

CHAPTER 297

SALES TAXES; CIGARETTES AND TOBACCO

TAX ON CIGARETTES	
297.01	Definitions.
297.02	Tax on cigarettes.
297.03	Payment, stamp on package.
297.031	Refund for tax constituting bad debt.
297.04	License.
297.041	Sales to Indian tribes.
297.05	Violations.
297.06	Keeping of records.
297.07	Distributor to file returns.
297.08	Contraband.
297.09	Investigations.
297.10	Enforcement.
297.11	Prohibitions.
297.12	Offenses.
297.13	Revenue, disposal.
TAX UPON USE OR STORAGE OF CIGARETTES BY CONSUMERS	
297.21	Definitions.
297.22	Tax.
297.23	Consumers to file return.
297.24	Application of certain laws.
297.25	Refusal or neglect to file return.
297.26	Revenue distribution.
TAX ON TOBACCO PRODUCTS	
297.31	Definitions.
297.32	Tax on tobacco products.
297.321	Refund for tax constituting bad debt.
297.33	Licenses; distributors, subjobbers.
297.335	Sales to Indian tribes.
297.34	Licensees, duties.
297.35	Distributors, monthly returns.
297.36	Refunds, credits.
297.37	Investigations and hearings, testimonial powers.
297.38	Enforcement.
297.385	Prohibition.
297.39	Violations, penalties.
297.40	Evasions; violations.
297.41	Personal debt.
297.42	Failure to file return.
297.43	Penalties.
297.44	Time limitations.

TAX ON CIGARETTES

297.01 DEFINITIONS.

Subdivision 1. When used in sections 297.01 to 297.13, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section.

Subd. 2. "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

Subd. 3. "Manufacturer" means a person who manufactures and sells cigarettes.

Subd. 4. "Person" means any individual, firm, trade association, company, partnership, joint stock company, corporation, club, syndicate, agency, or any legal representative of any of the foregoing engaged in the sale of cigarettes.

Subd. 5. "Package" means the individual packet, box, or other container whatsoever used to contain and to convey cigarettes to the consumer.

Subd. 6. "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling cigarettes, for advertising, as a means of evading the provisions of sections 297.01 to 297.13, or for any other purpose whatsoever.

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.

MINNESOTA STATUTES 1992

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

Subd. 8. "Place of business" means any place where cigarettes are sold or where cigarettes are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

Subd. 9. "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing cigarettes in this state.

Subd. 10. "Retailer" means any person engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

Subd. 11. "Retail outlet" means each place of business from which cigarettes are sold to consumers.

Subd. 12. "Commissioner" means the state commissioner of revenue.

Subd. 13. "Stamp" means the adhesive stamp supplied by the revenue commissioner.

Subd. 14. "Subjobber" means any person who acquires stamped cigarettes or other state's stamped cigarettes for the primary purpose of resale to retailers, and any licensed distributor who delivers to and sells or distributes stamped cigarettes from a place of business other than that licensed in the distributor's license. The definition of subjobber does not include the occasional sale of stamped cigarettes from one retailer to another. Notwithstanding the foregoing, "subjobber" shall also mean any person who is a vending machine operator. A vending machine operator is any person whose principal business is operating, or owning and leasing to operators, machines for the vending of merchandise or service.

For the purpose of this section, any subjobber that sells at retail must maintain a separate inventory, substantiated with invoices, that reflect the cigarettes were acquired for retail sale.

Subd. 15. [Repealed, 1989 c 277 art 3 s 17]

Subd. 16. "Licensing period" means a two-year period during which licenses are issued. A licensing period begins on January 1 of each even-numbered year and ends on December 31 of the following odd-numbered year.

History: 1947 c 619 s 1; 1953 c 652 s 1; 1955 c 421 s 1; 1973 c 582 s 3; 1986 c 444; 1987 c 268 art 13 s 1-5; 1988 c 719 art 11 s 1-3; 1989 c 277 art 3 s 1,2; 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, 24 mills on each such cigarette;

(2) On cigarettes weighing more than three pounds per thousand, 48 mills on each such cigarette.

Subd. 2. [Repealed, 1Sp1985 c 14 art 19 s 38]

Subd. 3. **Federal laws.** The tax imposed by this section shall not apply with respect to any sale which under the constitution and laws of the United States may not be made the subject of taxation by this state.

Subd. 4. **Additional tax.** The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees now or hereafter imposed by any city.

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.

Subd. 6. **Sales by state.** The state of Minnesota or any of its agencies, instrumental-

MINNESOTA STATUTES 1992

1501

SALES TAXES; CIGARETTES AND TOBACCO 297.03

ities, or governmental subdivisions shall be subject to the tax imposed by this chapter on all cigarettes sold, in the same manner as distributors, if such unit is engaged in the purchase and sale of cigarettes.

History: 1947 c 619 s 2; 1949 c 703 s 1; Ex1959 c 70 art 6 s 1; 1961 c 272 s 1; Ex1961 c 91 art 3 s 1; 1963 c 790 art 4 s 1; 1965 c 136 s 1; 1965 c 141 s 1; 1965 c 831 s 1; 1969 c 881 s 12; 1971 c 428 s 1; Ex1971 c 31 art 2 s 1; 1973 c 123 art 5 s 7; 1983 c 216 art 1 s 49; 1Sp1985 c 14 art 19 s 25; 1987 c 268 art 13 s 6,7; 1991 c 291 art 9 s 16; 1992 c 549 art 9 s 14

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.

Subd. 3. Section 16A.56 superseded. The provisions of sections 297.01 to 297.13 prescribing the powers and duties of the commissioner with relation to stamps supersede all the provisions of section 16A.56 in conflict therewith.

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 1.0 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 .60 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.

Subd. 5a. Deposit of proceeds. The commissioner shall use the amounts appropriated by law to purchase heat applied stamps for resale. The commissioner shall charge the purchasers for the costs of the stamps along with the tax value plus shipping costs. The costs recovered along with shipping costs must be deposited into the general fund.

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.

Subd. 7. Licensed distributor's permit number. The commissioner shall assign a permit number to each person licensed as a distributor at the time of issuance of the first license, which shall be inscribed and printed upon all licenses issued to that distributor. If the commissioner determines that cancellation of the stamps is necessary for the enforcement of sections 297.01 to 297.13, the distributor shall use the permit number, in a manner prescribed by the commissioner, as the cancellation mark for the stamps affixed by the distributor.

Subd. 8. Resale or transfer of stamps prohibited. No distributor shall resell or transfer any stamps purchased by the distributor from the commissioner. Any distributor who has on hand at the time of discontinuing the business of selling cigarettes any uncanceled stamps may return them to the commissioner and receive a refund of the amount paid for the stamps. Stamps which have become mutilated or unfit for use, or are affixed to cigarettes being returned to the manufacturer, or are affixed to packages which, or the contents of which, have become damaged and unfit for sale, shall be replaced by the commissioner, upon application by the distributor owning the stamps or cigarettes if an investigation discloses that the stamps have not evidenced a taxable transaction, after compliance with rules or orders of the commissioner designed to prevent use of the stamps replaced.

Subd. 9. Railroad or sleeping car company as a distributor. The commissioner may authorize any railroad or sleeping car company licensed as a distributor to sell cigarettes upon its cars without affixing stamps to the packages of same provided that monthly reports and payments of the tax due subject to the discount in subdivision 5 shall be made directly to the commissioner in the manner and under the terms provided for by the commissioner. Only one distributor's license need be obtained by each railroad or sleeping car company to permit it to sell cigarettes on any or all of its cars within the state.

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.

Subd. 11. Ocean-going vessels, tax free sale. The commissioner may promulgate rules for the sale by licensed distributors of tax free cigarettes to the masters of ocean-going vessels for use aboard ship outside the continental limits of the United States, provided such cigarettes are also exempt from the taxes imposed on cigarettes by the United States government.

