert:

**"SECTION 1. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-01. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the oral cavity.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
2. 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.
3. 4. "Consumer" means any person who has title to or possession of cigarettes, snuff, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products in storage, for use or other consumption in this state.
4. 5. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, snuff pipe tobacco, roll-your-own tobacco, or other tobacco products.
5. 6. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, snuff pipe tobacco, roll-your-own tobacco, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, snuff pipe tobacco, roll-your-own

tobacco, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.

6. 7. “Licensed dealer” means a dealer licensed under the provisions of this chapter.
7. 8. “Licensed distributor” means a distributor licensed under the provisions of this chapter.
8. 9. “Other tobacco products” means ~~any product except cigarettes, cigarette papers, cigars, or snuff~~ and chewing which is made up or composed of tobacco, in whole or in part.
9. 10. “Person” means any individual firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
11. “Pipe tobacco” means any tobacco that, because of its appearance, type, package, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
12. “Roll-your-own tobacco” means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.
10. 13. “Sale” or “sell” applies to gifts, exchanges, and barter.
14. “Snuff” means any finely cut, ground, or powered tobacco that is intended to be placed in the oral cavity.
11. 15. “Storage” means any keeping or retention of cigarettes, ~~snuff~~ pipe tobacco, roll-your-own tobacco, cigars, or other tobacco products for use or consumption in this state.
12. 16. “Use” means the exercise of any right or power incidental to the ownership or possession of cigarettes, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco or other tobacco products.

**SECTION 2. AMENDMENT.** Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-02. Distributors and dealers to be licensed.** Each person engaged in the business of selling cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage



in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license must be prominently displayed on the premises covered by the license.

**SECTION 3. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-04. Revocation of license – Penalty.** The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. No person may sell any cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products after his license has been revoked as provided in this chapter.

**SECTION 4. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-05. Unlawful to sell without license.** No dealer or distributor may sell cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to him as prescribed by this chapter, and no person may sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products without such license.”

Page 1, line 9, replace “1” with “5”

Page 1, after line 20, insert:

**“SECTION 6. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-09. Records to be kept by distributors and reports made – Penalty.**

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your own tobacco, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products, shall keep and preserve for one year all invoices of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products purchased by the distributor, and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, and representatives, of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, roll-your-own tobacco, or other tobacco products made from or to any persons either within or without this state during the preceding month. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

**SECTION 7. AMENDMENT.** Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-09.1. Warehouse – Record of deliveries and shipments.** Records of all

deliveries of shipments of ~~cigarettes and snuff, cigars, pipe tobacco, roll-your-own tobacco or other tobacco products~~ from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of ~~cigarettes, snuff, cigars, pipe tobacco, roll-your-own tobacco,~~ or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the ~~cigarettes, cigars, pipe tobacco, roll-your-own tobacco,~~ or other tobacco products.”

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 6

Page 2, line 7, replace “3” with “8”

Page 2, after line 23, insert:

**SECTION 9. AMENDMENT.** Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-24. Exemptions.** All gift ~~cigarettes, snuff, cigars, pipe tobacco, roll-your-own tobacco,~~ and other tobacco products, not for resale, which are given to the North Dakota veterans’ home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter.

**SECTION 10. AMENDMENT.** Section 57-36-25 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-25. ~~Cigars, snuff, and other tobacco products~~ pipe tobacco, and roll-your own tobacco – Excise tax on wholesale purchase price – Other tobacco products -- Excise Tax on weight -- Penalty – Reports – Collection – Allocation of revenue.**

1. There is hereby levied and assessed upon all ~~cigars, snuff, pipe tobacco, and roll-your-own tobacco~~ and ~~other tobacco products~~ sold in this state an excise tax at the rate of twenty-eight percent of the wholesale purchase price at which such ~~cigars, snuff, and other tobacco products~~ pipe tobacco, and roll-your-own tobacco are purchased by distributors. For the purposes of this section, the term “wholesale purchase price” shall mean the established price for which a manufacturer sells ~~cigars, snuff, or other tobacco products~~ pipe tobacco, and roll-your-own tobacco to a distributor exclusive of any discount or other reduction. ~~The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or~~

