

**SENATE BILL NO. 2448**

Introduced by

Senators Stenehjem, Christmann, Fischer

Representatives Carlson, Nelson

1 A BILL for an Act to create and enact two new subsections to section 57-36-01 and sections  
2 57-36-08.1, 57-36-10.1, 57-36-11.2, 57-36-12.1, and 57-36-13.1 of the North Dakota Century  
3 Code, relating to tobacco tax stamps; to amend and reenact sections 57-36-02, 57-36-07,  
4 57-36-09, 57-36-18, and 57-36-33 of the North Dakota Century Code, relating to tobacco tax  
5 stamps; to repeal section 57-36-25.1 of the North Dakota Century Code, relating to deductions  
6 for licensed distributors for tobacco products tax administrative expenses; to provide a penalty;  
7 and to provide an effective date.

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

9 **SECTION 1.** Two new subsections to section 57-36-01 of the North Dakota Century  
10 Code are created and enacted as follows:

11 "Insignia" means the impression or mark made on the cigarettes or package  
12 containing the cigarettes approved by the tax commissioner under section  
13 57-36-11.2.

14 "Stamp" means a stamp prepared by the tax commissioner as provided in section  
15 57-36-08.1.

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

18 **57-36-02. Distributors and dealers to be licensed.** Each person engaged in the  
19 business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including  
20 any distributor or dealer, must secure a license from the attorney general before engaging or  
21 continuing to engage in business. A separate application and license is required for each  
22 distributor at each outlet or place of business within the state, and a separate dealer's license is  
23 required for each retail outlet when a person owns or controls more than one place of business

1 dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a  
2 distributor's license except a retailer who, in the usual course of business, performed a  
3 distributor's or wholesaler's function for at least one year prior to filing the license application.  
4 The application prescribed by the attorney general must include the name and address of the  
5 applicant, the address and place of business, the type of business, and other information as  
6 required for the proper administration of this chapter. Each application for a wholesale or  
7 distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety  
8 bond approved by the attorney general. Each application for a dealer's outlet license must be  
9 accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in  
10 addition to the annual license fee for each license renewal applied for after June thirtieth. The  
11 total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal  
12 year. Stamps or insignia under this chapter may be sold to and affixed only in North Dakota by  
13 licensed distributors. Licensed dealers may sell, buy, or have in their possession only  
14 cigarettes upon which stamps or insignia were previously affixed. A distributor's license does  
15 not authorize the holder to make retail sales. Each license issued must be prominently  
16 displayed on the premises covered by the license.

17 **SECTION 3. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **57-36-07. Packaging - Presumption from possession - Stamps to be affixed.**

20 Cigarettes must be packaged and stamped as follows:

- 21 1. All cigarettes sold or distributed in this state must be in packages containing twenty  
22 or more cigarettes each.
- 23 2. Within seventy-two hours of receipt by the licensee, each package of cigarettes,  
24 except as otherwise provided in this chapter, must have a securely affixed stamp  
25 denoting the tax and each stamp must be properly canceled prior to sale or  
26 removal for consumption, under rules adopted by the tax commissioner.
- 27 3. Each package of cigarettes displayed, exhibited, stored, or possessed in original  
28 cartons or containers upon the premises where consumer sales are made is  
29 conclusively presumed to be for sale to consumers.
- 30 ~~3.~~ 4. All packages of roll-your-own tobacco sold or distributed in this state must be in  
31 packages containing at least 0.60 ounces [17 grams] of tobacco.

1           5. Each package of cigarettes displayed, exhibited, stored, or possessed in original  
2           cartons or containers upon the premises where consumer sales are made is  
3           conclusively presumed to be for sale to consumers. Each package of cigarettes,  
4           except as otherwise provided, must have a securely affixed stamp denoting the  
5           tax. Stamps must be canceled as provided in this chapter and possession of any  
6           unstamped package of cigarettes is prima facie evidence of a violation of this  
7           chapter.

8           **SECTION 4.** Section 57-36-08.1 of the North Dakota Century Code is created and  
9 enacted as follows:

10           **57-36-08.1. Stamps prepared by commissioner.** The tax commissioner shall  
11 prepare stamps for use on each kind of package under this chapter and keep an accurate  
12 record of all stamps received and delivered. The tax commissioner may sell the stamps only to  
13 a person holding a distributor's license. Wholesale distributors of cigarettes located outside of  
14 this state may apply for a distributor's license as provided in section 57-36-02 and may  
15 purchase stamps from the tax commissioner. The stamps must be affixed on cigarettes to be  
16 sold in this state and canceled pursuant to the tax commissioner's rules.