Subd. 12. [Repealed, 1989 c 277 art 3 s 17]

History: 1947 c 619 s 3; 1949 c 703 s 2; 1951 c 569 s 1; Ex1959 c 70 art 6 s 2,3; 1963

MINNESOTA STATUTES 1992

1503

SALES TAXES; CIGARETTES AND TOBACCO 297.04

c 462 s 1; 1963 c 876 s 1; 1969 c 880 s 1; 1969 c 881 s 13; 1969 c 882 s 1; Ex1971 c 31 art 2 s 2; 1973 c 582 s 3; 1980 c 607 art 19 s 4; 1Sp1981 c 4 art 1 s 154; 1983 c 222 s 37; 1985 c 248 s 70; 1Sp1985 c 14 art 19 s 26,27; 1986 c 444; 1987 c 268 art 13 s 8-10; 1987 c 384 art 2 s 72; 1988 c 719 art 11 s 4-6; 1989 c 277 art 3 s 3; 1990 c 594 art 3 s 12; 1991 c 291 art 9 s 17-21; art 17 s 7; 1992 c 549 art 9 s 15

297.031 REFUND FOR TAX CONSTITUTING BAD DEBT.

Subdivision 1. Adoption of rules. The commissioner may adopt rules providing a refund of the tax paid under section 297.02 if the tax paid qualifies as a bad debt under section 166(a) of the Internal Revenue Code of 1986, as amended through December 31, 1991.

Subd. 2. Credit against tax. The commissioner may credit the amount determined under this section against taxes otherwise payable under this chapter by the taxpayer.

Subd. 3. Claims; time limit. Claims for refund must be filed with the commissioner within one year of the filing date of the taxpayer's federal income tax return containing the bad debt deduction that is being claimed. Claimants under this section are subject to the notice requirements of section 289A.38, subdivision 7.

Subd. 4. Annual appropriation. There is appropriated annually from the general fund to the commissioner the amount necessary to make the refunds provided by this section.

History: *1992 c 511 art 8 s 5*

297.04 LICENSE.

Subdivision 1. Selling without license illegal. From and after July 1, 1947, no person shall engage in the business of a distributor or subjobber at any place of business without first having received a license from the commissioner to engage in that business at that place of business.

Subd. 2. Application. Every application for such a license shall be made on a form prescribed by the commissioner and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the commissioner may require for the purpose of the administration of sections 297.01 to 297.13.

Subd. 3. Nonresident. A person without this state who ships or transports cigarettes to retailers in this state, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the commissioner, and thereafter be subject to all the provisions of sections 297.01 to 297.13 and entitled to act as a licensed distributor, on filing proof with the application of having appointed the secretary of state for service of process relating to any matter of issue arising under sections 297.01 to 297.13.

Subd. 4. Distributor's application; fee; subjobber's license. Each application for a distributor's license shall be accompanied by a fee of \$300. A separate application for license shall be made for each place of business at which a distributor proposes to engage in business as such under sections 297.01 to 297.13, provided that a separate application for a subjobber's license may be made by a licensed distributor for each place of business (other than that licensed in the distributor's license) to which the distributor delivers and from which the distributor sells or distributes stamped cigarettes.

Each application for a subjobber's license shall be accompanied by a fee of \$24.

A distributor or subjobber applying for a license during the second year of a two-year licensing period shall be required to pay only one-half of the license fee provided for herein.

Subd. 5. Issuance. The commissioner, upon receipt of the application in proper form, and payment of the license fee required by subdivision 4, shall, unless otherwise provided by sections 297.01 to 297.13, issue the applicant a license in form as pre-

scribed by the commissioner, which said license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in the application.

Subd. 6. Expiration. Each license issued shall expire on December 31 of the second year of the licensing period unless sooner revoked by the commissioner or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the commissioner.

Subd. 7. Display. Each license shall be prominently displayed on the premises covered by the license.

Subd. 8. Transfer. No license shall be transferable to any other person.

Subd. 9. Revocation. The commissioner may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of sections 297.01 to 297.13, or any other act applicable to the sale of cigarettes, or any rule promulgated by the commissioner, and may also revoke any such license or licenses of any distributor or subjobber for the violation of sections 297.31 to 297.39, or any other act applicable to the sale of tobacco products, or any rule promulgated by the commissioner in furtherance of sections 297.31 to 297.39. The commissioner may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of sections 325D.31 to 325D.42.

No license shall be revoked, canceled, or suspended except after notice and a hearing by the commissioner as provided in section 297.09.

Subd. 10. [Repealed, 1989 c 277 art 3 s 17]

Subd. 11. Revocation, new license not granted for year. No license shall be issued under sections 297.01 to 297.13 to any person within one year of the date of final determination of a revocation of any previous license held.

History: 1947 c 619 s 4; 1953 c 652 s 2; 1961 c 419 s 1; 1969 c 1148 s 42; 1971 c 243 s 1,2; 1984 c 618 s 8; 1985 c 248 s 70; 1986 c 444; 1987 c 268 art 13 s 11-13; 1989 c 277 art 3 s 4-6

297.041 SALES TO INDIAN TRIBES.

Subdivision 1. Wholesalers. A wholesaler may set aside the part of the wholesaler's stock necessary to make sales to the established governing body of an Indian tribe recognized by the United States Department of Interior without paying the tax required by this chapter. The unstamped stock shall be kept separate and apart from stamped stock. When shipping or delivering unstamped stock to an Indian tribal organization, the wholesaler shall make a true duplicate invoice. The invoice must show the complete details of the sale or delivery. The wholesaler must send the duplicate to the commissioner not later than the 18th day of the following calendar month. If the wholesaler fails to comply with this section, the commissioner shall revoke the permission granted to the wholesaler to keep a stock of unstamped goods.

Subd. 2. Retailers. Retailers who are Indian tribal organizations may keep unstamped stock intended for sale to qualified purchasers.

Subd. 3. Qualified purchasers. A qualified purchaser of unstamped cigarettes means only an enrolled member of the Indian tribe which is offering the cigarettes for sale.

Subd. 4. Sales to nonqualified buyers. A retailer who sells or otherwise disposes of unstamped cigarettes other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by section 297.02, subdivision 1, and remit the tax to the department of revenue at the same time and manner as required by section 297.07. If the retailer fails to collect the tax from the buyer or transferee, or fails to remit the tax, the retailer is personally responsible for the tax and the commissioner may seize any cigarettes destined to be delivered to the retailer. The cigarettes so seized shall be considered contraband and be subject to the procedures outlined in section 297.08, subdivision 3. The proceeds of the sale of the cigarettes may be applied to any tax liability owed by the retailer after deducting all costs and expenses.

MINNESOTA STATUTES 1992

1505

SALES TAXES; CIGARETTES AND TOBACCO 297.06

This section does not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax.

History: 1982 c 523 art 19 s 5; 1986 c 444; 1988 c 719 art 11 s 7; 1989 c 277 art 1 s 9-11; art 3 s 7

297.05 VIOLATIONS.

Subdivision 1. **Package without stamp affixed presumed to be a violation.** Except as provided in subdivision 2, whenever a package of cigarettes is found in the place of business or in the possession of any person without a proper stamp affixed as required by sections 297.01 to 297.13, it shall be presumed that those cigarettes are kept there or held by that person in violation thereof.

Subd. 2. **Presumption, exceptions.** This presumption shall not apply to:

- (1) Cigarettes in the place of business or in the possession of a licensed distributor;
- (2) Cigarettes in the possession of a common carrier or sleeping car company engaged in interstate commerce;
- (3) Cigarettes held in a public warehouse of first destination in this state, subject to the provisions of and licensed under Minnesota Statutes 1945, chapter 231, as amended, in the unbroken, original shipping containers, subject to delivery or shipping instructions from the manufacturer or a distributor;
- (4) Cigarettes in the possession of a person other than a distributor in quantities of 200 cigarettes or less, when those cigarettes have had the individual packages or seals thereof broken, and when they are intended for personal use by that person and not to be sold or offered for sale;
- (5) Packages of not more than ten cigarettes each, in the possession of a representative of either a manufacturer or a person authorized pursuant to section 297.03, subdivision 10, to distribute such packages.

