

SENATE BILL NO. 2408

Introduced by

Senators Stenehjem, Tomac, Wardner

Representatives Carlson, Renner, Wald

1 A BILL for an Act to amend and reenact sections 57-36-01, 57-36-09, 57-36-25, 57-36-26,
2 57-36-28, 57-36-29, and 57-36-33 of the North Dakota Century Code, relating to the tobacco
3 products tax.

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

5 **SECTION 1. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-36-01. Definitions.** As used in this chapter, unless the context or subject matter
8 otherwise requires:

- 9 1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the
10 mouth.
- 11 2. "Cigar" means any roll of tobacco wrapped in tobacco.
- 12 ~~2.~~ 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco and
13 encased in any material except tobacco.
- 14 ~~3.~~ 4. "Consumer" means any person who has title to or possession of cigarettes, ~~snuff,~~
15 cigars, or other tobacco products in storage, for use or other consumption in this
16 state.
- 17 ~~4.~~ 5. "Dealer" includes any person other than a distributor who is engaged in the
18 business of selling cigarettes, cigarette papers, cigars, ~~snuff,~~ or other tobacco
19 products.
- 20 ~~5.~~ 6. "Distributor" includes any person engaged in the business of producing or
21 manufacturing cigarettes, cigarette papers, cigars, ~~snuff,~~ or other tobacco
22 products, or importing into this state cigarettes, cigarette papers, cigars, ~~snuff,~~ or
23 other tobacco products, for the purpose of distribution and sale thereof to dealers
24 and retailers.

1 ~~6-~~ 7. "Licensed dealer" means a dealer licensed under the provisions of this chapter.

2 ~~7-~~ 8. "Licensed distributor" means a distributor licensed under the provisions of this
3 chapter.

4 ~~8-~~ 9. "Other tobacco products" means ~~any product except cigarettes, cigarette papers,~~
5 ~~eigars, or snuff which is made up or composed of tobacco, in whole or in part,~~
6 chewing tobacco, and pipe tobacco.

7 ~~9-~~ 10. "Person" means any individual, firm, fiduciary, partnership, corporation, limited
8 liability company, trust, or association however formed.

9 11. "Pipe tobacco" means any tobacco that, because of its appearance, type,
10 packaging, or labeling, is suitable for use and likely to be offered to, or purchased
11 by, consumers as tobacco to be smoked in a pipe.

12 ~~10-~~ 12. "Sale" or "sell" applies to gifts, exchanges, and barter.

13 13. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
14 placed in the mouth.

15 ~~11-~~ 14. "Storage" means any keeping or retention of cigarettes, ~~snuff,~~ cigars, or other
16 tobacco products for use or consumption in this state.

17 ~~12-~~ 15. "Use" means the exercise of any right or power incidental to the ownership or
18 possession of cigarettes, ~~snuff,~~ cigars, or other tobacco products.

19 **SECTION 2. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-36-09. Records to be kept by distributors and reports made - Penalty.**

22 Distributors shall keep records and make reports relating to purchases and sales of cigarettes,
23 cigarette papers, ~~snuff,~~ cigars, or other tobacco products made by them, and must be punished
24 for failure so to do, as follows:

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

1 assistants, authorized agents, or representatives of the state tax commissioner in
2 determining the amount of the tax as may be yet due. Each person selling or
3 otherwise disposing of cigarettes, cigarette papers, ~~snuff~~, cigars, or other tobacco
4 products as a distributor shall keep a record of all sales made within the state
5 showing the name and 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 3. AMENDMENT.** Section 57-36-25 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **57-36-25. Cigars, ~~snuff~~, and ~~other tobacco products~~ - Excise tax on wholesale**
24 **purchase price - Other tobacco products - Excise tax on weight - Penalty - Reports -**
25 **Collection - Allocation of revenue.**

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

1 manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive
2 of any discount or other reduction.

3 2. There is levied and assessed upon all other tobacco products sold in this state an
4 excise tax at the following rates:

5 a. Upon each can or package of snuff, sixty cents per ounce and a proportionate
6 tax at the like rate on all fractional parts of an ounce.

7 b. On chewing tobacco, fifteen cents per ounce and a proportionate tax at the
8 like rate on all fractional parts of an ounce.

9 c. On pipe tobacco, forty cents per ounce and a proportionate tax at the like rate
10 on all fractional parts of an ounce.

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

13 3. The proceeds of ~~such tax~~ the taxes imposed under this section, together with such
14 forms of return and in accordance with such rules and regulations as the tax
15 commissioner may prescribe, shall be remitted to the tax commissioner by the
16 distributor on a calendar quarterly basis on or before the fifteenth day of the month
17 following the quarterly period for which paid. The tax commissioner shall, however,
18 have authority to prescribe monthly returns upon the request of the licensee
19 distributor and such returns accompanied with remittance shall be filed before the
20 fifteenth day of the month following the month for which the returns are filed.

21 ~~2.~~ 4. Any person failing to file any prescribed form or return or to pay any tax within the
22 time required or permitted by this section is subject to a penalty of five percent of
23 the amount of tax due or five dollars, whichever is greater, plus interest of one
24 percent of the tax per month or fraction of a month of delay except the first month
25 after the return or the tax became due. The tax commissioner, if satisfied that the
26 delay was excusable, may waive all or any part of the penalty. The penalty must
27 be paid to the tax commissioner and disposed of in the same manner as are other
28 receipts under this chapter.