17           **SECTION 5. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **57-36-09. Records to be kept by distributors and reports made - Penalty.**  
20 Distributors shall keep records and make reports relating to purchases and sales of cigarettes,  
21 cigarette papers, snuff, cigars, or other tobacco products made by them, and must be punished  
22 for failure so to do, as follows:

23           1. Each distributor who shall dispose of cigarettes, cigarette papers, snuff, cigars, or  
24 other tobacco products shall keep and preserve for one year all invoices of  
25 cigarettes, cigarette papers, snuff, cigars, or other tobacco products and all  
26 receipts issued by the tax commissioner for stamps purchased by the distributor  
27 and shall permit the state tax commissioner, and assistants, authorized agents, or  
28 representatives of the state tax commissioner, to inspect and examine all taxable  
29 merchandise, invoices, receipts, books, papers, and memoranda as may be  
30 deemed necessary by the state tax commissioner, and assistants, authorized  
31 agents, or representatives of the state tax commissioner in determining whether

1           stamps required by this chapter have been purchased and used and the amount of  
2           the tax as may be yet due. Each person selling or otherwise disposing of  
3           cigarettes, cigarette papers, snuff, cigars, or other tobacco products as a distributor  
4           shall keep a record of all sales made within the state showing the name and  
5           address of the purchaser and the date of sale.

6           2. On or before the fifteenth day of each month, each licensed distributor, on such  
7           form as the state tax commissioner shall prescribe, shall report to the tax  
8           commissioner all purchases and sales of cigarettes, cigarette papers, snuff, cigars,  
9           or other tobacco products made from or to any persons either within or without this  
10          state during the preceding month. The tax levied by this chapter is payable  
11          monthly and must be remitted to the tax commissioner by each licensed distributor  
12          on or before the fifteenth day of the month following the monthly period.

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

21          **SECTION 6.** Section 57-36-10.1 of the North Dakota Century Code is created and  
22          enacted as follows:

23          **57-36-10.1. Stamps may be purchased at discount.** Any licensed distributor may  
24          purchase stamps for taxed cigarettes at a discount. The tax commissioner may allow the  
25          discount in the settlement of the account of the wholesale distributor upon the payment to the  
26          tax commissioner of any moneys due by reason of the sale, delivery, or consignment to the  
27          distributor of the stamps. The discount is computed as a percentage of the face value of the  
28          stamp at the following rates:

29                  1. Five percent of the face value for the first one hundred thousand dollars purchased  
30                  each fiscal year.

- 1           2. Four percent of the face value for the next one hundred and twenty-five thousand
- 2                   dollars purchased each fiscal year.
- 3           3. Three percent of the face value for the next one hundred and seventy-five
- 4                   thousand dollars purchased each fiscal year.
- 5           4. Two percent of the face value for purchases over four hundred thousand dollars for
- 6                   each fiscal year.
- 7           5. The total discount under this section for any distributor may not exceed twenty-five
- 8                   thousand dollars for each fiscal year.

9 A licensed distributor may purchase stamps for untaxed cigarettes at a cost not to exceed the  
10 cost of producing the stamps. A discount is not allowed for the purchase of untaxed cigarette  
11 stamps.

12           **SECTION 7.** Section 57-36-11.2 of the North Dakota Century Code is created and  
13 enacted as follows:

14           **57-36-11.2. Tax meter machines.**

- 15           1. In lieu of selling stamps, the tax commissioner may authorize any manufacturer or
- 16                   distributor to stamp cigarettes with an insignia with a tax meter machine. The tax
- 17                   commissioner may adopt rules for leasing a tax meter machine to any
- 18                   manufacturer or distributor and for supervising the operation of the meter. Meters
- 19                   may not be used to stamp untaxed cigarettes. The tax commissioner shall collect
- 20                   and receive the tax prescribed by this chapter on all cigarettes sold in or delivered
- 21                   to dealers in this state for sale, barter, gifts, or any other purpose. Any cigarette
- 22                   stamped with a tax meter machine need not have stamps affixed and may be
- 23                   possessed and sold by any wholesale or retail dealer in this state. Any
- 24                   manufacturer or distributor stamping cigarettes with a tax meter machine under this
- 25                   section is entitled to the discount provided in section 57-36-10.1.
- 26           2. The tax commissioner may designate a county auditor of this state as the
- 27                   representative for setting tax meter machines for any particular distributor and for
- 28                   collection of the cigarette tax due upon each setting. Any designated county
- 29                   auditor must transmit the tax collected and report each meter machine setting to
- 30                   the tax commissioner on or before the next business day and perform the duties in
- 31                   accordance with the procedure prescribed by the tax commissioner. The duties of