Subd. 3. **Warehouse, record of deliveries and shipments.** Records of all deliveries or shipments of cigarettes from a licensed warehouse to persons within this state shall be kept by the warehouse and be available to the commissioner for inspection. They shall show the name and address of the consignee, the date, the quantity of cigarettes delivered, and such other information as the commissioner may require. These records shall be preserved for one year from the date of delivery of the cigarettes.

History: 1947 c 619 s 5; 1951 c 569 s 2; 1969 c 882 s 2,3

297.06 KEEPING OF RECORDS.

Subdivision 1. **Distributor to keep records.** Every distributor shall keep at each licensed place of business complete and accurate records, for that place of business, including itemized invoices, of cigarettes held, purchased, manufactured, or brought in or caused to be brought in from without the state, and of all sales of cigarettes made, except sales to the ultimate consumer. These records shall show the names and addresses of purchasers, the inventory at the close of each period for which a return is required of all cigarettes on hand, and of all stamps, affixed and unaffixed, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. When a licensed distributor sells cigarettes exclusively to the ultimate consumer at the address given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all cigarettes transferred to other retail outlets owned or controlled by that licensed distributor. All books, records, and other papers and documents required by sections 297.01 to 297.13 to be kept shall be preserved for a period of at least three years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the commissioner, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours the commissioner, or duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under sections 297.01 to 297.13, and the packages of cigarettes and the vending devices contained therein, to determine whether or not all the provisions

of these sections are being fully complied with. If the commissioner, or any such agent or employee, is denied free access or is hindered or interfered with in making such examination, the license of the distributor at such premises shall be subject to revocation by the commissioner.

Subd. 2. Distributor to preserve copies of invoices. Every person who sells cigarettes to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and shall preserve legible copies of all such invoices for three years from the date of sale.

Subd. 3. Retailer and subjobber to preserve purchase invoices. Every retailer and subjobber shall procure itemized invoices of all cigarettes purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for one year from the date of purchase.

At any time during normal business hours, the commissioner or the commissioner's agents may enter any place of business of a retailer or subjobber and inspect the premises, the records required to be kept for this subdivision, and the packages of cigarettes, tobacco products, and vending devices contained on the premises to determine whether all provisions of this chapter and sections 325D.30 to 325D.40 are being fully complied with.

Subd. 4. Physical inventory. The commissioner of revenue or the commissioner's authorized agents may, upon request but not more than twice annually, require a cigarette or tobacco distributor to furnish a physical inventory of all cigarettes in stock. The inventory must contain the information that the commissioner requests and must be certified by an officer of the corporation.

History: 1947 c 619 s 6; 1986 c 444; 1988 c 719 art 11 s 8-11

297.07 DISTRIBUTOR TO FILE RETURNS.

Subdivision 1. Monthly return filed with commissioner. 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 of cigarettes manufactured or brought in from without the state or purchased during the preceding calendar month and the quantity of cigarettes sold or otherwise disposed of in this state and outside this state during that month. Every licensed distributor outside this state shall in like manner file a return showing the quantity of cigarettes shipped or transported into this state 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. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

Subd. 2. Commissioner to examine and correct return; collection of deficiency. As soon as practicable after any return is filed, the commissioner shall examine the return and correct it, if necessary, according to the commissioner's best judgment and information. The return, together with the commissioner's corrections, if any, shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein. Proof of any such correction by the commissioner may be made at any hearing before the commissioner or in any legal proceeding by a copy of the pertinent record of the commissioner under the certificate of the custodian of the original official record. Such a certified copy shall, without further proof, be admitted into evidence before the commissioner or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein. The commissioner, on finding that any amount of tax is due from the distributor and unpaid, shall notify the distributor of the deficiency, stating an intention to assess the amount due together with interest and penalties as hereinafter provided. If a deficiency disclosed by the commissioner's examination cannot be allocated to a particular month or months, the commissioner shall notify the distributor of the deficiency, stating an intention to assess the amount due for a given period without allocating it to any particular month or months,

MINNESOTA STATUTES 1992

1507

SALES TAXES; CIGARETTES AND TOBACCO 297.08

together with the penalty provided in the case of other corrected returns. If any distributor making any return shall die or shall become incompetent at any time before the commissioner issues the notice of intention to assess an amount due, that notice shall be issued to the administrator, executor, or other legal representative, as such, of that distributor.

Subd. 3. Dealer may protest; hearing. If, within 30 days after mailing of notice of the assessment, the distributor or a legal representative shall file a protest to said assessment and request a hearing thereon, the commissioner shall give notice to that distributor or legal representative of the time and place fixed for the hearing, and shall hold a hearing in conformity with the provisions of sections 297.01 to 297.13. The tax due must be paid within 60 days after the mailing date of the assessment notice.

Subd. 4. Accelerated tax payment. Every distributor having a liability of \$1,500 or more in May 1987 or in May of each subsequent year, shall remit the June liability in the manner required by this section.

On or before June 18, 1987, or June 18 of each subsequent year, the distributor shall remit the actual May liability and one-half of the estimated June liability to the commissioner and file the return on a form prescribed by the commissioner.

On or before July 18, 1987, or July 18 of each subsequent year, the distributor shall submit a return showing the actual June liability and paying any additional amount of tax not remitted in June. A penalty is imposed equal to ten percent of the amount of June liability required to be paid in June less the amount remitted in June. However, the penalty shall not be imposed if the amount remitted in June equals the lesser of (a) 45 percent of the actual June liability, or (b) 50 percent of the preceding May's liability.

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.

Subd. 6. [Repealed, 1987 c 268 art 13 s 54]

History: 1947 c 619 s 7; 1969 c 883 s 1,2; 1969 c 884 s 1-3; 1971 c 238 s 1; 1973 c 582 s 3; 1975 c 377 s 34; 1976 c 134 s 78; 1977 c 307 s 29; 1978 c 767 s 29; 1986 c 444; 1Sp1986 c 1 art 7 s 22,23; 1987 c 268 art 13 s 14-17; 1989 c 209 art 1 s 31; 1990 c 604 art 10 s 14; 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.

Subd. 2. Seizure. Any cigarettes or other property made contraband by 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 subdivisions 3 and 4.

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 human services 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, the commissioner 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 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 court administrator 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

MINNESOTA STATUTES 1992

1509

SALES TAXES; CIGARETTES AND TOBACCO 297.09

fail to file their answer within the time, the property will be ordered sold by the commissioner or 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 court administrator, setting forth the fact, order the property sold by the commissioner or 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, it shall order the property unlawfully used, sold as provided by law, unless the owner shows to the satisfaction of the court that the owner 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 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 commissioner may dismiss the proceedings outlined in this subdivision when the commissioner deems it to be in the best interests of the state to do so.

History: 1947 c 619 s 8; 1953 c 624 s 1; 1959 c 267 s 3; 1963 c 712 s 1; 1973 c 119 s 1; 1975 c 340 s 1-3; 1977 c 203 s 7; 1983 c 247 s 125,126; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 719 art 11 s 12; 1989 c 277 art 3 s 8; 1991 c 291 art 9 s 23

297.09 INVESTIGATIONS.

Subdivision 1. Powers of commissioner. The commissioner, or duly authorized agents, may conduct investigations, inquiries, and hearings under sections 297.01 to 297.13, and, in connection with such investigations, inquiries, and hearings, the commissioner and the duly authorized agents shall have all the powers conferred upon the commissioner and the commissioner's examiners by section 270.06, and the provisions of that section shall apply to all such investigations, inquiries and hearings.

