

## CHAPTER 297

## SALES TAXES; CIGARETTES AND TOBACCO

297.02 Tax on cigarettes.  
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**297.02 TAX ON CIGARETTES.**

*[For text of subs 1 to 4, see M.S.1982]*

Subd. 5. **Construction.** The tax imposed by this section shall not be construed as a cost of doing business or an overhead expense under section 325D.01, subdivision 7.

*[For text of subd 6, see M.S.1982]*

**History:** 1983 c 216 art 1 s 49

**297.03 PAYMENT, STAMP ON PACKAGE.**

*[For text of subs 1 to 9, see M.S.1982]*

Subd. 10. **Distribution of free sample packages.** The commissioner may authorize distribution in Minnesota of free packages of cigarettes without affixing stamps to said packages by the following persons provided that monthly reports and payment of a tax at the same rates prescribed by section 297.02, subdivision 1, shall be made directly to the commissioner under the terms provided for by the commissioner:

(1) Any manufacturer providing such packages contain not more than 20 cigarettes each;

(2) Any person engaged as a common carrier in the transportation of persons, who purchases packages of cigarettes from a manufacturer for distribution without charge, provided that no such package shall contain more than 20 cigarettes.

All packages distributed pursuant to this section shall be marked "Complimentary - Not For Sale." The commissioner shall promulgate rules providing for the procedures to be complied with by any person distributing free sample packages.

*[For text of subs 11 and 12, see M.S.1982]*

**History:** 1983 c 222 s 37

**297.08 CONTRABAND.**

*[For text of subs 1 and 2, see M.S.1982]*

Subd. 3. **Inventory; judicial determination; appeal; disposition of seized property.** Within two days after the seizure of any alleged contraband, the person making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, if known, and file a copy with the commissioner. Within ten days after the date of service of the inventory, the person from whom the property was seized or any person claiming an interest in the property may file with the commissioner a demand for a judicial determination of the question as to whether the property was lawfully subject to seizure and forfeiture.

The commissioner, within 30 days, shall institute an action in the district court of the county where the seizure was made to determine the issue of forfeiture. The action shall be brought in the name of the state and shall be prosecuted by the county attorney or by the attorney general. The court shall hear the action without a jury and shall try and determine the issues of fact and law involved. Whenever a judgment of forfeiture is entered, the commissioner may, unless the judgment is stayed pending an appeal, either (1) deliver the forfeited property to the commissioner of public welfare for use by patients in state institutions; (2) cause it to be destroyed; or (3) cause it to be sold at public auction as provided by law. If a demand for judicial determination is made and no action is commenced as provided in this subdivision, the property shall be released by the commissioner and redelivered to the person entitled to it. If no demand is made, the property seized shall be deemed forfeited to the state by operation of law and may be disposed of by the commissioner as provided where there has been a judgment of forfeiture. Whenever the commissioner is satisfied that any person from whom property is seized under sections 297.01 to 297.13 was acting in good faith and without intent to evade the tax imposed by sections 297.01 to 297.13, he shall release the property seized, without further legal proceedings.

Subd. 4. **Disposal.** The property described in subdivision 1, clause 5 shall be confiscated after conviction of the person from whom it was seized, upon compliance with the following procedure: the commissioner or his agents shall file with the court a separate complaint against the property, describing it and charging its use in the specified violation, and specifying substantially the time and place of the unlawful use. A copy of the complaint shall be served upon the defendant or person in charge of the property at the time of seizure, if any. If the person arrested is acquitted, the court shall dismiss the complaint against the property and order it returned to the persons legally entitled to it. Upon conviction of the person arrested, the court shall issue an order directed to any person known or believed to have any right or title or interest in, or lien upon, any of the property, and to persons unknown claiming any right, title, interest or lien in it, describing the property and (1) stating that it was seized and that a complaint against it, charging the specified violation, has been filed with the court, (2) requiring the persons to file with the clerk of the court their answer to the complaint, setting forth any claim they may have to any right or title to, interest in, or lien upon the property, within 30 days after the service of the order, and (3) notifying them in substance that if they fail to file their answer within the time, the property will be ordered sold by the commissioner or his agents. The court shall cause the order to be served upon any person known or believed to have any right, title, interest or lien as in the case of a summons in a civil action, and upon unknown persons by publication, as provided for service of summons in a civil action. If no answer is filed within the time prescribed, the court shall, upon affidavit by the clerk of the court, setting forth the fact, order the property sold by the commissioner or his agents. The proceeds of the sale, after deducting the expense of keeping the property and fees and costs of sale, paid into the state treasury to be credited to the general fund. If answer is filed within the time provided, the court shall fix a time for hearing, which shall be not less than ten nor more than 30 days after the time for filing answer expires. At the time fixed for hearing, unless continued for cause, the matter shall be heard and determined by the court, without a jury, as in other civil actions. If the court finds that the property, or any part of it, was used in the violation specified in the complaint, he shall order the property unlawfully used, sold as provided by law, unless the owner shows to the satisfaction of the court that he had no notice or knowledge or reason to believe that the property was used or intended to be used in the violation. The

officer making a sale, after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are established at the hearing as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation specified in the order of the court, shall pay the balance of the proceeds into the state treasury to be credited to the general fund. Any sale under the provisions of this section shall operate to free the property sold from any and all liens on it. Appeal from the order of the district court will lie as in other civil cases. At any time after seizure of the articles specified in this subdivision, and before the hearing provided for, the property shall be returned to the owner or person having a legal right to its possession, upon execution by him of a good and valid bond to the state, with corporate surety, in the sum of not less than \$100 and not more than double the value of the property seized, to be approved by the court in which the case is triable, or a judge of it, conditioned to abide any order and the judgment of the court, and to pay the full value of the property at the time of seizure. The proceedings outlined in this subdivision may be dismissed by the commissioner when he deems it to be in the best interests of the state to do so.

**History:** 1983 c 247 s 125,126

#### **297.37 INVESTIGATIONS AND HEARINGS, TESTIMONIAL POWERS.**

*[For text of subds 1 to 4, see M.S.1982]*

Subd. 5. **Review.** Any person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under section 297.35 may, within 60 days from the date of notice of the order, appeal to the tax court in the manner provided by law. Any other order of the commissioner under sections 297.31 to 297.39 shall be subject to review by certiorari to the court of appeals.

**History:** 1983 c 247 s 127