

CHAPTER 57-36
TOBACCO PRODUCTS TAX LAW

57-36-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed tobacco and encased in any material except tobacco. The term also means any product of a cigarette-making machine.
4. "Cigarette-making machine" means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.
5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes a retailer and any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers. The term also includes a dealer that fabricates, repackages, compounds, or mixes electronic smoking devices for purposes of sale to a consumer.
8. "Electronic smoking device" means a device that may be used to deliver an aerosolized, vaporized, or heated substance containing nicotine, regardless of whether the nicotine is natural or synthetic, to an individual inhaling from the device, and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The term includes any substance containing nicotine, regardless of whether the nicotine is natural or synthetic, that may be aerosolized, vaporized, or heated by the device, regardless of whether the device is sold separately. The term does not include:
 - a. A cigarette as defined in section 51-25-01;
 - b. A cigarette as defined in this section;
 - c. A drug, device, or combination product, as those terms are defined in the federal Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved for sale by the United States food and drug administration; or
 - d. A battery or battery charger when sold separately.
9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
10. "Licensed distributor" means a distributor licensed under the provisions of this chapter.
11. "Other tobacco products" means snuff and chewing tobacco.
12. "Outlet" means each place of business from which tobacco products are sold.
13. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
14. "Pipe tobacco" means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
15. "Place of business" means a place where tobacco products are sold or where tobacco products are manufactured, fabricated, stored, or kept for purposes of sale or consumption.
16. "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products to consumers.
17. "Sale" or "sell" applies to gifts, exchanges, and barter.

18. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth or nose.
19. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products for use or consumption in this state.
20. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products.

57-36-02. Distributors and dealers to be licensed.

1. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco in this state, including any distributor or dealer, shall secure a license from the attorney general before engaging or continuing to engage in business.
2. A separate application and license is required for each outlet or place of business operated or maintained by a distributor within the state.
 - a. A distributor's license does not authorize the distributor to make retail sales.
 - b. A distributor may not be granted a dealer's license unless the distributor has possessed a distributor's license issued under this chapter for at least one year before filing an application for a dealer's license.
 - c. Notwithstanding subdivision b, a person that can demonstrate to the satisfaction of the attorney general that the person has been engaged, in the normal course of business, in the sale of electronic smoking devices before July 1, 2018, may be granted a dealer's license.
 - d. Each application for a distributor's license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general.
3. A separate application and license is required for each outlet or place of business operated or maintained by a dealer in this state.
 - a. A dealer may not sell tobacco products purchased from a distributor not licensed under this chapter.
 - b. A person issued a dealer's license under this chapter may not be issued a distributor's license.
4. Each application for a dealer's outlet or place of business license must be accompanied by a fee of fifteen dollars.
5. A license application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the administration of this chapter.
6. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year.
7. Each license issued must be prominently displayed on the place of business or outlet covered by the license.

57-36-03. License.

Each license issued under the provisions of this chapter is valid until the first day of July subsequent to the date of issuance unless sooner revoked by the attorney general or unless the business with respect to which such license was issued is transferred, in either of which cases the holder of the license shall return it immediately to the attorney general. The license issued is annual and runs from July first of each year to June thirtieth of the following year.

57-36-04. Revocation of license - Penalty.

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter or chapter 51-25.1, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A

person may not sell any cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco after that person's license has been revoked as provided in this chapter.

57-36-05. Unlawful to sell without license.

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco without such license.

57-36-05.1. Sale of imported cigarettes - When prohibited.

A dealer, distributor, or other person may not sell or distribute in this state any tobacco product previously exported from the United States.

57-36-05.2. Sale of noncompliant tobacco products.

A dealer, distributor, or other person may not knowingly sell or distribute in this state any tobacco product manufactured by a tobacco product manufacturer not in compliance with subsection 2 of section 51-25-02.

57-36-05.3. Use of cigarette-making machines - When allowed.

A person may not maintain or operate in this state a cigarette-making machine unless that person:

1. Has a valid federal permit as a tobacco product manufacturer issued under 26 U.S.C. 5713; or
2. Uses the machine exclusively for personal purposes. A cigarette-making machine may be considered used exclusively for personal purposes only if the product resulting from the operation of the machine is consumed by the individual who owns the machine or by other persons whose consumption of the product is incidental to the owner's personal use of the machine.

