

CHAPTER 297F

CIGARETTES AND TOBACCO TAXES

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297F.01 DEFINITIONS.

Subdivision 1. **Applicability.** Unless the language or context clearly indicates that a different meaning is intended, the following terms for the purposes of this chapter, have the following meanings.

Subd. 2. **Business.** "Business" means any trade, occupation, activity, or enterprise engaged in selling or distributing cigarettes or tobacco products in this state.

Subd. 3. **Cigarette.** "Cigarette" means any roll for smoking made wholly or in part of tobacco, the wrapper or cover of which is made of paper or another substance or material except tobacco.

Subd. 4. **Cigarette distributor.** "Cigarette distributor" means any of the following:

(1) a 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 outside the state any packages of cigarettes for sale to subjobbers or retailers;

(2) a person engaged in the business outside this state who ships or transports cigarettes to retailers in this state, to be sold by those retailers;

(3) a 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.

Subd. 5. **Cigarette subjobber.** "Cigarette 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, sells, or distributes stamped cigarettes from a place of business other than that licensed in the distributor's license.

"Cigarette subjobber" also means a person who is a vending machine operator. A vending machine operator is a person whose principal business is operating, or owning and leasing to operators, machines for the vending of merchandise or service.

Subd. 6. **Commissioner.** "Commissioner" means the state commissioner of revenue.

Subd. 7. **Consumer.** "Consumer" means any person who has title to or possession of cigarettes or tobacco products in storage, for use or other consumption in this state.

Subd. 8. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 1996.

Subd. 9. **Licensing period.** "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.

Subd. 10. **Manufacturer.** "Manufacturer" means a person who produces and sells cigarettes or tobacco products.

Subd. 11. **Package.** "Package" means the individual packet, box, or other container used to contain and convey cigarettes to the consumer.

Subd. 12. **Person.** "Person" means an individual or any entity engaged in the sale of cigarettes or tobacco products.

Subd. 13. **Place of business.** "Place of business" means a place where cigarettes or tobacco products are sold or where cigarettes or tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

Subd. 14. **Retailer.** "Retailer" means a person engaged in this state in the business of selling, or offering to sell, cigarettes or tobacco products to consumers.

Subd. 15. **Retail outlet.** "Retail outlet" means each place of business from which cigarettes or tobacco products are sold to consumers.

Subd. 16. **Sale.** "Sale" means a transfer, exchange, or barter, in any manner or by any means, for consideration, and includes all sales made by any person. It also includes gifts or samples provided for advertising or promotional purposes, made by a person engaged in the selling of cigarettes or tobacco products.

Subd. 17. **Stamp.** "Stamp" means the adhesive stamp supplied by the commissioner of revenue for use on cigarette packages.

Subd. 18. **Storage.** "Storage" means any keeping or retention of cigarettes or tobacco products for use or consumption in this state.

Subd. 19. **Tobacco products.** "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 tobacco; 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 does not include cigarettes as defined in this section.

Subd. 20. **Tobacco products distributor.** "Tobacco products distributor" means any of the following:

- (1) a person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;
- (2) a person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;
- (3) a person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

Subd. 21. **Tobacco products subjobber.** "Tobacco products subjobber" means a 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. 22. **Use.** "Use" means the exercise of a right or power incidental to the ownership of cigarettes or tobacco products.

Subd. 23. **Wholesale price.** "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

History: 1997 c 106 art 1 s 1

297F.02 ADMINISTRATION.

Subdivision 1. **Duties of commissioner.** The commissioner shall enforce the provisions of this chapter and may prescribe rules consistent with the provisions of this chapter for its detailed and efficient administration.

In the enforcement of this chapter, 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 this chapter. The commissioner may bring injunction proceedings to restrain any person from acting as a distributor without complying with the provisions of this chapter.

Subd. 2. **Powers of commissioner.** The commissioner, or duly authorized agents, may conduct investigations, inquiries, and hearings under this chapter 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. 3. **Expenses of administration.** Expenses for the administration of this chapter shall be paid out of appropriations to the commissioner for the administration of this chapter and shall include fees and expenses incurred by the attorney general and any county attorney in litigation in connection with the enforcement of this chapter. Expenses also include all court costs and expenses.

History: 1997 c 106 art 1 s 2

297F.03 LICENSES; CIGARETTE AND TOBACCO PRODUCTS DISTRIBUTOR AND SUBJOBBER.

Subdivision 1. **Selling without license illegal.** 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. **Form of application.** Every application for a cigarette or tobacco products 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 any other information the commissioner may require for the administration of this chapter.

Subd. 3. **Place of application.** A separate application for a distributor's license shall be made for each place of business at which a distributor proposes to engage in business.

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 stamped cigarettes or tobacco products.