~~before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.~~

2. There is hereby levied and assessed upon all other tobacco products sold in this state an excise tax in the following amounts:
  - a. On snuff, 60 cents for each full ounce; and
  - b. On chewing tobacco, 15 cents for each full ounce.
3. For purposes of subsection 2, the tax on other tobacco products shall be computed based on the net weight as listed by the manufacturer. "Unit" shall mean the smallest individual package of other tobacco product intended for sale or distribution at retail. The term "full ounce" shall mean the number of whole ounces, within each taxable unit, with fractions of an ounce equal to one half or less rounded down to the next whole ounce, and fractions of an ounce greater than one half rounded up to the next whole ounce. Any unit containing less than one whole ounce shall be deemed to contain one whole ounce for purposes of computing the tax imposed by subsection two. The total tax to be imposed on a multi-unit package shall be the sum of the taxes imposed by subsection two on each individual unit within such multi-unit package.
4. The proceeds of the taxes, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the fifteenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the fifteenth day of the month following the month for which the returns are filed.
5. Any person failing to file any prescribed forms of form or return or to pay any tax within the time required or permitted by this section shall be is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of such the tax for each per month or fraction of a month of delay or fraction thereof excepting the portion of except the first month within which such after the return was required to be filed or the such tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of such the penalty. Such The penalty shall must be paid to the tax commissioner

and disposed of in the same manner as are other receipts under this chapter.

3. 6. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

**SECTION 11. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-26. Cigars, snuff pipe tobacco, roll-your-own tobacco, and other tobacco products – Excise tax payable by dealers – Reports – Penalties – Collection – Allocation of revenue.**

1. There is hereby levied and assessed upon all cigars, ~~snuff, and other tobacco products~~, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price, and upon all other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in Section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term “wholesale purchase price” means the established price for which a manufacturer sells cigars, ~~snuff, or other tobacco products~~ pipe tobacco, or roll-your-own tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer’s return when the dealer has more than one location and thereby would be required to file more than one return.
2. If cigars ~~or snuff~~, pipe tobacco, roll-your own tobacco, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other

state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, ~~snuff, and pipe tobacco, roll-your-own tobacco, or~~ other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

**SECTION 12. AMENDMENT.** Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-28. Consumer's use tax – Cigars, ~~snuff pipe tobacco, roll-your-own tobacco, and other tobacco products~~ – Reports – Remittances.**

1. A tax is hereby imposed upon the use or storage by consumers of cigars, ~~snuff pipe tobacco, roll-your-own tobacco, and other tobacco products~~ in this state, and upon those consumers, at the ~~rate of twenty-eight percent of the cost to the consumer of those products~~ rates indicated in section 57-36-25.
2. This tax shall not apply if the tax imposed by section 57-36-25 or section 57-36-26 has been paid nor shall it apply to cigars, ~~snuff pipe tobacco, roll-your-own tobacco, or other tobacco products~~ exempt pursuant to section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter has acquired title to or possession of cigars, ~~snuff pipe tobacco, roll-your-own tobacco, or other tobacco products~~ for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or section 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. The return shall be made upon a form furnished and

prescribed by the tax commissioner and shall contain such other information as the tax commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to his best judgment and information.
5. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner shall have authority to make an assessment of tax against him according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protects thereto, hearings thereon, interest and penalties, and collections of taxes, shall be applicable to consumers under this section in like manner as though set out in full herein.

**SECTION 13. AMENDMENT.** Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-29. Correction of errors.**

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
- W. Whenever a distributor destroys cigarettes, cigars, ~~snuff, and pipe tobacco,~~ roll-your own tobacco, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

**SECTION 14. EFFECTIVE DATE.** This Act is effective for taxable events occurring afer June 30, 1999.”

Page 2, remove lines 24 through 31

Page 3, remove lines 1 through 18

Renumber accordingly