Subd. 2. Hearing; notice; findings. Every hearing conducted under sections 297.01 to 297.13 shall be preceded by ten days notice in writing of the subject of the hearing, including, in the case of suspension or revocation of a license, a statement of the nature of the charges against the licensee. The notice shall be sent by certified mail to the last known address of the licensee or other person involved, in the hearing, and service shall be complete upon mailing. After every hearing the commissioner shall make findings and an order in writing. The findings and order shall be filed in the office of the commissioner, and a copy sent by mail or otherwise to the person to whom the notice was directed.

Subd. 3. Exchange of information. The commissioner may exchange information with the officers and agencies of other states administering laws relating to the taxation of cigarettes and the sale thereof.

Subd. 4. Claim of possible incrimination not to excuse witness from testifying; no exemption from prosecution. No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records, or memoranda in any investigation or upon any hearing, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject the person to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which the person may testify or produce evidence, documentary or otherwise, before the commissioner or an employee or agent thereof; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, pursuant to a subpoena. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Subd. 5. Appeal to tax court. Any person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under section 297.07 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 297.01 to 297.13 shall be subject to review by certiorari.

History: 1947 c 619 s 9; 1965 c 698 s 3; 1976 c 134 s 78; 1977 c 307 s 29; 1978 c 674 s 60; 1978 c 767 s 30; 1986 c 444; 1990 c 480 art 1 s 46

297.10 ENFORCEMENT.

Subdivision 1. Duties of commissioner. The commissioner shall enforce the provisions of sections 297.01 to 297.13 and may prescribe rules not inconsistent with the provisions of sections 297.01 to 297.13 for its detailed and efficient administration. In the enforcement of sections 297.01 to 297.13 the commissioner may call any county attorney or any peace officer for assistance and may appoint such additional employees as may be required to administer sections 297.01 to 297.13. The commissioner may bring injunction proceedings to restrain any person from acting as a distributor without complying with the provisions of sections 297.01 to 297.13.

Subd. 2. Expenses of administration. Expenses of the administration of sections 297.01 to 297.13 to be paid out of appropriations to the commissioner for the administration thereof shall include fees and expenses incurred by the attorney general and any county attorney in litigation in connection with the enforcement of sections 297.01 to 297.13 and all court costs and expenses.

History: 1947 c 619 s 10; 1985 248 s 70; 1986 c 444

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.

Subd. 2. Prohibition against possession. No person other than a licensed distributor shall sell, offer for sale, or have in possession with intent to sell or offer for sale, a package of cigarettes not stamped in accordance with the provisions of sections 297.01 to 297.13.

Subd. 3. Packages stamped, exception. No distributor shall sell a package of cigarettes not stamped in accordance with the provisions of sections 297.01 to 297.13, except when the sale is made under such circumstances that the tax imposed by sections 297.01 to 297.13 may not legally be levied because of the constitution or laws of the United States.

Subd. 4. Falsification of records. No person required by sections 297.01 to 297.13 to keep records or to make returns shall falsify or fail to keep such records or falsify or fail to make such returns.

Subd. 5. Transporting unstamped packages. No person shall transport into, or receive, carry, or move from place to place in this state, any packages of cigarettes not

MINNESOTA STATUTES 1992

1511

SALES TAXES; CIGARETTES AND TOBACCO 297.13

stamped in accordance with the provisions of Laws 1951, chapter 569, except in the course of interstate commerce, unless the cigarettes are moving from a public warehouse to a distributor upon orders from the manufacturer or distributor. This subdivision shall not apply to a person carrying for personal use not more than 200 cigarettes when those cigarettes have had the individual packages or seals thereof broken and are intended for personal use by that person and not to be sold or offered for sale.

Common carriers and contract carriers transporting cigarettes into this state shall file with the commissioner reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 231. Such reports shall be filed monthly on or before the 10th day of each month and shall show with respect to deliveries made in the preceding month: the date, point of origin, point of delivery, name of consignee, the quantity of cigarettes delivered, and such other information as the commissioner may require.

All common carriers and contract carriers transporting cigarettes into Minnesota shall permit examination by the commissioner of their records relating to the shipment of cigarettes.

Any person who fails or refuses to transmit to the commissioner the required reports or whoever refuses to permit the examination of the records by the commissioner shall be guilty of a gross misdemeanor.

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: 1947 c 619 s 11; 1951 c 569 s 3; 1965 c 456 s 1; 1986 c 444; 1987 c 268 art 13 s 18,19; 1988 c 719 art 11 s 13; 1991 c 291 art 9 s 24-26

297.12 OFFENSES.

Subdivision 1. Felony. (a) Any person violating section 297.11, subdivision 1, shall be guilty of a felony.

(b) Any person violating section 297.11, subdivision 2 or 5, by possessing, receiving, or transporting more than 20,000 cigarettes not stamped in accordance with the provisions of sections 297.01 to 297.13 shall be guilty of a felony.

(c) A person selling cigarettes after the person's license has been revoked is guilty of a felony.

Subd. 2. Gross misdemeanor. Any person who in any manner attempts to evade the tax imposed by sections 297.01 to 297.13 or who aids or abets in the evasion or attempted evasion of the tax or who violates the provisions of section 297.04, subdivision 1, shall be guilty of a gross misdemeanor.

Subd. 3. Misdemeanor. Any person who otherwise violates any provision of sections 297.01 to 297.13 shall be guilty of a misdemeanor.

History: 1947 c 619 s 12; 1977 c 203 s 8; 1988 c 719 art 11 s 14

297.13 REVENUE, DISPOSAL.

Subdivision 1. MS 1965 [Repealed, Ex1967 c 48 s 48 subd 15]

Subdivision 1. Cigarette tax apportionment. Revenues received from taxes, penalties, and interest under sections 297.01 to 297.13 and from license fees and miscellaneous sources of revenue shall be deposited by the commissioner of revenue in the state treasury and credited as follows:

(a) first to the general obligation special tax bond debt service account in each fiscal year the amount required to increase the balance on hand in the account on each December 1 to an amount equal to the full amount of principal and interest to come due on all outstanding bonds whose debt service is payable primarily from the proceeds of the tax to and including the second following July 1; and

(b) after the requirements of paragraph (a) have been met:

(1) the revenue produced by one mill of the tax on cigarettes weighing not more than three pounds a thousand and two mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to the Minnesota future resources fund;

(2) the balance of the revenues derived from taxes, penalties, and interest under sections 297.01 to 297.13 and from license fees and miscellaneous sources of revenue shall be credited to the general fund.

Subd. 2. [Repealed, 1973 c 650 art 10 s 2]

Subd. 3. [Repealed, 1973 c 650 art 10 s 2]

Subd. 4. [Repealed, 1973 c 650 art 10 s 2]

Subd. 5. [Repealed, 1973 c 650 art 10 s 2]

Subd. 6. [Repealed, 1973 c 650 art 10 s 2]

Subd. 7. [Repealed, 1973 c 650 art 10 s 2]

Subd. 8. [Repealed, 1973 c 650 art 10 s 2]

History: 1947 c 619 s 13; 1949 c 703 s 3; 1953 c 623 s 1; 1955 c 376 s 1,2; 1959 c 158 s 25; 1963 c 282 s 1,2,5; 1963 c 790 art 4 s 2; 1965 c 810 s 8; 1967 c 598 s 1; Ex1967 c 48 s 48 subd 14; 1969 c 399 s 49; 1969 c 881 s 14; Ex1971 c 31 art 2 s 3; 1973 c 582 s 3; 1973 c 650 art 10 s 1; 1976 c 2 s 111; 1977 c 347 s 45; 1Sp1985 c 13 s 312; 1Sp1985 c 14 art 19 s 28; 1987 c 268 art 13 s 20; 1988 c 690 art 1 s 18; 1989 c 282 art 3 s 93; 1989 c 335 art 1 s 190; art 4 s 77

297.14 [Obsolete]

297.15 [Repealed, 1973 c 650 art 10 s 2]

297.16 [Repealed, 1973 c 650 art 10 s 2]

TAX UPON USE OR STORAGE OF CIGARETTES BY CONSUMERS

297.21 DEFINITIONS.

Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following terms for the purposes of sections 297.21 to 297.26, shall be given the meanings subjoined to them.