Subd. 4. **Nonresident application.** A person outside this state who ships or transports cigarettes or tobacco products to retailers in this state, to be sold by those retailers, shall make an application for a distributor's license, be granted such a license by the commissioner, and thereafter be subject to all the provisions of this chapter.

Subd. 5. **License fees; cigarettes.** Each application for a cigarette distributor's license must be accompanied by a fee of \$300. Each application for a cigarette subjobber's license must 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 is required to pay only one-half of the license fee.

Subd. 6. **License fees; tobacco products.** Each application for a tobacco products distributor's license must be accompanied by a fee of \$75. Each application for a tobacco products subjobber's license must be accompanied by a fee of \$20. A distributor or subjobber applying for a license during the second year of a two-year licensing period is required to pay only one-half of the license fee.

Subd. 7. **Issuance of license.** The commissioner, upon receipt of the application in proper form, and payment of the license fee required by this chapter, shall, unless otherwise provided by this chapter, issue the applicant a license in the form prescribed by the commissioner. The license permits the applicant to engage in business as a distributor or subjobber at the place of business shown in the application.

Subd. 8. **Licensing period; expiration.** The licensing period begins January 1 of an even-numbered year and ends on December 31 of the following year. 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. 9. **Display.** Each license must be prominently displayed on the premises covered by the license.

Subd. 10. **Transfer.** Licenses are not transferable to any other person.

History: 1997 c 106 art 1 s 3

297F.04 LICENSE SUSPENSION OR REVOCATION.

Subdivision 1. **Powers of commissioner.** The commissioner may revoke or suspend the license or licenses of any distributor or subjobber for violation of this chapter, any other act applicable to the sale of cigarettes or tobacco products, or any rule promulgated by the commissioner, in furtherance of this chapter. The commissioner may also revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of sections 325D.30 to 325D.42.

Subd. 2. **Refusal to issue or renew; revocation:** The commissioner must not issue or renew a license under this chapter, and may revoke a license under this chapter, if the applicant or licensee:

- (1) owes \$500 or more in delinquent taxes as defined in section 270.72, subdivision 2;
- (2) after demand, has not filed tax returns required by the commissioner;
- (3) had a cigarette or tobacco license revoked by the commissioner within the past two years;
- (4) had a sales and use tax permit revoked by the commissioner within the past two years; or
- (5) has been convicted of a crime involving cigarettes, including but not limited to: selling stolen cigarettes or tobacco products, receiving stolen cigarettes or tobacco products, or involvement in the smuggling of cigarettes or tobacco products.

Subd. 3. **Notice.** No license may be revoked or suspended under this chapter, and no application for a license may be denied under this chapter, except after 20 days' notice. In that notice the commissioner shall specify the allegations against the licensee or applicant, and provide the licensee or applicant the right to request in writing within 20 days a contested case hearing as provided in chapter 14.

If a written request for a hearing is received by the department of revenue within 20 days of the date of the initial notice, the hearing must be held within 45 days after referral to the office of administrative hearings, and no earlier than 20 days after notice to the licensee or applicant of the hearing time and place. A license is revoked or suspended, and an application is denied, when the commissioner serves notice of revocation, suspension, or denial after 20 days have passed following the initial notice under this paragraph without a request for hearing being made, or if a hearing is held, after the commissioner serves an order of revocation, suspension, or denial under section 14.62, subdivision 1. All notices under this paragraph may be served personally or by mail.

History: 1997 c 106 art 1 s 4

297F.05 RATES OF TAX; PERSONAL DEBT.

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

- (1) on cigarettes weighing not more than three pounds per thousand, 24 mills on each such cigarette; and
- (2) on cigarettes weighing more than three pounds per thousand, 48 mills on each such cigarette.

Subd. 2. **Distribution of free sample packages.** A person who distributes free packages of cigarettes is liable for the payment of tax under this chapter.

Subd. 3. **Rates; tobacco products.** A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor, at the rate of 35 percent of the wholesale sales price of the tobacco products. The tax is imposed at the time the distributor:

- (1) brings, or causes to be brought, into this state from outside 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. 4. **Use tax; tobacco products.** A tax is 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 to the consumer of the tobacco products.

Subd. 5. **Tax as personal debt.** The tax imposed by this chapter, and interest and penalties imposed with respect to it, is a personal debt of the person required to file a return from the time the liability for it arises, regardless of when the time for payment of the liability occurs. In the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, the debt is 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. In that case, the person is personally liable for the deficiency.

Subd. 6. **Tax construction.** The tax imposed by this section is not a cost of doing business or an overhead expense under section 325D.01, subdivision 7.

