

January 21, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16"

Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"

Page 1, line 8, after the fourth comma insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33,"

Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"

Page 1, line 14, after the first comma insert "sales tax and use tax on tobacco products,"

Page 4, replace lines 16 through 19 with:

"SECTION 8. AMENDMENT. Subsections 5, 6, 7, 10, 15, and 16 of section 57-36-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, 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, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
10. "Other tobacco products" means ~~snuff and chewing tobacco~~ any product, not otherwise defined in this section, which is made up or composed of tobacco in whole or in part. "Other tobacco products" do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.
15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.

16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

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

Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The 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 proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. 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. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

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 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, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

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

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products 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, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

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, chewing tobacco, snuff, 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, chewing tobacco, snuff, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, 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, chewing tobacco, snuff, 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, chewing tobacco, snuff, 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.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

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

Records of all deliveries of shipments of cigarettes and cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions.

All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, 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."

Page 5, remove the overstrike over line 8

Page 5, line 8, overstrike "other tobacco products" and insert immediately thereafter "snuff and chewing tobacco"

Page 5, remove the overstrike over line 9

Page 5, after line 28, insert:

"SECTION 16. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff, 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 chewing tobacco, snuff, and 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, chewing tobacco, snuff, 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, chewing tobacco, snuff, 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.

SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, 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, chewing tobacco, snuff, 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, chewing tobacco, snuff, 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.

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

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, chewing tobacco, snuff, 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.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

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, chewing tobacco, snuff, 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."

Page 6, after line 18, insert:

"SECTION 22. AMENDMENT. Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.9. Sales tax on tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products includes any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale of ~~such~~the merchandise.

SECTION 23. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on tobacco products.

Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products, provided that gross receipts from the sale ~~thereof~~ of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products mean and include any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale ~~thereof~~ of the merchandise."

Page 7, line 16, replace "10" with "20"

Page 7, line 16, replace "11" with "21"

Page 7, line 17, replace "8, 12," with "24"

Page 7, line 17, replace "13" with "25"

Page 7, line 18, after the fifth comma insert "8,"

Page 7, line 18, after the sixth comma insert "10, 11, 12, 13,"

Page 7, line 18, remove "and"

Page 7, line 18, after "14" insert ", 15, 16, 17, 18, 19, 22, 23, and 26"

Renumber accordingly