

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2408
(Senators Stenehjem, Tomac, Wardner)
(Representatives Carlson, Renner, Wald)

AN ACT to amend and reenact sections 57-36-01, 57-36-09, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the North Dakota Century Code, relating to the tobacco products tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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 mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco and encased in any material except tobacco.
4. "Consumer" means any person who has title to or possession of cigarettes, snuff, cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption in this state.
5. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, snuff, or other tobacco products.
6. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
7. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
8. "Licensed distributor" means a distributor licensed under the provisions of this chapter.
9. "Other tobacco products" means any product except cigarettes, cigarette papers, cigars, or snuff which is made up or composed of tobacco, in whole or in part and chewing tobacco.
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, packaging, 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. "Sale" or "sell" applies to gifts, exchanges, and barter.
13. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.
14. "Storage" means any keeping or retention of cigarettes, snuff, cigars, pipe tobacco, or other tobacco products for use or consumption in this state.

- ~~12.~~ 15. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, ~~snuff~~, cigars, pipe tobacco, or other tobacco products.

SECTION 2. 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, 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, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe 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, or 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, 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. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
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, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. 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 3. 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 and pipe 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~~, and other tobacco products and pipe tobacco 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 and pipe 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 or pipe tobacco to a distributor exclusive of any discount or other reduction.
2. There is levied and assessed upon all other tobacco products sold in this state an excise tax at the following rates:

- a. Upon each can or package of snuff, sixty cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.
- b. On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

For purposes of this subsection, the tax on other tobacco products is computed based on the net weight as listed by the manufacturer.

3. The proceeds of ~~such tax~~ the taxes imposed under this section, 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.
2. 4. 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.
3. 5. 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.
4. ~~Repealed by S.L. 1975, ch. 106, § 673.~~

SECTION 4. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, ~~snuff~~, pipe 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~~, and pipe tobacco 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~~ or pipe 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, 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,~~ 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.
5. ~~Repealed by S.L. 1975, ch. 106, § 673.~~

SECTION 5. 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, and other tobacco products - Reports - Remittances.

1. A tax is hereby imposed upon the use or storage by consumers of cigars, ~~snuff,~~ pipe 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, 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, 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. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. 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 the tax commissioner's 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 the consumer 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, protests 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 6. 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.
2. Whenever a distributor destroys cigarettes, cigars, ~~snuff, and pipe 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 7. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter, any person who violates any provision of this chapter is guilty of a class A misdemeanor. All cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, or other tobacco products in the possession of the person or in the place of business of the person must be confiscated and forfeited to the state.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2408.

Senate Vote: Yeas 45 Nays 2 Absent 2

House Vote: Yeas 86 Nays 6 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State