Subd. 2. "Person" means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

Subd. 3. "Consumer" means any person who has title to or possession of cigarettes in storage, for use or other consumption in this state.

Subd. 4. "Storage" means any keeping or retention of cigarettes for use or consumption in this state.

Subd. 5. "Use" means the exercise of any right or power incidental to the ownership of cigarettes.

Subd. 6. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.

Subd. 7. "Commissioner" means the state commissioner of revenue.

History: 1949 c 553 s 1; 1973 c 582 s 3

297.22 TAX.

Subdivision 1. A tax is hereby imposed upon the use or storage by consumers of cigarettes in this state, and upon such consumers, at the rates specified in section 297.02.

Subd. 2. This tax shall not apply if the tax imposed by Laws 1947, chapter 619, as amended, has been paid.

MINNESOTA STATUTES 1992

1513

SALES TAXES; CIGARETTES AND TOBACCO 297.26

Subd. 3. This tax shall not apply to the use or storage of cigarettes in quantities of 200 or less in the possession of any one consumer, provided that such cigarettes were carried into this state by such consumer.

History: 1949 c 553 s 2; 1951 c 570 s 1; Ex1959 c 70 art 6 s 4; Ex1961 c 91 art 3 s 2; 1965 c 134 s 1; 1969 c 881 s 15; Ex1971 c 31 art 2 s 4; 1973 c 455 s 1; 1Sp1985 c 14 art 19 s 29

297.221 [Repealed, Ex1971 c 31 art 2 s 6]

297.23 CONSUMERS TO FILE RETURN.

Subdivision 1. On or before the 18th day of each calendar month, every consumer who during the preceding calendar month has acquired title to or possession of cigarettes for use or storage in this state, upon which cigarettes the tax imposed by sections 297.01 to 297.13 has not been paid, shall file a return with the commissioner showing the quantity of cigarettes so acquired. The return shall be made upon a form furnished and prescribed by the commissioner and shall contain such other information as the commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

Subd. 2. As soon as practicable after any return is filed, the commissioner shall examine the return and correct it, if necessary, according to the commissioner's best judgment and information.

Subd. 3. In case any consumer required to pay the tax levied by this act fails to file a return or remit the tax as herein required, the commissioner shall have authority to make an assessment of tax against the consumer according to the commissioner's best judgment and information.

Subd. 4. All of the provisions of section 297.07, subdivisions 2, 3, 4 and 5, relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes, shall be applicable to consumers under the act in like manner as though set out in full herein.

Subd. 5. [Repealed, 1987 c 268 art 13 s 54]

History: 1949 c 553 s 3; 1969 c 883 s 3; 1973 c 134 s 1; 1973 c 582 s 3; 1986 c 444; 1Sp1986 c 1 art 7 s 24; 1987 c 268 art 13 s 21

297.24 APPLICATION OF CERTAIN LAWS.

All of the provisions of sections 297.09 and 297.10 shall be applicable to consumers under sections 297.21 to 297.26 in like manner as though set out in full herein.

History: 1949 c 553 s 4

297.25 REFUSAL OR NEGLECT TO FILE RETURN.

Subdivision 1. Any person required by sections 297.21 to 297.26 to make and file a return with the commissioner, who neglects or refuses to make such return, or neglects or refuses to pay the tax levied by sections 297.21 to 297.26, or neglects or refuses to pay any lawful assessment made by the commissioner, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$50 or more than \$200.

Subd. 2. Any person who otherwise violates any provision of sections 297.21 to 297.26 shall be guilty of a misdemeanor.

History: 1949 c 553 s 5; 1987 c 329 s 21

297.26 REVENUE DISTRIBUTION.

All revenues derived from taxes, penalties, and interest under sections 297.21 to 297.26 shall be deposited by the commissioner in the state treasury and disposed of in the same manner as provided by section 297.13 for revenues received under sections 297.01 to 297.13.

History: 1949 c 553 s 6; 1951 c 570 s 2; 1969 c 399 s 49; 1971 c 748 s 2; 1987 c 268 art 13 s 22; 1989 c 335 art 4 s 78

TAX ON TOBACCO PRODUCTS

297.31 DEFINITIONS.

Subdivision 1. When used in sections 297.31 to 297.39, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section.

Subd. 2. "Tobacco products" means cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in section 297.01, subdivision 2.

Subd. 3. "Person" means any individual, firm, trade association, company, partnership, joint stock company, corporation, club, syndicate, agency, or any legal representative of any of the foregoing engaged in the sale of tobacco.

Subd. 4. "Manufacturer" means a person who manufactures and sells tobacco products.

Subd. 5. "Distributor" means any and each of the following:

(1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(2) Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

(3) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

Subd. 6. "Subjobber" means any person, other than a manufacturer or distributor, who buys from a distributor tobacco products upon which the tax imposed by this chapter has been paid and sells them to persons other than the ultimate consumers, and any licensed distributor who delivers, sells or distributes tobacco products upon which the tax imposed by this chapter has been paid from a place of business other than that licensed in the distributor's license.

Subd. 7. "Retailer" means any person engaged in this state in the business of selling, or offering to sell, tobacco at retail.

Subd. 8. "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of sections 297.31 to 297.39, or for any other purposes whatsoever.

Subd. 9. "Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

Subd. 10. "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

Subd. 11. "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

Subd. 12. "Retail outlet" means each place of business from which tobacco products are sold to consumers.

Subd. 13. "Commissioner" means the state commissioner of revenue.

Subd. 14. "Consumer" means any person who has title to or possession of tobacco products in storage, for use or other consumption in this state.

Subd. 15. "Storage" means any keeping or retention of tobacco products for use or consumption in this state.

Subd. 16. "Use" means the exercise of any right or power incidental to the ownership of tobacco products.

Subd. 17. "Licensing period" means a two-year period during which licenses are issued. A licensing period begins on January 1 of each even-numbered year and ends on December 31 of the following odd-numbered year.

History: *Ex1955 c 2 art 5 s 1; Ex1957 c 1 art 5 s 1-3; 1971 c 239 s 1; 1973 c 582 s 3; 1974 c 556 s 22; 1986 c 444; 1987 c 268 art 13 s 23-25; 1989 c 277 art 3 s 9*

297.32 TAX ON TOBACCO PRODUCTS.

Subdivision 1. A tax is hereby imposed upon all tobacco products in this state and upon any person engaged in business as a distributor thereof, at the rate of 35 percent of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (1) brings, or causes to be brought, into this state from without the state tobacco products for sale; (2) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or (3) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

Subd. 1a. [Expired]

Subd. 2. A tax is hereby imposed upon the use or storage by consumers of tobacco products in this state, and upon such consumers, at the rate of 35 percent of the cost of such tobacco products.

The tax imposed by this subdivision shall not apply if the tax imposed by subdivision 1 on such tobacco products has been paid.

This tax shall not apply to the use or storage of tobacco products in quantities of:

1. not more than 50 cigars;
2. not more than ten oz. snuff or snuff powder;
3. not more than one lb. smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

Subd. 2a. [Expired]

Subd. 3. Any tobacco product with respect to which a tax has once been imposed under sections 297.31 to 297.39 shall not again be subject to tax under sections 297.31 to 297.39.

Subd. 4. The tax imposed by this section shall not apply with respect to any tobacco product which under the constitution and laws of the United States may not be made the subject of taxation by this state.

Subd. 5. The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees now or hereafter imposed by any city or township.

Subd. 6. 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.

Subd. 7. [Repealed, 1992 c 511 art 7 s 26]

Subd. 8. The state of Minnesota or any of its agencies, instrumentalities, or governmental subdivisions shall be subject to the tax imposed by sections 297.32 to 297.39 in the same manner as distributors, if such unit is engaged in the purchase and sale of tobacco products.

