

## CHAPTER 297

## SALES TAXES; CIGARETTES AND TOBACCO

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**297.01 DEFINITIONS.**

*[For text of subds 1 to 6, see M.S.1990]*

Subd. 7. "Distributor" means any and each of the following:

(1) any person engaged in the business of selling cigarettes in this state and who manufactures or who brings, or causes to be brought, into this state from without the state any packages of cigarettes for sale to subjobbers or retailers;

(2) any person engaged in the business without this state who ships or transports cigarettes to retailers in this state, to be sold by those retailers;

(3) any person who is on direct purchase from a cigarette manufacturer and applies cigarette stamps on at least 50 percent of cigarettes sold by that person.

A distributor who also sells at retail must maintain a separate inventory, substantiated with invoices for cigarettes that were acquired for retail sale.

A distributor may transfer another state's stamped cigarettes to another distributor for the purpose of resale in the other state.

*[For text of subds 8 to 16, see M.S.1990]*

**History:** 1991 c 291 art 9 s 15

**297.02 TAX ON CIGARETTES.**

Subdivision 1. **Rates.** A tax is hereby imposed upon the sale of cigarettes in this state or having cigarettes in possession in this state with intent to sell and upon any person engaged in business as a distributor thereof, at the following rates, subject to the discount provided in section 297.03:

(1) On cigarettes weighing not more than three pounds per thousand, 21.5 mills on each such cigarette;

(2) On cigarettes weighing more than three pounds per thousand, 43 mills on each such cigarette.

*[For text of subds 3 to 6, see M.S.1990]*

**History:** 1991 c 291 art 9 s 16

**297.03 PAYMENT, STAMP ON PACKAGE.**

Subdivision 1. **Stamp put on by distributor.** Except as otherwise provided in this section payment of the tax imposed by section 297.02 shall be evidenced by stamps affixed to each package. Before delivering, or causing to be delivered, any package to any person in this state, every distributor shall firmly affix to each package of cigarettes appropriate stamps in amounts equal to the tax on those cigarettes as provided for in section 297.02.

Subd. 2. **Time of affixing stamp.** The commissioner may require, in all cases where cigarettes are shipped into this state by any licensed distributor from without this state, that the appropriate stamp shall be affixed to the package at the time the same enters this state.

*[For text of subd 3, see M.S.1990]*

**Subd. 4. Stamps; design, printing.** The commissioner shall adopt the design of two stamps. One stamp shall be designed for application to cigarette packages destined for retail sale on an Indian reservation which is a party to an agreement pursuant to section 270.60, subdivision 2, and only to those packages. A second stamp shall be designed for all other cigarette packages subject to the provisions of this chapter. The commissioner shall arrange for the printing thereof in such amounts and denominations as the commissioner deems necessary.

**Subd. 5. Sale of stamps.** The commissioner shall sell stamps to any person licensed as a distributor at a discount of 1.1 percent from the face amount of the stamps for the first \$1,500,000 of such stamps purchased in any fiscal year; and at a discount of .65 percent on the remainder of such stamps purchased in any fiscal year. The commissioner shall not sell stamps to any other person. The commissioner may prescribe the method of shipment of the stamps to the distributor as well as the quantities of stamps purchased.

*[For text of subd 5a, see M.S.1990]*

**Subd. 6. Tax stamping machines.** (a) The commissioner shall require any person licensed as a distributor to stamp packages with a heat-applied tax stamping machine, approved by the commissioner, which shall be provided by the distributor. The commissioner shall supervise and check the operation of the machines and shall provide for the payment of the tax on any package so stamped, subject to the discount provided in subdivision 5. The commissioner may sell heat-applied stamps on a credit basis under conditions prescribed by the commissioner. The stamps shall be sold by the commissioner at a price which includes the tax after giving effect to the discount provided in subdivision 5. The commissioner shall recover the actual costs of the stamps from the distributor. A distributor having a liability of \$240,000 or more during a fiscal year ending June 30 must remit all liabilities purchased on a credit basis in the subsequent calendar year by means of a funds transfer as defined in section 336.4A-104, paragraph (a). The funds transfer payment date, as defined in section 336.4A-401, must be on or before the date the tax is due. If the date the tax is due is not a funds transfer business day, as defined in section 336.4A-105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the tax is due.

(b) If the commissioner finds that a stamping machine is not affixing a legible stamp on the package, the commissioner may order the distributor to immediately cease the stamping process until the machine is functioning properly.

(c) The commissioner shall annually establish the maximum amount of heat applied stamps that may be purchased each month. Notwithstanding any other provisions of this chapter, the tax due on the return will be based upon actual heat applied stamps purchased during the reporting period.

