

SENATE BILL NO. 2103

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact a new subsection to section 57-36-09 of the North Dakota
2 Century Code, relating to the imposition of penalty and interest under the tobacco products tax
3 law; and to amend and reenact sections 57-36-07, 57-36-11.1, and subsections 1 and 2 of
4 section 57-36-25 of the North Dakota Century Code, relating to the tobacco product stamp
5 requirements on sales to enrolled tribal members, the time for filing tobacco products tax
6 returns by licensed tobacco products manufacturers, and the imposition of penalty and interest
7 under the tobacco products tax law.

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

9 **SECTION 1. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-36-07. Packaging - Presumption from possession.** Cigarettes must be packaged
12 as follows:

- 13 1. All cigarettes sold in this state must be in packages containing five or more
14 cigarettes each.
- 15 2. ~~If the cigarettes are to be sold to an enrolled tribal member pursuant to section~~
16 ~~57-36-11.1, within seventy-two hours of receipt by the licensee, a special stamp~~
17 ~~must be affixed to each package of cigarettes indicating that it is not subject to tax.~~
- 18 3. Each package of cigarettes displayed, exhibited, stored, or possessed in original
19 cartons or containers upon the premises where consumer sales are made is
20 conclusively presumed to be for sale to consumers.

21 **SECTION 2.** A new subsection to section 57-36-09 of the North Dakota Century Code
22 is created and enacted as follows:

23 Any person failing to file any prescribed form or return or to pay any tax within the
24 time required or permitted by this section is subject to a penalty of five percent of

1 the amount of tax due or five dollars, whichever is greater, plus interest of one
2 percent of the tax per month or fraction of a month of delay except the first month
3 after the return or the tax became due. The tax commissioner, if satisfied that the
4 delay was excusable, may waive all or any part of the penalty. The penalty must
5 be paid to the tax commissioner and disposed of in the same manner as are other
6 receipts under this chapter.

7 **SECTION 3. AMENDMENT.** Section 57-36-11.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-36-11.1. Sales of untaxed cigarettes.** ~~An enrolled tribal member conducting~~
10 ~~authorized cigarette sales activities within the exterior boundaries of the Indian reservation of~~
11 ~~the tribe of the enrolled tribal member may purchase from a licensed distributor cigarettes~~
12 ~~stamped as untaxed.~~

13 When a distributor makes an untaxed cigarette sale to an enrolled tribal member, the
14 distributor must obtain from the tribal member, on forms prescribed by the tax commissioner,
15 the following information:

- 16 1. Name of the tribal member.
- 17 2. Social security number of the tribal member.
- 18 3. Name of the tribe of the tribal member.
- 19 4. Tribal enrollment number of the tribal member.
- 20 5. Residential address of the tribal member.
- 21 6. Business address and business location of the retail sales of the tribal member.
- 22 7. Certification that the tribal member has been granted authority from the tribe to
23 conduct cigarette sales activity within the external boundaries of the reservation.

24 **SECTION 4. AMENDMENT.** Subsections 1 and 2 of section 57-36-25 of the North
25 Dakota Century Code are amended and reenacted as follows:

- 26 1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco
27 products sold in this state an excise tax at the rate of twenty-eight percent of the
28 wholesale purchase price at which such cigars, snuff, and other tobacco products
29 are purchased by distributors. For the purposes of this section, the term
30 "wholesale purchase price" shall mean the established price for which a
31 manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive

1 of any discount or other reduction. The proceeds of such tax, together with such
2 forms of return and in accordance with such rules and regulations as the tax
3 commissioner may prescribe, shall be remitted to the tax commissioner by the
4 distributor on a calendar quarterly basis on or before the ~~tenth~~ fifteenth day of the
5 month following the quarterly period for which paid. The tax commissioner shall,
6 however, have authority to prescribe monthly returns upon the request of the
7 licensee distributor and such returns accompanied with remittance shall be filed
8 before the ~~tenth~~ fifteenth day of the month following the month for which the
9 returns are filed.

10 2. Any person failing to file any prescribed ~~forms of form or~~ form or return or to pay any tax
11 within the time required or permitted by this section ~~shall be~~ is subject to a penalty
12 of five percent of the amount of tax due or five dollars, whichever is greater, plus
13 interest of one percent of such the tax for each per month or fraction of a month of
14 delay or fraction thereof excepting the portion of ~~except the first month within which~~
15 ~~such~~ after the return ~~was required to be filed~~ or ~~such the~~ tax became due. The tax
16 commissioner, if satisfied that the delay was excusable, may waive all or any part
17 of ~~such the~~ penalty. ~~Such~~ The penalty ~~shall~~ must be paid to the tax commissioner
18 and disposed of in the same manner as are other receipts under this chapter.