Subd. 9. Revenue derived from the taxes imposed by this section must be deposited by the commissioner in the state treasury and credited to the general fund.

History: *Ex1955 c 2 art 5 s 2; Ex1957 c 1 art 5 s 4,5; Ex1959 c 70 art 7 s 1-4; 1961 c 271 s 1,2; Ex1961 c 91 art 4 s 1-3; 1965 c 136 s 2; 1965 c 141 s 2; 1965 c 831 s 2; 1969 c 881 s 16,17; 1971 c 237 s 1; 1973 c 123 art 5 s 7; 1974 c 556 s 23,24; 1Sp1985 c 14 art 19 s 30-32; 1986 c 444; 1987 c 268 art 13 s 26-28; 1989 c 335 art 4 s 79*

297.321 REFUND FOR TAX CONSTITUTING BAD DEBT.

Subdivision 1. **Adoption of rules.** The commissioner may adopt rules providing a refund of the tax paid under section 297.32 if the tax paid qualifies as a bad debt under

section 166(a) of the Internal Revenue Code of 1986, as amended through December 31, 1991.

Subd. 2. **Credit against tax.** The commissioner may credit the amount determined under this section against taxes otherwise payable under this chapter by the taxpayer.

Subd. 3. **Claims; time limit.** Claims for refund must be filed with the commissioner within one year of the filing date of the taxpayer's federal income tax return containing the bad debt deduction that is being claimed. Claimants under this section are subject to the notice requirements of section 289A.38, subdivision 7.

Subd. 4. **Annual appropriation.** There is appropriated annually from the general fund to the commissioner the amount necessary to make the refunds provided by this section.

History: 1992 c 511 art 8 s 6

297.33 LICENSES; DISTRIBUTORS, SUBJOBBER.

Subdivision 1. From and after 12:01 a.m. on July 1, 1955, no person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received a license from the commissioner to engage in that business at that place of business.

Subd. 2. Every application for such a license shall be made on a form prescribed by the commissioner and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the commissioner may require for the purpose of the administration of sections 297.31 to 297.39.

Subd. 3. A person without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the commissioner, and thereafter be subject to all the provisions of sections 297.31 to 297.39 and entitled to act as a licensed distributor, on filing proof with the application of having appointed the secretary of state for service of process relating to any matter or issue arising under sections 297.31 to 297.39. A foreign corporation applying for a distributor's license need not qualify as such if it files the proof of appointment of the secretary of state for service of process as provided in this subdivision.

Subd. 4. Each application for a distributor's license shall be accompanied by a fee of \$75.

A separate application for license shall be made for each place of business at which a distributor proposes to engage in business as such under sections 297.31 to 297.39. A separate application for a subjobber's license may be made by a licensed distributor for each place of business, other than that licensed in the distributor's license, to which the distributor sells or distributes tobacco products upon which the tax imposed by this chapter has been imposed to other than the ultimate consumer.

Subd. 5. (a) Each application for a subjobber's license shall be accompanied by a fee of \$20.

(b) All licenses expire on December 31 of the second year of the licensing period in which they were issued.

Subd. 6. A distributor or subjobber applying for a license during the second year of a licensing period shall be required to pay only one-half of the license fee provided for herein.

Subd. 7. The commissioner, upon receipt of the application in proper form, and payment of the license fee required by subdivision 4 or subdivision 5, shall, unless otherwise provided by sections 297.31 to 297.39, issue the applicant a license in form as prescribed by the commissioner, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business

MINNESOTA STATUTES 1992

1517

SALES TAXES; CIGARETTES AND TOBACCO 297.34

shown in the application. The commissioner shall assign a permit number to each person licensed as a distributor at the time of issuance of the first license, which shall be inscribed upon all licenses issued to that distributor.

Subd. 8. Each license shall expire on December 31 of the second year of the licensing period unless sooner revoked by the commissioner or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the commissioner.

Subd. 9. Each license shall be prominently displayed on the premises covered by the license.

Subd. 10. No license shall be transferable to any other person.

Subd. 11. The commissioner may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of sections 297.31 to 297.39, or any other act applicable to the sale of tobacco products, or any rule promulgated by the commissioner in furtherance of sections 297.31 to 297.39. No license shall be revoked, canceled, or suspended except after notice and a hearing by the commissioner as provided in section 297.37.

Subd. 12. No license shall be issued under sections 297.31 to 297.39 to any person within one year of the date of final determination of a revocation of any previous license held.

Subd. 13. [Repealed, 1989 c 277 art 3 s 17]

History: *Ex1955 c 2 art 5 s 3; Ex1957 c 1 art 5 s 6; 1969 c 1148 s 43; 1971 c 243 s 3-6; 1985 c 248 s 70; 1986 c 444; 1987 c 268 art 13 s 29,30; 1989 c 277 art 3 s 10-14*

297.335 SALES TO INDIAN TRIBES.

Subdivision 1. Wholesalers. A wholesaler may set aside the part of the wholesaler's stock necessary to make sales to the established governing body of an Indian tribe recognized by the United States Department of the Interior without paying the tax required by this chapter. When shipping or delivering untaxed stock to an Indian tribal organization, the wholesaler shall make a true duplicate invoice. The invoice must show the complete details of the sale or delivery. The wholesaler must send the duplicate to the commissioner not later than the 18th day of the following calendar month. If the wholesaler fails to comply with this section, the commissioner shall revoke the permission granted to the wholesaler to keep a stock of untaxed goods.

Subd. 2. Retailers. Retailers who are Indian tribal organizations may keep untaxed stock intended for sale to qualified purchasers.

Subd. 3. Qualified purchasers. A qualified purchaser of untaxed tobacco means only an enrolled member of the Indian tribe offering the tobacco for sale.

Subd. 4. Sales to nonqualified buyers. A retailer who sells or otherwise disposes of untaxed tobacco other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by this chapter and remit the tax to the department of revenue at the same time and manner as required by this chapter. If the retailer fails to collect the tax from the buyer or transferee, or fails to remit the tax, the retailer is personally responsible for the tax, and the commissioner may seize any tobacco destined to be delivered to the retailer. The procedures for seized contraband outlined in section 297.08, subdivision 3, apply to the seized tobacco. The proceeds of the sale of the tobacco may be applied to any tax liability owed by the retailer after deducting all costs and expenses.

This section does not relieve the buyer or possessor of untaxed tobacco from personal liability for the tax.

History: *1989 c 277 art 1 s 12*

297.34 LICENSEES, DUTIES.

Subdivision 1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of

tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least one year after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the commissioner, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours the commissioner, or duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine whether or not all the provisions of sections 297.31 to 297.39 are being fully complied with. If the commissioner, or any such agent or employee, is denied free access or is hindered or interfered with in making such examination, the license of the distributor at such premises shall be subject to revocation by the commissioner.

Subd. 2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts and shall preserve legible copies of all such invoices for one year from the date of sale.

Subd. 3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for one year from the date of purchase. Invoices shall be available for inspection by the commissioner or authorized agents or employees at the retailer's or subjobber's place of business.

Subd. 4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 231, shall be kept by the warehouse and be available to the commissioner for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for one year from the date of delivery of the tobacco products.

Subd. 5. The transportation of tobacco products into this state by means other than common carrier must be reported to the commissioner of revenue within 30 days with the following exceptions:

(1) The transportation of not more than 50 cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

(2) Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 297.33, of tobacco products sold by such person to a retailer in this state.

Such report shall be made on forms provided by the commissioner.

Common carriers transporting tobacco products into this state shall file with the commissioner reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 231. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month: the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the commissioner may otherwise require.

All common carriers transporting tobacco products into Minnesota shall permit

examination by the commissioner of their records relating to the shipment of tobacco products.

Any person who fails or refuses to transmit to the commissioner the required reports or whoever refuses to permit the examination of the records by the commissioner shall be guilty of a misdemeanor.