*[For text of subs 7 to 11, see M.S.1990]*

**History:** 1991 c 291 art 9 s 17-21; art 17 s 7

## 297.07 DISTRIBUTOR TO FILE RETURNS.

*[For text of subs 1 to 4, see M.S.1990]*

**Subd. 5. Offset.** Upon audit, if a distributor's return reflects an overage resulting from an inventory counting error, the overage shall be offset against a shortage, if any, in the month immediately preceding the month of the overage. If any overage remains after that offset, the remainder may only be offset against a shortage, if any, in the month immediately following the month of the overage. If the commissioner determines that the overage is attributable to a mistake by the distributor other than an inventory counting error, the commissioner may permit the overage to be offset against a shortage in any month or months during the 12-month period immediately following the month when the overage was discovered upon audit.

**History:** 1991 c 291 art 9 s 22

**297.08 CONTRABAND.**

Subdivision 1. **Contraband defined.** The following are declared to be contraband:

(1) All packages which do not have stamps affixed to them as provided in sections 297.01 to 297.13 and all devices for the vending of cigarettes in which such unstamped packages are found, including all contents contained within the devices.

(2) Any device for the vending of cigarettes and all packages of cigarettes contained therein, where the device does not afford at least partial visibility of contents. Where any package exposed to view does not carry the stamp required by sections 297.01 to 297.13, it shall be presumed that all packages contained in the device are unstamped and contraband.

(3) Any device for the vending of cigarettes to which the commissioner or authorized agents have been denied access for the inspection of contents. In lieu of seizure, the commissioner or an agent may seal the device to prevent its use until inspection of contents is permitted.

(4) Any device for the vending of cigarettes which does not carry the name and address of the owner, plainly marked and visible from the front of the machine.

(5) Any device including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner or of a person operating with the consent of the owner for the storage or transportation of more than 5,000 cigarettes which are contraband under this subdivision. When cigarettes are being transported in the course of interstate commerce, or are in movement from either a public warehouse to a distributor upon orders from a manufacturer or distributor, or from one distributor to another, the cigarettes are not contraband, notwithstanding the provisions of clause (1).

(6) All packages obtained in violation of section 297.11, subdivision 6.

(7) All packages offered for sale or held as inventory in violation of section 297.11, subdivision 7.

*[For text of subds 2 to 4, see M.S.1990]*

**History:** 1991 c 291 art 9 s 23

**297.11 PROHIBITIONS.**

Subdivision 1. **Counterfeiting.** No person shall, with intent to defraud the state, make, alter, forge, or counterfeit any license or stamp provided for in sections 297.01 to 297.13 or have in possession any forged, spurious, or altered stamps with the intent, or with the result, of depriving the state of the tax imposed by sections 297.01 to 297.13.

*[For text of subds 2 to 5, see M.S.1990]*

Subd. 6. **Prohibition against sales by unlicensed sellers.** No retailer or subjobber shall purchase cigarettes from any person who is not licensed under section 297.04 as a cigarette distributor or subjobber.

Subd. 7. **Sale of packages with Indian stamp.** No retailer doing business off of an Indian reservation shall offer for sale or possess as inventory packages affixed with the stamp designed for Indian reservations.

**History:** 1991 c 291 art 9 s 24-26

**297.35 DISTRIBUTORS, MONTHLY RETURNS.**

Subdivision 1. On or before the 18th day of each calendar month every distributor with a place of business in this state shall file a return with the commissioner showing the quantity and wholesale sales price of each tobacco product (1) brought, or caused to be brought, into this state for sale; and (2) made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state

to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the commissioner and shall contain such other information as the commissioner may require. Each return shall be accompanied by a remittance for the full tax liability shown therein, less 1.5 percent of such liability as compensation to reimburse the distributor for expenses incurred in the administration of sections 297.31 to 297.39.

A distributor having a liability of \$240,000 or more during a calendar year must remit all liabilities in the subsequent fiscal year ending June 30 by means of a funds transfer as defined in section 336.4A-104, paragraph (a). The funds transfer payment date, as defined in section 336.4A-401, must be on or before the date the tax is due. If the date the tax is due is not a funds transfer business day, as defined in section 336.4A-105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the tax is due.

*[For text of subds 2 to 10, see M.S.1990]*

**History:** 1991 c 291 art 17 s 8

### **297.385 PROHIBITION.**

**Subdivision 1. Sales by unlicensed sellers.** No retailer or subjobber shall purchase tobacco products from any person who is not licensed under section 297.33 as a tobacco products distributor or subjobber.

**Subd. 2. Seizure.** Tobacco products purchased in violation of subdivision 1 may be seized by the commissioner or authorized agents or by any sheriff or other police officer, with or without process, and shall be subject to forfeiture as provided in section 297.08, subdivision 3.

**History:** 1991 c 291 art 9 s 27

### **297.43 PENALTIES.**

*[For text of subds 1 to 9, see M.S.1990]*

**Subd. 10. Statute of limitations.** Notwithstanding section 628.26, or other provision of the criminal laws of this state, an indictment may be found and filed or a complaint filed upon a criminal offense specified in this chapter, in the proper court within six years after the offense is committed.

**History:** 1991 c 291 art 9 s 28