57-36-05.4. Certain cigarette-making machines - Registration requirements.

The following requirements apply to any cigarette-making machine:

1. A person may not maintain or operate a cigarette-making machine in this state unless the machine has been registered with the attorney general in the form and manner as prescribed by the attorney general. The person registering a machine under this section shall certify under penalties of perjury that all statements in the registration and in any attachments to the registration are true, accurate, and complete.
2. The registration expires three years from the date the machine is registered with the attorney general and must be renewed as provided under subsection 1.
3. The person registering the machine shall attach to the registration a copy of a valid federal permit issued to the person under 26 U.S.C. 5713 or an affidavit indicating that the machine will be used exclusively for personal purposes as described in section 57-36-05.3.
4. The registration required under this section immediately terminates if the federal permit is declared invalid, surrendered, or revoked, or any statement in the affidavit ceases to be true, correct, or complete.

57-36-06. Cigarettes - Amount of tax.

There are levied and assessed, and there must be collected and paid to the state tax commissioner, upon all cigarettes sold in this state, the following excise taxes, payment thereof to be made prior to the time of the sale and delivery thereof:

1. Class A. On cigarettes weighing not more than three pounds [1360.78 grams] per thousand, five mills on each such cigarette.
2. Class B. On cigarettes weighing more than three pounds [1360.78 grams] per thousand, five and one-half mills on each such cigarette.

57-36-06.1. Cigarette-making machines - Requirements.

A person operating or maintaining a cigarette-making machine who is a tobacco product manufacturer under Public Law 112-141 [126 Stat. 914; 26 U.S.C. 5702 et seq.] shall:

1. Maintain on the machine, in good working order, a tamper-proof counting device that records the number of all rolls or tubes processed on the machine.
2. Provide the tax commissioner access to the machine and its counting device at all reasonable times for verification and other tax administration purposes.
3. Pay any taxes required under chapter 57-36.
4. Comply with the provisions of chapter 51-25 pertaining to all cigarettes produced by the machine.
5. Comply with the ignition propensity requirements under chapter 18-13 with respect to all cigarettes produced by the machine.
6. Use only federal tax-paid roll-your-own tobacco or tobacco exempt from federal tax under 26 U.S.C. 5704(b).

57-36-07. Packaging - Presumption from possession.

Cigarettes must be packaged as follows:

1. All cigarettes sold or distributed in this state must be in packages containing twenty or more cigarettes each.
2. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers.
3. All packages of roll-your-own tobacco sold or distributed in this state must be in packages containing at least 0.60 ounces [17 grams] of tobacco.

57-36-08. Stamps prepared by commissioner.

Repealed by S.L. 1991, ch. 665, § 10.

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

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products shall keep and preserve for three years all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable

monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

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

57-36-09.1. Outlet - Record of deliveries and shipments.

Records of all deliveries of shipments of cigarettes, snuff, cigars, electronic smoking devices, or other tobacco products from a licensed outlet to persons within this state must be kept by the outlet and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity and purchase price of cigarettes, snuff, cigars, electronic smoking devices, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for three years from the date of delivery of the cigarettes, snuff, cigars, electronic smoking devices, or other tobacco products.

57-36-09.2. Examination and correction of returns - Collection of taxes.

1. As soon as practicable after any return required by this chapter is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information. The return, with the tax commissioner's corrections, if any, is prima facie correct and is prima facie evidence of the correctness of the amount of tax due, as shown therein. Proof of any such correction by the tax commissioner may be made at any hearing before the tax commissioner or in any legal proceeding by a copy of the pertinent record of the tax commissioner under the certificate of the custodian of the original official record. Such a certified copy must, without further proof, be admitted into evidence before the tax commissioner or in any legal proceeding and is prima facie proof of the correctness of the amount of tax due, as shown therein. If the tax commissioner finds that any amount of tax is due under this chapter from any person and is unpaid, the tax commissioner shall notify such person of the deficiency, stating that the tax commissioner proposes to assess the amount due with interest and penalties as hereinafter provided. If a deficiency disclosed by the tax commissioner's examination cannot be allocated by the tax commissioner to a particular month or months, the tax commissioner shall notify such person of the deficiency, stating the tax commissioner's intention to assess the amount due for a given period without allocating it to any particular month or months, with the penalty provided in the case of other corrected returns. If any person making any return dies or becomes incompetent at any time before the tax commissioner issues notice that the tax commissioner proposes to assess an amount due, that notice must be issued to the administrator, executor, or other legal representative, as such, of that person.
2. If, within fifteen days after mailing of notice of the proposed assessment, the person to whom such notice is sent or that person's legal representative shall file a written protest to said proposed assessment and request a hearing thereon, the tax commissioner shall give notice to such person or legal representative of the time and place fixed for the hearing. Such notice of hearing and the hearing, with any appeal therefrom, must be governed by the provisions of chapter 28-32.
3. The tax commissioner may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action.