History: *Ex1955 c 2 art 5 s 4; Ex1957 c 1 art 5 s 7; 1965 c 455 s 1; 1971 c 234 s 1; 1973 c 582 s 3; 1986 c 444*

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.

Subd. 2. As soon as practicable after any return is filed, the commissioner shall examine each return and correct it, if necessary, according to the commissioner's best judgment and information. On finding that any amount of tax is due from the taxpayer and unpaid, the commissioner shall notify the taxpayer of the deficiency, and of the intention to assess the amount due together with interest and penalties as hereinafter provided. If a deficiency disclosed by the commissioner's examination cannot be allocated to a particular month or months, the commissioner shall notify the taxpayer of the deficiency, stating the intention to assess the amount due for a given period without allocating it to any particular month or months. If any taxpayer making any return shall die or shall become incompetent at any time before the commissioner issues the notice of intention to assess an amount due, that notice shall be issued to the administrator, executor, or other legal representative, as such, of that taxpayer.

Subd. 3. If, within 30 days after mailing of notice of the assessment, the taxpayer or a legal representative shall file a protest to said assessment and request a hearing thereon, the commissioner shall give notice to that taxpayer or legal representative of the time and place fixed for the hearing, and shall hold a hearing on such protest. Any tax due and owing after an assessment order has been issued to the distributor or legal representative of such distributor shall be paid within 60 days. Any such assessment made by the commissioner shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 4. [Repealed, 1987 c 268 art 13 s 54]

Subd. 5. Every distributor having a liability of \$1,500 or more in May 1987 or in May of each subsequent year, shall remit the June liability in the manner required by this section.

On or before June 18, 1987, or June 18 of each subsequent year, the distributor

MINNESOTA STATUTES 1992

shall remit the actual May liability and one-half of the estimated June liability to the commissioner and file the return on a form prescribed by the commissioner.

On or before July 18, 1987, or July 18 of each subsequent year, the distributor shall submit a return showing the actual June liability and paying any additional amount of tax not remitted in June. A penalty is imposed equal to ten percent of the amount of June liability required to be paid in June less the amount remitted in June. However, the penalty is not imposed if the amount remitted in June equals the lesser of (a) 45 percent of the actual June liability, or (b) 50 percent of the preceding May's liability.

Subd. 6. [Repealed, 1987 c 268 art 13 s 54]

Subd. 7. [Repealed, 1987 c 268 art 13 s 54]

Subd. 8. On or before the 18th day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 297.32 has not been paid, shall file a return with the commissioner showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the commissioner, and shall contain such other information as the commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

Subd. 9. If any return required to be filed under the provisions of this section is not filed within the time herein specified, a penalty of five percent of the tax, with an additional five percent each additional 30 days or fraction thereof up to a maximum of 25 percent is herein imposed but in no event shall the penalty for failing to file such return timely be less than \$10. The commissioner of revenue is authorized to extend the time for filing such return without penalty for good cause shown.

Subd. 10. A manufacturer of tobacco products as defined by section 297.31, shall report on a form prescribed by the commissioner all sales of tobacco products to Minnesota-licensed distributors, subjobbers, retailers, or to any locations within the state. The report is due on the 18th of the month following the reporting period.

Anyone violating this section is guilty of a gross misdemeanor.

History: *Ex1955 c 2 art 5 s 5; Ex1957 c 1 art 5 s 8-13; Ex1959 c 70 art 7 s 5; 1969 c 97 s 6,7; 1969 c 883 s 4-6; 1969 c 884 s 4; 1971 c 238 s 2; 1971 c 502 s 1; 1973 c 582 s 3; 1975 c 377 s 35; 1978 c 767 s 31; 1Sp1985 c 14 art 19 s 33; 1986 c 444; 1Sp1986 c 1 art 7 s 25-27; 1987 c 268 art 13 s 31-34; 1988 c 719 art 11 s 15; 1989 c 209 art 1 s 32; 1991 c 291 art 17 s 8*

297.36 REFUNDS, CREDITS.

Where tobacco products upon which the tax imposed by sections 297.31 to 297.39 has been reported and paid, are shipped or transported by the distributor to consumers, to be consumed without the state, or to retailers or subjobbers without the state, to be sold by those retailers, or subjobbers without the state, or are returned to the manufacturer by the distributor or destroyed by the distributor, refund of such tax or credit may be made to the distributor in accordance with rules prescribed by the commissioner. Any overpayment of the tax imposed under section 297.32 may be made to the taxpayer in accordance with rules prescribed by the commissioner. The commissioner of finance shall cause any such refund of tax to be paid out of the general fund, and so much of said fund as may be necessary is hereby appropriated for that purpose. Any claims for refund must be filed within three years from the due date of the return for which the refund is claimed.

History: *Ex1955 c 2 art 5 s 6; Ex1957 c 1 art 5 s 14; 1965 c 135 s 1; 1969 c 399 s 49; 1973 c 492 s 14; 1985 c 248 s 70; 1987 c 268 art 13 s 35*

297.37 INVESTIGATIONS AND HEARINGS, TESTIMONIAL POWERS.

Subdivision 1. The commissioner, or duly authorized agents, may conduct investigations, inquiries, and hearings for the purpose of enforcing the provisions of sections 297.31 to 297.39, and, in connection with such investigations, inquiries, and hearings,

the commissioner and the duly authorized agents shall have all the powers conferred upon the commissioner and examiners by section 270.06, and the provisions of that section shall apply to all such investigations, inquiries and hearings.

Subd. 2. Every hearing conducted under sections 297.31 to 297.39 shall be preceded by ten days' notice in writing of the subject of the hearing, including, in the case of suspension or revocation of a license, a statement of the nature of the charges against the licensee. The notice shall be sent by certified mail to the last known address of the licensee or other person involved in the hearing, and service shall be complete upon mailing. After every hearing the commissioner shall make findings and an order in writing. The findings and order shall be filed in the office of the commissioner, and a copy sent by mail or otherwise to the person to whom the notice was directed.

Subd. 3. The commissioner may exchange information with the officers and agencies of other states administering laws relating to the taxation of tobacco products.

Subd. 4. No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records, or memoranda in any investigation or upon any hearing, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject the person to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which the person may testify or produce evidence, documentary or otherwise, before the commissioner or an employee or agent thereof; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, pursuant to a subpoena. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

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: *Ex1955 c 2 art 5 s 7; 1965 c 698 s 1; 1976 c 134 s 78; 1977 c 307 s 29; 1978 c 674 s 60; 1978 c 767 s 32; 1983 c 247 s 127; 1986 c 444; 1990 c 480 art 1 s 46*

297.38 ENFORCEMENT.

Subdivision 1. The commissioner shall enforce the provisions of sections 297.31 to 297.39 and may prescribe rules not inconsistent with the provisions of sections 297.31 to 297.39 for its detailed and efficient administration. In the enforcement of sections 297.31 to 297.39 the commissioner may call upon any county attorney or the attorney general for assistance and may appoint such additional employees as may be required to administer sections 297.31 to 297.39. The commissioner may bring injunction proceedings to restrain any person from acting as a distributor or subjobber without complying with the provisions of sections 297.31 to 297.39.

Subd. 2. Expenses of the administration of sections 297.31 to 297.39 to be paid out of appropriations to the commissioner for the administration thereof shall include fees and expenses incurred by the attorney general and any county attorney in litigation in connection with the enforcement of sections 297.31 to 297.39 and all court costs and expenses.

History: *Ex1955 c 2 art 5 s 8; 1985 c 248 s 70; 1986 c 444*

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*

297.39 VIOLATIONS, PENALTIES.

Subdivision 1. Any person who in any manner knowingly attempts to evade the tax imposed by sections 297.31 to 297.39 or who knowingly aids or abets in the evasion or attempted evasion of the tax or who knowingly violates the provisions of section 297.33, subdivision 1, or sections 297.31 to 297.39, shall be guilty of a gross misdemeanor.

