

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1421

Introduced by

Representatives J. Nelson, Beadle, Hogan, Keiser, Monson

Senators Bekkedahl, Mathern, Oehlke

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 sections 57-36-31 and 57-36-32 of the
3 North Dakota Century Code, relating to the excise taxes on tobacco products and the cigarette
4 tax; to repeal section 57-36-24 of the North Dakota Century Code, relating to the exemption
5 from the tobacco tax for products given to the veterans' home and the state hospital; and to
6 provide a continuing appropriation.

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

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

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

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

14 **57-36-25. Cigars and, pipe tobacco, and other tobacco products - Excise tax on**
15 **wholesale purchase price - ~~Other tobacco products - Excise~~Snuff and chewing tobacco**
16 **excise tax on weight - Penalty - Reports - Collection - Allocation of revenue.**

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

1 established price for which a manufacturer sells the cigars, pipe tobacco, or other
2 tobacco products to a distributor, the excise tax shall be paid by the retailer and the
3 "wholesale purchase price" means the price at which the retailer sells such product to
4 a customer at the point of sale, exclusive of any discount or reduction.

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

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

9 b. On chewing tobacco, ~~sixteen~~ fifty-six cents per ounce and a proportionate tax at
10 the like rate on all fractional parts of an ounce.

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

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

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

29 5. All moneys received by the tax commissioner under the 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 **SECTION 3. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-36-26. Cigars, pipe tobacco, and other tobacco products - Excise tax payable by**
4 **dealers - Reports - Penalties - Collection - Allocation of revenue.**

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

- 1 2. If cigars, pipe tobacco, or other tobacco products have been subjected already to a tax
2 by any other state in respect to their sale in an amount less than the tax imposed by
3 this section, the provisions of this section apply, but at a rate measured by the
4 difference only between the rate fixed in this section and the rate by which the
5 previous tax upon the sale was computed. ~~If the tax imposed in the other state is~~
6 ~~twenty percent of the wholesale purchase price or more, then no tax is due on the~~
7 ~~article. The provisions of this subsection apply only if the other state allows a tax credit~~
8 ~~with respect to the excise tax on cigars, pipe tobacco, or other tobacco products~~
9 ~~imposed by this state which is substantially similar in effect to the credit allowed by this~~
10 ~~subsection.~~
- 11 3. Any person failing to file any prescribed forms of return or to pay any tax within the
12 time required by this section is subject to a penalty of five dollars or a sum equal to
13 five percent of the tax due, whichever is greater, plus one percent of the tax for each
14 month of delay or fraction thereof excepting the month within which the return was
15 required to be filed or the tax became due. The tax commissioner, if satisfied that the
16 delay was excusable, may waive all or any part of the penalty. The penalty must be
17 paid to the tax commissioner and disposed of in the same manner as are other
18 receipts under this chapter.
- 19 4. All moneys received by the tax commissioner under the provisions of this section must
20 be transmitted to the state treasurer at the end of each month and deposited in the
21 state treasury to the credit of the general fund.

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

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

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

29 **57-36-31. Transfer and allocation of revenues - Appropriation.**

- 30 1. All moneys received by the tax commissioner under the provisions of this chapter must
31 be transmitted to the state treasurer at the end of each month and deposited in the

1 state treasury to the credit of the general fund, except as hereinafter provided in this
2 section.

3 2. All moneys received by the tax commissioner under this chapter from fifty-six and
4 one-half mills of the tax on each of the classes of cigarettes; fifteen and one-half
5 percentage points of the tax on all cigars, pipe tobacco, and other tobacco products;
6 one dollar fifty cents per ounce of the tax on snuff; and forty cents per ounce of the tax
7 on chewing tobacco must be transmitted to the state treasurer at the end of each
8 month and deposited in the tobacco tax distribution fund in the state treasury.

9 3. All moneys received from the levy and assessment of one and one-half mills on each
10 of the classes of cigarettes provided in this chapter~~Fifteen percent of the revenues~~
11 deposited in the tobacco tax distribution fund are appropriated and must be distributed
12 on or before the thirtieth day of June and the thirty-first day of December of each year
13 on a per capita basis to the incorporated cities for such purposes as are now or may
14 be hereafter authorized by law, which may be used by the city for public health and
15 safety purposes, the allocation to be based upon the population of each incorporated
16 city according to the last~~most recent~~ official federal census, or the census taken in
17 accordance with the provisions of chapter 40-02 in the case of a city incorporated
18 subsequent to the last~~most recent~~ federal census, and warrants must be drawn
19 payable to the treasurers of such cities.

20 4. Twenty-five percent of the revenues deposited in the tobacco tax distribution fund are
21 appropriated and must be distributed on or before the thirtieth day of June and the
22 thirty-first day of December of each year, ten percent of the distribution in equal
23 amounts to each county and ninety percent on a per capita basis to the counties, the
24 allocation to be based upon the population of each county according to the most
25 recent official federal census. The county treasurer shall distribute all moneys received
26 under this section to the county public health unit. Moneys received by counties under
27 this section are intended to augment, but not replace, county taxes levied for the
28 support of public health units under section 23-35-07.

29 5. Sixty percent of the revenues deposited in the tobacco tax distribution fund are
30 appropriated and must be transferred to the community health trust fund.

1 **SECTION 6. AMENDMENT.** Section 57-36-32 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-36-32. Separate and additional tax on the sale of cigarettes - Collection -**
4 **Allocation of revenue - Tax avoidance prohibited.**

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

14 **SECTION 7. REPEAL.** Section 57-36-24 of the North Dakota Century Code is repealed.