1           the county auditor under this section are within the coverage of the official bond.  
2           Any designated county auditor may collect a fee of five dollars from the distributor  
3           for each meter setting. The auditor may retain the fee for the services and need  
4           not credit the fee to any public fund.  
5           3. If it is inappropriate for the tax commissioner to designate a county auditor as the  
6           representative for setting tax meter machines, the tax commissioner may delegate  
7           the responsibility to an individual or a corporate setting agent within this state. Any  
8           designated individual or corporation must transmit the tax collected and report  
9           each meter machine's setting to the tax commissioner on or before the next  
10           business day and perform the duties in accordance with the procedure prescribed  
11           by the tax commissioner. The setting agent must submit a bond in an amount  
12           determined by the tax commissioner prior to beginning the agent's duties. Any  
13           setting agent must receive a meter setting fee from the distributor for services to  
14           cover the cost of that portion of a bond which is attributable to that particular  
15           distributor plus a reasonable fee for the setting of the tax meter as determined by  
16           agreement among the setting agent, the distributor, and the tax commissioner.

17           **SECTION 8.** Section 57-36-12.1 of the North Dakota Century Code is created and  
18 enacted as follows:

19           **57-36-12.1. Distributors may not sell stamps.** A distributor or wholesale dealer may  
20 not resell to any other distributor or dealer any stamp purchased from the tax commissioner.  
21 Any distributor who has on hand any unused and canceled stamps at the time of discontinuing  
22 the business of selling cigarettes may return such stamps to the tax commissioner and receive  
23 ninety-seven percent of the face value of the stamps.

24           **SECTION 9.** Section 57-36-13.1 of the North Dakota Century Code is created and  
25 enacted as follows:

26           **57-36-13.1. Unlawful to transport unstamped cigarettes.** A person may not  
27 transport into, receive, carry, or move from place to place in this state any unstamped cigarettes  
28 by any means of transportation, except in the course of interstate commerce. Any automobile,  
29 truck, boat, airplane, conveyance, vehicle, or other means of transportation in which any  
30 cigarettes are transported or carried in violation of this chapter, and any cigarettes and other  
31 equipment or personal property used as an incident to such transportation and found in such

1 means of transportation, is subject to seizure by the tax commissioner or by any sheriff or other  
2 police officer, with or without process, and is subject to forfeiture as provided in section  
3 57-36-14.

4 **SECTION 10. AMENDMENT.** Section 57-36-18 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **57-36-18. Tax commissioner to administer chapter.** In administering this chapter,  
7 the tax commissioner and agents of the tax commissioner shall exercise the following powers:

- 8 1. The tax commissioner and authorized agents of the tax commissioner shall enforce  
9 the provisions of this chapter and have the powers of peace officers. They may  
10 arrest violators of the provisions of this chapter and enter complaint before any  
11 court of competent jurisdiction, and may seize without formal warrant, and use as  
12 evidence, any forged, counterfeit, spurious, or altered license or stamp found in the  
13 possession of any person in violation of this chapter.
- 14 2. The tax commissioner may prescribe rules and regulations not inconsistent with  
15 the provisions of the chapter for its detailed and efficient administration.

16 **SECTION 11. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **57-36-33. Penalties for violation of chapter.** Except as otherwise provided in this  
19 chapter, ~~any~~:

- 20 1. Any person who violates any provision of this chapter is guilty of a class A  
21 misdemeanor. All cigarettes, cigarette papers, snuff, cigars, or other tobacco  
22 products in the possession of the person or in the place of business of the person  
23 must be confiscated and forfeited to the state.
- 24 2. Any consumer who purchases any package of cigarettes that does not bear the  
25 stamp or insignia placed on it under this chapter and any person who uses or  
26 consumes within this state any cigarette, unless it was taken from a package or  
27 container having attached the stamp or insignia required by this chapter, is guilty of  
28 a class B misdemeanor.

29 **SECTION 12. REPEAL.** Section 57-36-25.1 of the North Dakota Century Code is  
30 repealed.

1           **SECTION 13. EFFECTIVE DATE.** This Act is effective for taxable events occurring  
2 after July 31, 2001.