57-36-09.3. Corporate officer liability.

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making such returns and payments, is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the corporation.

57-36-09.4. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments, are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the limited liability company.

57-36-09.5. Lien of tax - Collection - Action authorized.

1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
2. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.
3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The name "State of North Dakota" as claimant.
 - c. The date and time the notice of lien was indexed.

- d. The amount of the lien.
- e. The internal revenue service taxpayer identification number or social security number of the taxpayer.

The notice of lien is effective as of eight a.m. next day following the indexing of the notice. Any notice of lien filed by the commissioner may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien or for its satisfaction.
6. Upon payment of a tax as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property, and in the action the attorney general shall have the assistance of the state's attorney of the county in which the action is pending.
8. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

57-36-09.6. General partner in a limited liability limited partnership liability.

1. If a limited liability limited partnership taxable under this chapter fails for any reason to file the required returns or to pay the tax due, the general partners, jointly or severally, charged with the responsibility for the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the limited liability limited partnership.

57-36-10. Stamps may be purchased at discount.

Repealed by S.L. 1991, ch. 665, § 10.

57-36-11. Tax meter machines.

Repealed by S.L. 1991, ch. 665, § 10.

57-36-11.1. Sales of untaxed cigarettes.

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

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

57-36-12. Distributors may not sell stamps.

Repealed by S.L. 1991, ch. 665, § 10.

57-36-13. Unlawful to transport unstamped cigarettes.

Repealed by S.L. 1991, ch. 665, § 10.

57-36-14. Procedure in case of seizure - Determination - Judgment.

The procedure in case of seizure of cigarettes, equipment, or any other product taxed pursuant to this chapter must be as follows:

1. Upon the seizure of any cigarettes and within two days thereafter, the officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and shall file a copy thereof with the tax commissioner.
2. Within ten days after the date of the service of such inventory, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may file a demand for a judicial determination of the question as to whether such property was, or lawfully is, subject to seizure and forfeiture. Thereupon the tax commissioner, within thirty days, shall institute an action in the district court of the county where such seizure was made to determine the issue of forfeiture. Such action must be brought in the name of the state of North Dakota and must be prosecuted by the state's attorney, the tax commissioner, or the attorney general. The district court shall hear such action as a court case and shall try and determine the issues of law and fact involved.
3. In case a judgment of forfeiture is entered, the tax commissioner, unless the judgment is stayed pending an appeal to the supreme court, as soon as convenient, shall destroy the forfeited property.
4. In case a demand for a judicial determination is made and no action is commenced as provided in this section, such property must be released by the tax commissioner and redelivered to the person entitled thereto.
5. In the event that no demand for judicial determination is made, the seized property must be deemed forfeited to the state by operation of law, and the tax commissioner shall destroy the same.
6. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation pursuant to the provisions of this chapter, the officer making the seizure shall file an inventory, and upon a demand for a judicial determination as provided in this section, the tax commissioner, within thirty days thereafter, shall commence an action in the district court of the county where such seizure was made to declare a forfeiture of such vehicle or other means of transportation, and such action must be heard and determined as other forfeiture actions instituted under this chapter.
7. Whenever the tax commissioner is satisfied that any person from whom property is seized was acting in good faith and without intent to evade the revenue provisions of this chapter, the tax commissioner shall release the property seized without further legal proceedings.

57-36-15. Hearings by tax commissioner.

Repealed by S.L. 1965, ch. 403, § 23.

57-36-16. Petition to tax commissioner for hearing or rehearing.

Repealed by S.L. 1965, ch. 403, § 23.

57-36-17. Hearing - Appeals from decision of the tax commissioner.

