

HOUSE BILL NO. 1421

Introduced by

Representatives J. Nelson, Beadle, Hogan, Keiser, Monson

Senators Bekkedahl, Mathern, Oehlke

1 A BILL for an Act to amend and reenact subsection 10 of section 57-36-01, sections 57-36-25
2 and 57-36-26, subsection 2 of section 57-36-28, and sections 57-36-31 and 57-36-32 of the
3 North Dakota Century Code, relating to the excise taxes on tobacco products and the cigarette
4 tax; to repeal section 57-36-24 of the North Dakota Century Code, relating to the exemption
5 from the tobacco tax for products given to the veterans' home and the state hospital; and to
6 provide a continuing appropriation.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Subsection 10 of section 57-36-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 10. "Other tobacco products" means ~~snuff and chewing tobacco~~ any product not otherwise
11 defined in this section, which is made up or composed of tobacco, in whole or in part.

12 **SECTION 2. AMENDMENT.** Section 57-36-25 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **57-36-25. Cigars and pipe tobacco - Excise tax on wholesale purchase price - Other**
15 **tobacco products - Excise tax on weight - Penalty - Reports - Collection - Allocation of**
16 **revenue.**

17 1. There is hereby levied and assessed upon all cigars ~~and~~ pipe tobacco, and other
18 tobacco products sold in this state an excise tax at the rate of ~~twenty-eight~~ forty-three
19 and one-half percent of the wholesale purchase price at which such cigars ~~and~~ pipe
20 tobacco, and other tobacco products are purchased by distributors. For the purposes
21 of this section, the term "wholesale purchase price" shall mean the established price
22 for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any
23 discount or other reduction.

- 1 2. There is levied and assessed upon ~~all other tobacco products~~ snuff and chewing
2 tobacco sold in this state an excise tax at the following rates:
- 3 a. Upon each can or package of snuff, ~~sixtytwo dollars~~ seventy-two cents per ounce
4 and a proportionate tax at the like rate on all fractional parts of an ounce.
- 5 b. On chewing tobacco, ~~sixteenseventy-three~~ cents per ounce and a proportionate
6 tax at the like rate on all fractional parts of an ounce.
- 7 ~~For purposes of this subsection, the tax on other tobacco products is computed based~~
8 ~~on the net weight as listed by the manufacturer.~~
- 9 3. The proceeds of the taxes imposed under this section, together with such forms of
10 return and in accordance with such rules and regulations as the tax commissioner may
11 prescribe, shall be remitted to the tax commissioner by the distributor on a calendar
12 quarterly basis on or before the fifteenth day of the month following the quarterly
13 period for which paid. The tax commissioner shall, however, have authority to
14 prescribe monthly returns upon the request of the licensee distributor and such returns
15 accompanied with remittance shall be filed before the fifteenth day of the month
16 following the month for which the returns are filed.
- 17 4. Any person failing to file any prescribed form or return or to pay any tax within the time
18 required or permitted by this section is subject to a penalty of five percent of the
19 amount of tax due or five dollars, whichever is greater, plus interest of one percent of
20 the tax per month or fraction of a month of delay except the first month after the return
21 or the tax became due. The tax commissioner, if satisfied that the delay was
22 excusable, may waive all or any part of the penalty. The penalty must be paid to the
23 tax commissioner and disposed of in the same manner as are other receipts under this
24 chapter.
- 25 5. All moneys received by the tax commissioner under the provisions of this section shall
26 be transmitted to the state treasurer at the end of each month and deposited in the
27 state treasury to the credit of the general fund.

28 **SECTION 3. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **57-36-26. Cigars, pipe tobacco, and other tobacco products - Excise tax payable by**
2 **dealers - Reports - Penalties - Collection - Allocation of revenue.**

3 1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another
4 state and brought into this state by a dealer for the purpose of sale at retail, an excise
5 tax at the rate of ~~twenty-eight~~forty-three and one-half percent of the wholesale
6 purchase price and, upon all other tobacco products purchased in another state and
7 brought into this state by a dealer for the purpose of sale at retail, an excise tax at the
8 rates indicated in section 57-36-25, at the time the products were brought into this
9 state. For the purposes of this section, the term "wholesale purchase price" means the
10 established price for which a manufacturer sells cigars or pipe tobacco to a distributor
11 exclusive of any discount or other reduction. However, the dealer may elect to report
12 and remit the tax on the cost price of the products to the dealer rather than on the
13 wholesale purchase price. The proceeds of the tax, together with the forms of return
14 and in accordance with any rules and regulations the tax commissioner may prescribe,
15 must be remitted to the tax commissioner by the dealer on a monthly basis on or
16 before the fifteenth day of the month following the monthly period for which it is paid.
17 The tax commissioner shall have the authority to place any dealer on an annual
18 remittance basis when in the judgment of the tax commissioner the operations of the
19 dealer merit that remittance period. In addition, the tax commissioner shall have the
20 authority to permit the consolidation of the filing of a dealer's return when the dealer
21 has more than one location and thereby would be required to file more than one
22 return.

