

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED 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 of, composed of, or derived from tobacco, in
11 whole or in part, which can be ingested in any way. "Other tobacco products" includes
12 any product or device that contains nicotine and any separately sold component of
13 such a product or device. "Other tobacco products" does not include a product that
14 delivers nicotine for human consumption if that product has been approved by the
15 United States food and drug administration for sale as a tobacco-cessation product.

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

18 **57-36-25. Cigars and, pipe tobacco, and other tobacco products - Excise tax on**
19 **wholesale purchase price - ~~Other tobacco products - Excise~~Snuff and chewing tobacco**
20 **excise tax on weight - Penalty - Reports - Collection - Allocation of revenue.**

21 1. There is hereby levied and assessed upon all cigars ~~and, pipe tobacco, and other~~
22 tobacco products sold in this state an excise tax at the rate of ~~twenty-eight~~fifty percent
23 of the wholesale purchase price at which such cigars ~~and, pipe tobacco, and other~~
24 tobacco products are purchased by distributors. For the purposes of this section, the

1 term "wholesale purchase price" shall mean the established price for which a
2 manufacturer sells cigars-~~or~~, pipe tobacco, or other tobacco products to a distributor
3 exclusive of any discount or other reduction. For cigars, pipe tobacco, or other tobacco
4 products for which the tax commissioner is unable to readily identify the established
5 price for which a manufacturer sells the cigars, pipe tobacco, or other tobacco
6 products to a distributor, the excise tax shall be paid by the retailer and the "wholesale
7 purchase price" means the price at which the retailer sells such product to a customer
8 at the point of sale, exclusive of any discount or reduction.

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

- 11 a. Upon each can or package of snuff, ~~sixtytwo~~ two dollars seventy-two cents per ounce
12 and a proportionate tax at the like rate on all fractional parts of an ounce.
13 b. On chewing tobacco, ~~sixteenseventy-three~~ seventy-three cents per ounce and a proportionate
14 tax at the like rate on all fractional parts of an ounce.

15 For purposes of this subsection, the tax on ~~other tobacco products~~ snuff and chewing
16 tobacco is computed based on the net weight as listed by the manufacturer.

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

25 4. Any person failing to file any prescribed form or return or to pay any tax within the time
26 required or permitted by this section is subject to a penalty of five percent of the
27 amount of tax due or five dollars, whichever is greater, plus interest of one percent of
28 the tax per month or fraction of a month of delay except the first month after the return
29 or the tax became due. The tax commissioner, if satisfied that the delay was
30 excusable, may waive all or any part of the penalty. The penalty must be paid to the

1 tax commissioner and disposed of in the same manner as are other receipts under this
2 chapter.

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

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

8 **57-36-26. Cigars, pipe tobacco, and other tobacco products - Excise tax payable by**
9 **dealers - Reports - Penalties - Collection - Allocation of revenue.**

10 1. There is levied and assessed, upon all cigars ~~and~~ pipe tobacco, ~~and other tobacco~~
11 ~~products~~ purchased in another state and brought into this state by a dealer for the
12 purpose of sale at retail, an excise tax at the rate of ~~twenty-eight~~fifty percent of the
13 wholesale purchase price ~~and, upon all other tobacco products purchased in another~~
14 ~~state and brought into this state by a dealer for the purpose of sale at retail, an excise~~
15 ~~tax at the rates indicated in section 57-36-25, at the time the products were brought~~
16 ~~into this state.~~ For the purposes of this section, the term "wholesale purchase price"
17 means the established price for which a manufacturer sells cigars ~~or~~ pipe tobacco, ~~or~~
18 ~~other tobacco products~~ to a distributor exclusive of any discount or other reduction.
19 For cigars, pipe tobacco, or other tobacco products for which the tax commissioner is
20 unable to readily identify the established price for which a manufacturer sells the
21 cigars, pipe tobacco, or other tobacco products to a distributor, the excise tax shall be
22 paid by the retailer and the "wholesale purchase price" means the price at which the
23 retailer sells such product to a customer at the point of sale, exclusive of any discount
24 or reduction. However, the dealer may elect to report and remit the tax on the cost
25 price of the products to the dealer rather than on the wholesale purchase price. The
26 proceeds of the tax, together with the forms of return and in accordance with any rules
27 ~~and regulations~~ the tax commissioner may prescribe, must be remitted to the tax
28 commissioner by the dealer on a monthly basis on or before the fifteenth day of the
29 month following the monthly period for which it is paid. The tax commissioner shall
30 have the authority to place any dealer on an annual remittance basis when in the
31 judgment of the tax commissioner the operations of the dealer merit that remittance

1 period. In addition, the tax commissioner shall have the authority to permit the
2 consolidation of the filing of a dealer's return when the dealer has more than one
3 location and thereby would be required to file more than one return.

4 2. If cigars, pipe tobacco, or other tobacco products have been subjected already to a tax
5 by any other state in respect to their sale in an amount less than the tax imposed by
6 this section, the provisions of this section apply, but at a rate measured by the
7 difference only between the rate fixed in this section and the rate by which the
8 previous tax upon the sale was computed. ~~If the tax imposed in the other state is
9 twenty percent of the wholesale purchase price or more, then no tax is due on the
10 article. The provisions of this subsection apply only if the other state allows a tax credit
11 with respect to the excise tax on cigars, pipe tobacco, or other tobacco products
12 imposed by this state which is substantially similar in effect to the credit allowed by this
13 subsection.~~

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

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

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

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

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

1 **57-36-32. Separate and additional tax on the sale of cigarettes - Collection -**
2 **Allocation of revenue - Tax avoidance prohibited.**

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

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