Except as provided in section 57-36-14, any person aggrieved because of any action or decision of the tax commissioner under the provisions of this chapter has the right to a hearing

by the tax commissioner and has the right to appeal from the decision of the tax commissioner on such hearing, all in accordance with the provisions of chapter 28-32.

57-36-18. Tax commissioner to administer chapter.

In administering this chapter, the tax commissioner and agents of the tax commissioner shall exercise the following powers:

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

57-36-19. State's attorney and other officers may be called.

In the enforcement of this chapter, the state tax commissioner may call to the tax commissioner's assistance any state's attorney, or any peace officer, and may appoint such additional assistants as may be required to carry out the provisions of this chapter.

57-36-20. Penalties for violation of chapter.

Repealed by S.L. 1975, ch. 106, § 673.

57-36-21. Unlawful to counterfeit stamps or insignia.

Repealed by S.L. 1975, ch. 106, § 673.

57-36-22. Separate additional tax on cigarettes - Collection - Penalty.

Repealed by S.L. 1965, ch. 403, § 23.

57-36-23. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited - Penalty.

Repealed by S.L. 1965, ch. 403, § 23.

57-36-24. Exemptions.

All gift cigarettes, snuff, cigars, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter.

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

1. There is hereby levied and assessed upon all cigars and pipe tobacco sold in this state an excise tax at the rate of twenty-eight percent of the wholesale purchase price at which such cigars and pipe tobacco are purchased by distributors. For the purposes of this section, the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction.
2. There is levied and assessed upon all other tobacco products sold in this state an excise tax at the following rates:
 - a. Upon each can or package of snuff, sixty cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.
 - b. On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

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

3. The proceeds of the taxes imposed under this section, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the fifteenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the fifteenth day of the month following the month for which the returns are filed.
4. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
5. All moneys received by the tax commissioner under the provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

57-36-25.1. Deduction to reimburse licensed distributor for administrative expenses.

1. A licensed distributor who pays the tax due under this chapter within the time limitations prescribed may deduct and retain one and one-half percent of the tax due to reimburse the distributor for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information requested by the commissioner.
2. The total deduction allowed by this section may not exceed one hundred dollars per month for each licensed distributor.

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

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.
2. If cigars, pipe tobacco, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the

article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

57-36-27. Consumer's use tax - Cigarettes - Reports - Remittances.

1. A tax is hereby imposed upon the use or storage by consumers of cigarettes in this state, and upon such consumers, at the following rates:
 - a. On cigarettes weighing not more than three pounds [1360.78 grams] per thousand, five mills on each such cigarette.
 - b. On cigarettes weighing more than three pounds [1360.78 grams] per thousand, five and one-half mills on each such cigarette.
2. This tax does not apply if the tax imposed by section 57-36-06 has been paid.
3. On or before the tenth day of each calendar quarter, every consumer who during the preceding calendar quarter has acquired title or possession of cigarettes for use or storage in this state, upon which cigarettes the tax imposed by section 57-36-06 has not been paid, shall file a return with the tax commissioner showing the quantity of cigarettes so acquired. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner has the authority to make an assessment of tax against the consumer according to the commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes are applicable to consumers under this section in like manner as though set out in full herein.

57-36-28. Consumer's use tax - Cigars, pipe tobacco, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return

with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.

4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

57-36-30. Issuance of credit or refund.

Whenever by any provisions of this chapter a credit or refund is authorized, the tax commissioner shall issue a credit applicable to future obligations under this chapter or certify the amount of the refund, the reason therefor, and the name of the payee to the director of the office of management and budget, who shall thereupon draw a warrant on the fund to which the payment had been credited in the amount specified payable to the named payee.

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

1. All moneys received by the tax commissioner under the provisions of this chapter must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund, except as hereinafter provided.
2. All moneys received from the levy and assessment of one and one-half mills on each of the classes of cigarettes provided in this chapter are appropriated and must be distributed on or before the thirtieth day of June and the thirty-first day of December of each year on a per capita basis to the incorporated cities for such purposes as are now or may be hereafter authorized by law, the allocation to be based upon the population of each incorporated city according to the last official federal census, or the census taken in accordance with the provisions of chapter 40-02 in the case of a city incorporated subsequent to the last federal census, and warrants must be drawn payable to the treasurers of such cities.

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

There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of seventeen mills on each cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, corporation, or

limited liability company shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying the tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

57-36-33. Penalties for violation of chapter.

Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1.