23 2. If cigars, pipe tobacco, or other tobacco products have been subjected already to a tax
24 by any other state in respect to their sale in an amount less than the tax imposed by
25 this section, the provisions of this section apply, but at a rate measured by the
26 difference only between the rate fixed in this section and the rate by which the
27 previous tax upon the sale was computed. ~~If the tax imposed in the other state is~~
28 ~~twenty percent of the wholesale purchase price or more, then no tax is due on the~~
29 ~~article. The provisions of this subsection apply only if the other state allows a tax credit~~
30 ~~with respect to the excise tax on cigars, pipe tobacco, or other tobacco products~~

1 imposed by this state which is substantially similar in effect to the credit allowed by this-
2 subsection.

3 3. Any person failing to file any prescribed forms of return or to pay any tax within the
4 time required by this section is subject to a penalty of five dollars or a sum equal to
5 five percent of the tax due, whichever is greater, plus one percent of the tax for each
6 month of delay or fraction thereof excepting the month within which the return was
7 required to be filed or the tax became due. The tax commissioner, if satisfied that the
8 delay was excusable, may waive all or any part of the penalty. The penalty must be
9 paid to the tax commissioner and disposed of in the same manner as are other
10 receipts under this chapter.

11 4. All moneys received by the tax commissioner under the provisions of this section must
12 be transmitted to the state treasurer at the end of each month and deposited in the
13 state treasury to the credit of the general fund.

14 **SECTION 4. AMENDMENT.** Subsection 2 of section 57-36-28 of the North Dakota Century
15 Code is amended and reenacted as follows:

16 2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been
17 paid and it does not apply to cigars, pipe tobacco, or other tobacco products exempt
18 under section ~~57-36-24~~.

19 **SECTION 5. AMENDMENT.** Section 57-36-31 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-36-31. Transfer and allocation of revenues - Appropriation.**

22 1. All moneys received by the tax commissioner under the provisions of this chapter must
23 be transmitted to the state treasurer at the end of each month and deposited in the
24 state treasury to the credit of the general fund, except as hereinafter provided.

25 2. All moneys received from the levy and assessment of ~~one and one-half~~nine and
26 six-tenths mills on each of the classes of cigarettes provided in this chapter and four
27 and six-tenths percent of all revenue collected from the levy and assessment on other
28 tobacco products provided in this chapter are appropriated and must be distributed on
29 or before the thirtieth day of June and the thirty-first day of December of each year on
30 a per capita basis to the incorporated cities ~~for such purposes as are now or may be~~
31 ~~hereafter authorized by law, which may be used by the city for public health and safety~~

1 purposes, the allocation to be based upon the population of each incorporated city
2 according to the ~~last~~most recent official federal census, or the census taken in
3 accordance with the provisions of chapter 40-02 in the case of a city incorporated
4 subsequent to the ~~last~~most recent federal census, and warrants must be drawn
5 payable to the treasurers of such cities.

6 3. All moneys received from the levy and assessment of thirty-three and one-tenth mills
7 on each of the classes of cigarettes provided in this chapter and eighteen and
8 seven-tenths percent of all revenue collected from the levy and assessment on other
9 tobacco products provided in this chapter are appropriated and must be deposited to
10 the credit of the community health trust fund.

11 4. All moneys received from the levy and assessment of thirteen and three-fourths mills
12 on each of the classes of cigarettes provided in this chapter and seven and
13 three-fourths percent of all revenue collected from the levy and assessment on other
14 tobacco products provided in this chapter must be distributed on or before the thirtieth
15 day of June and the thirty-first day of December of each year, ten percent of the
16 distribution in equal amounts to each county and ninety percent on a per capita basis
17 to the counties, the allocation to be based upon the population of each county
18 according to the most recent official federal census, and warrants must be drawn
19 payable to the treasurers of such counties. Counties shall distribute all moneys
20 received under this section to their respective local public health unit. Moneys received
21 by the counties pursuant to this section are intended to augment, but not replace, the
22 moneys counties levy for the support of local public health units pursuant to section
23 23-35-07.

24 **SECTION 6. AMENDMENT.** Section 57-36-32 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **57-36-32. Separate and additional tax on the sale of cigarettes - Collection -**
27 **Allocation of revenue - Tax avoidance prohibited.**

28 There is hereby levied and assessed and there shall be collected by the state tax
29 commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional
30 tax, separate and apart from all other taxes, of ~~seventeen~~seventy-two mills on each cigarette, to
31 be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of

1 appropriate stamps and under similar accounting procedures. No person, firm, corporation, or
2 limited liability company shall transport or bring or cause to be shipped into the state of North
3 Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state,
4 without first paying the tax thereon to the state tax commissioner. All of the moneys collected by
5 the state treasurer under this section shall be credited to the state general fund.

6 **SECTION 7. REPEAL.** Section 57-36-24 of the North Dakota Century Code is repealed.