Subd. 2. Any person who otherwise violates any provisions of sections 297.31 to 297.39 shall be guilty of a misdemeanor.

History: *Ex1955 c 2 art 5 s 9*

297.40 EVASIONS; VIOLATIONS.

Subdivision 1. **Assessment, generally.** Except as otherwise provided in this chapter, the amount of any tax due shall be assessed within 3-1/2 years after a return is filed. The taxes are deemed to have been assessed within the meaning of this section whenever the commissioner of revenue has determined the tax and computed and recorded the amount of tax with respect thereto, and if the amount is found to be in excess of that originally declared on the return, whenever the commissioner has prepared a notice of tax assessment and mailed it to the taxpayer. The notice of tax assessment shall be sent by mail to the post office address given in the return and the record of the mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

Subd. 2. **Computation of time.** For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day.

Subd. 3. **False or fraudulent return and no return.** When a company, joint stock association, copartnership, corporation, or individual required to file a return under this chapter files a false or fraudulent return or fails to file a return, the tax may be assessed, and the attorney general may begin proceedings at any time.

Subd. 4. **Consent to extend time.** Where before the expiration of the time prescribed in subdivision 1 for the assessment of the tax, the commissioner of revenue and the company, joint stock association, copartnership, corporation, or individual filing the return consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Subd. 5. **Omission in excess of 25 percent.** If the taxpayer omits an amount properly includable therein which is in excess of 25 percent of the amount of tax stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax, may be begun at any time within six years after the return was filed.

History: *1984 c 522 s 12*

297.41 PERSONAL DEBT.

The tax imposed by sections 297.01 to 297.40, and interest and penalties imposed with respect to it, shall be a personal debt of the person required to file a return from the time the liability for it arises, irrespective of when the time for payment of the liability occurs. The debt shall, in the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, be that of the person in the person's official or fiduciary capacity only, unless the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties. Then the person shall be personally liable for the deficiency.

History: *1987 c 268 art 13 s 36*

297.42 FAILURE TO FILE RETURN.

If a person required by this chapter to file a return fails to do so within the time

prescribed, or makes, willfully or otherwise, an incorrect, false, or fraudulent return, the person shall, upon written notice and demand, immediately file the return, or corrected return, and at the same time pay any tax due on the basis of it. If the person fails to file the return or corrected return, the commissioner shall make a return, or corrected return, for the person from the commissioner's own knowledge and from information that the commissioner can obtain through testimony, or otherwise, and assess a tax on the basis of it. The tax (less any payments previously made on account of the tax for the taxable period covered by such return) must be paid immediately upon written notice and demand. A return or assessment made by the commissioner is prima facie correct and valid, and the person shall have the burden of establishing its incorrectness or invalidity in an action or proceeding in respect to it.

History: 1987 c 268 art 13 s 37

297.43 PENALTIES.

Subdivision 1. Penalty on unpaid tax. If a tax imposed by this chapter, or any part of it, is not paid within the time required for the payment, or an extension of time, or within 30 days after final determination of an appeal to the tax court relating to it, there shall be added to the tax a penalty equal to three percent of the amount remaining unpaid if the failure is for not more than 30 days, with an additional penalty of three percent of the amount of tax remaining unpaid during each additional 30 days or fraction thereof, not exceeding 24 percent in the aggregate.

Subd. 2. Penalty for failure to file. If a person fails to make and file a return within the time required under sections 297.07, 297.23, and 297.35, there shall be added to the tax three percent of the amount of tax not paid on or before the date prescribed for payment of the tax if the failure is for not more than 30 days, with an additional five percent of the amount of tax remaining unpaid for each additional 30 days or fraction thereof during which such failure continues, not exceeding 23 percent in the aggregate. The amount so added to any tax under this subdivision and subdivision 1 shall be collected at the same time and in the same manner and as a part of the tax and shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid, unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

In the case of a failure to file a return within 60 days of the date prescribed for filing of the return (determined with regard to any extension of time for filing), the addition to tax under this subdivision shall not be less than the lesser of (i) \$200; or (ii) the greater of (a) 25 percent of the amount required to be shown as tax on the return without reduction for any payments made or refundable credits allowable against the tax; or (b) \$50.

Subd. 3. Combined penalties. Where penalties are imposed under subdivisions 1 and 2, the penalties imposed under both subdivisions combined, other than the minimum penalty under subdivision 2, shall not exceed 38 percent in the aggregate.

Subd. 4. Willful failure; fraud. If a person willfully fails to file a return or make a payment required by this chapter, or willfully files a false or fraudulent return, or willfully attempts in any manner to evade or defeat the tax or payment of it, there shall also be imposed a penalty in an amount equal to 50 percent of the tax (less any amounts paid on the basis of the false or fraudulent return) found due for the period to which the return related. The penalty imposed by this subdivision shall be collected as part of the tax, and is in addition to any other penalties, civil and criminal, provided by this section.

Subd. 5. Order payments credited. All payments received may, in the discretion of the commissioner of revenue, be credited first to the oldest liability not secured by a judgment or lien, but in all cases shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 6. Interest. The amount of tax not timely paid, together with any penalty imposed in this section, shall bear interest at the rate specified in section 270.75 from

the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and collected as a part of it.

Subd. 7. Extension of time. The commissioner may extend the time for filing returns and remittance of tax, deficiencies, and penalties for not more than 60 days. The commissioner may require that a tentative return be filed at the time fixed for filing the regularly required return and that payment of the tax be made with it on the basis of the tentative return.

When an extension of time for payment has been granted under this section, interest shall be payable at the rate provided in section 270.75 from the date when the payment should have been made, if no extension had been granted, until the tax is paid.

Subd. 8. Civil action. The commissioner may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of the tax, interest, or penalty is not a bar to any prosecution under this chapter.

Subd. 9. Negligence; intentional disregard of law or rules. If any part of any additional assessment is due to negligence or intentional disregard of the provisions of this chapter or rules of the commissioner of revenue (but without intent to defraud), there shall be added to the tax an amount equal to ten percent of the additional assessment. The amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid.

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: 1987 c 268 art 13 s 38; 1989 c 324 s 27; 1991 c 291 art 9 s 28

297.44 TIME LIMITATIONS.

Subdivision 1. Time for assessment; notice. Except as otherwise provided in this chapter, the amount of taxes assessable with respect to a taxable period must be assessed within three years after the return for the period is filed. The taxes are considered assessed within the meaning of this section when the commissioner has prepared a notice of tax assessment and mailed it to the person required to file a return to the post office address given in the return. The record of the mailing is presumptive evidence of the giving of the notice, and the records must be preserved by the commissioner.

Subd. 2. Omission over 25 percent. If the person required to file the return omits from the return a dollar amount properly includable in it that is in excess of 25 percent of the dollar amount reported in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun, at any time within five years after the return was filed.

Subd. 3. Date of filing. For purposes of this section and section 297.36, a return filed before the last day prescribed by law for its filing is considered filed on the last day.

Subd. 4. Fraud; failure to file. In the case of a false or fraudulent return with intent to evade tax or failure with the same intent to file a return, the tax may be assessed at any time, and a proceeding in court for the collection of the tax must be begun within five years after the assessment.

Subd. 5. Collection. Where the assessment of any tax is made within the period of limitation properly applicable to it, the tax may be collected by a proceeding in court, but only if begun within five years after the date of assessment.

Subd. 6. Suspension of time; bankruptcy proceedings. The time during which a tax must be assessed or collection proceedings commenced under this chapter is suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after notice to the commissioner of revenue that the bankruptcy proceedings have been closed or dismissed, or that the automatic stay has been terminated or has expired.

The suspension of the statute of limitations under this subdivision applies to the

MINNESOTA STATUTES 1992

1525

SALES TAXES; CIGARETTES AND TOBACCO 297.44

person against whom the petition in bankruptcy is filed, and to all other persons who may be wholly or partially liable for the tax under this chapter.

History: *1988 c 719 art 11 s 16*