29 ~~3.~~ 5. All moneys received by the tax commissioner under provisions of this section shall
30 be transmitted to the state treasurer at the end of each month and deposited in the
31 state treasury to the credit of the general fund.

1 4. ~~Repealed by S.L. 1975, ch. 106, § 673.~~

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

4 **57-36-26. Cigars, ~~snuff~~, and other tobacco products - Excise tax payable by**
5 **dealers - Reports - Penalties - Collection - Allocation of revenue.**

- 6 1. There is hereby levied and assessed upon all cigars, ~~snuff~~, and other tobacco
7 ~~products~~, purchased in another state and brought into this state by a dealer for the
8 purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the
9 wholesale purchase price, and upon all other tobacco products purchased in
10 another state and brought into this state by a dealer for the purpose of sale at
11 retail, an excise tax at the rates indicated in section 57-36-25, at the time the
12 products were brought into this state. For the purposes of this section, the term
13 "wholesale purchase price" means the established price for which a manufacturer
14 sells cigars, ~~snuff~~, or other tobacco products to a distributor exclusive of any
15 discount or other reduction. However, the dealer may elect to report and remit the
16 tax on the cost price of the products to the dealer rather than on the wholesale
17 purchase price. The proceeds of the tax, together with the forms of return and in
18 accordance with any rules and regulations the tax commissioner may prescribe,
19 must be remitted to the tax commissioner by the dealer on a monthly basis on or
20 before the fifteenth day of the month following the monthly period for which it is
21 paid. The tax commissioner shall have the authority to place any dealer on an
22 annual remittance basis when in the judgment of the tax commissioner the
23 operations of the dealer merit that remittance period. In addition, the tax
24 commissioner shall have the authority to permit the consolidation of the filing of a
25 dealer's return when the dealer has more than one location and thereby would be
26 required to file more than one return.
- 27 2. If cigars ~~or snuff~~ or other tobacco products have been subjected already to a tax by
28 any other state in respect to their sale in an amount less than the tax imposed by
29 this section, the provisions of this section apply, but at a rate measured by the
30 difference only between the rate fixed in this section and the rate by which the
31 previous tax upon the sale was computed. If the tax imposed in the other state is

1 twenty percent of the wholesale purchase price or more, then no tax is due on the
2 article. The provisions of this subsection apply only if the other state allows a tax
3 credit with respect to the excise tax on cigars, ~~snuff,~~ ~~and~~ ~~or~~ other tobacco products
4 imposed by this state which is substantially similar in effect to the credit allowed by
5 this subsection.

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

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

17 ~~5. Repealed by S.L. 1975, ch. 106, § 673.~~

18 **SECTION 5. AMENDMENT.** Section 57-36-28 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-36-28. Consumer's use tax - Cigars, ~~snuff,~~ and other tobacco products -**
21 **Reports - Remittances.**

22 1. A tax is hereby imposed upon the use or storage by consumers of cigars, ~~snuff,~~
23 and other tobacco products in this state, and upon those consumers, at the ~~rate of~~
24 ~~twenty-eight percent of the cost to the consumer of those products~~ rates indicated
25 in section 57-36-25.

26 2. This tax shall not apply if the tax imposed by section 57-36-25 or section 57-36-26
27 has been paid nor shall it apply to cigars, ~~snuff,~~ or other tobacco products exempt
28 pursuant to section 57-36-24.

29 3. On or before the tenth day of each calendar quarter, every consumer who, during
30 the preceding calendar quarter, has acquired title to or possession of cigars, ~~snuff,~~
31 or other tobacco products for use or storage in this state, upon which products the

1 tax imposed by either section 57-36-25 or section 57-36-26 has not been paid,
2 shall file a return with the tax commissioner showing the quantity of such products
3 so acquired. The return shall be made upon a form furnished and prescribed by
4 the tax commissioner and shall contain such other information as the tax
5 commissioner may require. The return shall be accompanied by a remittance for
6 the full unpaid tax liability shown by it.

7 4. As soon as practicable after any return is filed, the tax commissioner shall examine
8 the return and correct it, if necessary, according to the tax commissioner's best
9 judgment and information.

10 5. In case any consumer required to pay the tax levied by this section fails to file a
11 return or remit the tax as herein required, the tax commissioner shall have authority
12 to make an assessment of tax against the consumer according to the tax
13 commissioner's best judgment and information.

14 6. All of the provisions of this chapter relating to corrections of returns, deficiency
15 assessments, protests thereto, hearings thereon, interest and penalties, and
16 collections of taxes shall be applicable to consumers under this section in like
17 manner as though set out in full herein.

18 **SECTION 6. AMENDMENT.** Section 57-36-29 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-36-29. Correction of errors.**

21 1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has
22 been paid which was not due under the provisions of this chapter, then such
23 amount becomes due under this chapter, and the amount must be credited or
24 refunded to such person or firm by the tax commissioner.

25 2. Whenever a distributor destroys cigarettes, cigars, ~~snuff,~~ and or other tobacco
26 products accidentally, or intentionally, because of staleness or other unfitness for
27 sale, a credit or refund must be given to the wholesaler under the terms and
28 conditions prescribed by the tax commissioner.

29 **SECTION 7. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **57-36-33. Penalties for violation of chapter.** Except as otherwise provided in this
2 chapter, any person who violates any provision of this chapter is guilty of a class A
3 misdemeanor. All cigarettes, cigarette papers, ~~snuff~~, cigars, or other tobacco products in the
4 possession of the person or in the place of business of the person must be confiscated and
5 forfeited to the state.