

**SENATE BILL NO. 2322**

Introduced by

Senators Mathern, Oehlke

Representatives J. Nelson, Hogan

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 section 57-36-32 of the North Dakota  
3 Century Code, relating to the excise taxes on tobacco products and the cigarette tax; and to  
4 repeal section 57-36-24 of the North Dakota Century Code, relating to the exemption from the  
5 tobacco tax for products given to the veterans' home and the state hospital.

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

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

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

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

13 **57-36-25. Cigars and pipe tobacco - Excise tax on wholesale purchase price - Other**  
14 **tobacco products - Excise tax on weight - Penalty - Reports - Collection - Allocation of**  
15 **revenue.**

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

22 2. There is levied and assessed upon ~~all other tobacco products~~ snuff and chewing  
23 tobacco sold in this state an excise tax at the following rates:

1 a. Upon each can or package of snuff, ~~sixtytwo dollars ten~~ sixtytwo dollars ten cents per ounce and a  
2 proportionate tax at the like rate on all fractional parts of an ounce.

3 b. On chewing tobacco, ~~sixteenfifty-six~~ sixteenfifty-six cents per ounce and a proportionate tax at  
4 the like rate on all fractional parts of an ounce.

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

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

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

23 5. All moneys received by the tax commissioner under the provisions of this section shall  
24 be transmitted to the state treasurer at the end of each month and deposited in the  
25 state treasury to the credit of the general fund.

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

28 **57-36-26. Cigars, pipe tobacco, and other tobacco products - Excise tax payable by**  
29 **dealers - Reports - Penalties - Collection - Allocation of revenue.**

30 1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another  
31 state and brought into this state by a dealer for the purpose of sale at retail, an excise

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

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

28 3. Any person failing to file any prescribed forms of return or to pay any tax within the  
29 time required by this section is subject to a penalty of five dollars or a sum equal to  
30 five percent of the tax due, whichever is greater, plus one percent of the tax for each  
31 month of delay or fraction thereof excepting the month within which the return was

1 required to be filed or the tax became due. The tax commissioner, if satisfied that the  
2 delay was excusable, may waive all or any part of the penalty. The penalty must be  
3 paid to the tax commissioner and disposed of in the same manner as are other  
4 receipts under this chapter.

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

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

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

13 **SECTION 5. AMENDMENT.** Section 57-36-32 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **57-36-32. Separate and additional tax on the sale of cigarettes - Collection -**  
16 **Allocation of revenue - Tax avoidance prohibited.**

17 There is hereby levied and assessed and there shall be collected by the state tax  
18 commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional  
19 tax, separate and apart from all other taxes, of ~~seventeen~~ninety-five mills on each cigarette, to  
20 be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of  
21 appropriate stamps and under similar accounting procedures. No person, firm, corporation, or  
22 limited liability company shall transport or bring or cause to be shipped into the state of North  
23 Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state,  
24 without first paying the tax thereon to the state tax commissioner. All of the moneys collected by  
25 the state treasurer under this section shall be credited to the state general fund.

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