

North Dakota Stamping Legislation Frequently Asked Questions

Why does Philip Morris USA (PM USA) believe tax stamps are necessary?

State excise tax stamps are an important component of a comprehensive approach to help prevent contraband cigarettes. Because excise tax rates vary from state to state, it is important that each state require stamps that signify the state excise tax has been paid and identify the product as intended for sale in that state.

Currently:

- North Dakota is one of only three states that do not require excise tax stamps on cigarette packs (North and South Carolina are the other two)
- Untaxed cigarettes are the most common form of contraband. Untaxed cigarettes include packs that: (1) are sold with no tax stamp in a jurisdiction that requires one, (2) bear the wrong tax stamp for the jurisdiction in which it was sold, and (3) are sold with counterfeit tax stamps.

Is there a contraband cigarette problem in North Dakota?

Because contraband cigarette trafficking is illegal, it is impossible to quantify accurately. By looking at a pack of cigarettes in North Dakota it is impossible to tell if appropriate excise taxes have been paid. The situation is further complicated by the sale of unstamped and untaxed cigarettes occurring at Native American outlets located in North Dakota. This scenario creates an incentive for the purchase of untaxed and unstamped cigarettes for illegal resale at non-Native American outlets within North Dakota, as well as outside of the state.

Is there a contraband cigarette problem in neighboring states?

Law enforcement information indicates that traffickers of contraband cigarettes are intent on buying unstamped cigarettes for their illegal operations.¹ Businesses in North Dakota may unknowingly sell unstamped cigarettes to criminals who then resell the products – sometimes with counterfeit tax stamps – to buyers in states with higher excise taxes.

Could North Dakota be losing any cigarette excise tax revenue?

A recent 2010 report by the Mackinac Center for Public Policy affirmed a previous estimate that North Dakota was losing 3.01% of its cigarette sales due to contraband cigarette activity.² Based on reported 2010 cigarette sales volume, North Dakota should have received an estimated \$613,000 in additional cigarette excise tax revenues.³

¹ April 9, 2008 AP article entitled, Tobacco Bust Nets 6 Million in Fake Stamps

² Mackinac Center for Public Policy, "Cigarette Taxes and Smuggling," 2010 page 3, Graphic 1; ALCS on behalf of PM USA has provided funding to the Mackinac Center for Public Policy.

³ Estimates based on information from the Mackinac Center for Public Policy, "Cigarette Taxes and Smuggling," 2010 page 3, Graphic 1 and from Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 45 (February 2011); funded in part by Altria Client Services Inc. Estimate derived by multiplying the North Dakota State Excise Tax rate of 44¢ per pack times the difference in reported volume and total consumption.



Will tax stamps cause tax revenue for North Dakota to decline?

That was certainly not the case in Michigan, which realized more than a 13% increase in cigarette excise tax collection after adding tax stamps to all cigarette packs in May of 1998.⁴ Requiring tax stamps on all packs sold in the state will protect the legitimate trade and help ensure that all applicable tax revenues are collected.

How much would North Dakota have to spend to purchase tax stamps?

PM USA estimates that it would cost North Dakota approximately \$23,146 to purchase tax stamps based on reported 2010 sales volume plus the additional tax-paid sales due to the reduced smuggling activities.⁵ This estimate does not include staffing or other related costs to implement a stamping program.

Would wholesalers have to purchase new equipment to tax-stamp cigarettes for North Dakota?

Currently the majority of wholesalers that ship cigarettes in or into North Dakota also ship cigarettes to surrounding states that require tax stamps. Modification of the current stamping discount allowance could defray costs wholesalers that ship cigarettes only within North Dakota and may not have stamping equipment could incur to purchase tax stamping equipment.

What tax stamp discount proposals does PM USA support?

PM USA supports reasonable discount proposals that fairly compensate wholesalers for applying tax stamps.

Are cigarettes sold by Native American outlets to non-tribal members taxable?

Native American outlets can sell cigarettes to non-tribal members. However, any purchaser who is not a tribe member has an obligation under North Dakota law to report and pay the cigarette tax on purchases greater than 200 cigarettes (or amount equaling one carton).⁶

Can Native American outlets sell cigarettes to non-tribal outlets?

Any retailer that purchases untaxed cigarettes from a Native American outlet must report and pay applicable cigarette excise taxes to state authorities.

⁴ The sum of monthly tax-paid sales from May 1997 through April 1998 was \$705,486 and from May 1998 through April 1999 was \$802,344. Orzechowski, Bill & Walker, Rob. *The Tax Burden on Tobacco (vol. 40) 2005*; funded in part by ALCS on behalf of PM USA. During this timeframe Michigan imposed a cigarette excise tax of 75¢ per pack. This rate was in effect from 5/1/1994 through 7/31/2002.

⁵ Based on 44.9 million cigarette packs as reported by Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco, vol. 45 (February 2011)*; funded in part by Altria Client Services Inc., the additional 1.4 million cigarette packs that were once smuggled but are now legitimate tax-paid cigarettes, and at cost of 50¢ per thousand tax stamps.

⁶ North Dakota Office of State Tax Commissioner, Cigarette and Tobacco Taxes Frequently Asked Questions <http://www.nd.gov/tax/misc/faq/tobacco/>



Some believe that a no-value or tax-exempt stamp on cigarette sales from Native American outlets is not necessary. Does PM USA share this view?

No. PM USA believes that all packs sold in North Dakota should bear stamps, including cigarettes sold through tribal outlets. Other states (including Arizona, New Mexico, Idaho and Washington) require the application of unique tribal stamps on packs sold by Native American outlets. These stamps designate cigarette packs sold by Native American outlets, provide quick visual confirmation that the product is intended for sale within North Dakota, protect state revenue and reduce the likelihood that counterfeit tax stamps will be applied to unstamped packs.

How will tax stamps help law enforcement?

The use of tax stamps will make the illicit resale of cigarettes more difficult because unstamped packs could no longer be sold legally within the state. Tax stamps provide quick visual confirmation that the product is intended for sale within North Dakota and that the required state excise tax has been paid. Also, tax stamps can be inspected to verify authenticity and identify the wholesaler that applied the stamps to the packs. In a South Dakota Department of Revenue and Regulation press release, the Property and Special Taxes Division Director stated, "The new stamps have invisible security features which can be verified with special scanning equipment. Those features make it easy for the Department to spot any invalid stamps, which is a definite benefit for both distributors and the Department. The new tax stamps will help ensure that the packs of cigarettes sold in South Dakota are properly stamped and the tax is being paid as it should be."⁷

⁷ November 26, 2007, South Dakota press release, State News Service, Department of Revenue and Regulation to Debut New Cigarette Tax Stamps <http://apps.sd.gov/news/showDoc.aspx?i=9059>