Subd. 7. **Tax; sales by state.** The state of Minnesota or any of its agencies, instrumentalities, or governmental subdivisions is subject to the tax imposed by this chapter on all cigarettes or tobacco products sold, in the same manner as distributors, if such unit is engaged in the purchase and sale of cigarettes or tobacco products.

History: 1997 c 106 art 1 s 5

297F.06 EXEMPTIONS FROM TAX.

Subdivision 1. **Federal laws.** The tax imposed by this section does not apply with respect to any sale of cigarettes or tobacco products which under the constitution and laws of the United States may not be subject to taxation by the state.

Subd. 2. **Use tax.** The use tax does not apply if the tax imposed on cigarettes or tobacco products has been paid.

Subd. 3. **Cigarette use tax.** The cigarette use tax does not apply to the use or storage of cigarettes in quantities of 200 or fewer in the possession of any one consumer, provided that the cigarettes were carried into this state by that consumer.

Subd. 4. **Tobacco products use tax.** The tobacco products use tax does not apply to the use or storage of tobacco products in quantities of:

- (1) not more than 50 cigars;
- (2) not more than ten ounces snuff or snuff powder;
- (3) not more than one pound smoking or chewing tobacco or any other tobacco product in the possession of any one consumer.

Subd. 5. **Ocean-going vessels.** The commissioner may adopt 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 the cigarettes are also exempt from the taxes imposed on cigarettes by the United States government.

History: 1997 c 106 art 1 s 6

297F.07 SALES TO INDIAN TRIBES.

Subdivision 1. **Wholesalers.** A wholesaler may set aside the part of the wholesaler's cigarette and tobacco product 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 amount of unstamped or untaxed stock that wholesalers may deliver to an Indian reservation is limited to amounts necessary to meet the personal consumption needs of qualified purchasers. The unstamped stock must be kept separate and apart from stamped stock. When shipping or delivering unstamped or 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 shall 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 or untaxed stock intended for sale to qualified purchasers.

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

Subd. 4. **Sales to nonqualified buyers.** A retailer who sells or otherwise disposes of unstamped or untaxed stock other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by section 297F.05, and remit the tax to the department of revenue at the same time and manner as required by section 297F.09. 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 product destined to be delivered to the retailer. The product so seized shall be considered contraband and be subject to the procedures outlined in section 297F.21, subdivision 3. The proceeds of the sale of the stock 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 unstamped or untaxed stock from personal liability for the tax.

History: 1997 c 106 art 1 s 7.

297F.08 CIGARETTE STAMPS.

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

Subd. 2. **Tax due; cigarettes.** Notwithstanding any other provisions of this chapter, the tax due on the return is based upon actual heat-applied stamps purchased during the reporting period.

Subd. 3. **Time of affixing stamp.** In all cases where cigarettes are shipped into this state by any licensed distributor from outside this state, the appropriate stamps must be affixed to packages at the time the package enters the state.

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

Subd. 5. **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. **Section 16A.56 superseded.** The provisions of this chapter prescribing the powers and duties of the commissioner with relation to stamps supersede all the provisions of section 16A.56 in conflict.

Subd. 7. **Price 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 0.6 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. 8. **Sale of stamps.** The commissioner may sell heat-applied stamps on a credit basis under conditions prescribed by the commissioner. The commissioner shall sell the stamps at a price which includes the tax after giving effect to the discount provided in subdivi-

vision 7. The commissioner shall recover the actual costs of the stamps from the distributor. The commissioner shall annually establish the maximum amount of heat-applied stamps that may be purchased each month.

Subd. 9. **Tax stamping machines.** 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 also 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 7. 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.

Subd. 10. **Resale or transfer of stamps prohibited.** No distributor shall resell or transfer any stamps purchased by the distributor from the commissioner. A distributor may transfer another state's stamped cigarettes to another distributor for the purpose of resale in the other state. A distributor who has on hand any uncanceled stamps at the time of discontinuing the business of selling cigarettes 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. 11. **Railroad or sleeping car company as a distributor.** The commissioner may authorize a railroad or sleeping car company licensed as a distributor to sell cigarettes on its cars without affixing stamps to the packages, provided that monthly reports and payments of the tax due subject to the discount in subdivision 7 must 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.

History: 1997 c 106 art 1 s 8

297F.09 RETURNS; PAYMENT OF TAX.

Subdivision 1. **Monthly return; cigarette distributor.** On or before the 18th day of each calendar month, a 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 outside 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. A 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 must be made in the form and manner prescribed by the commissioner and must contain any other information required by the commissioner. The return must be accompanied by a remittance for the full unpaid tax liability shown by it. The return for the May liability and 75 percent of the estimated June liability is due on the date payment of the tax is due.

Subd. 2. **Monthly return; tobacco products distributor.** On or before the 18th day of each calendar month, a 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 must be made in the form and manner prescribed by the commissioner and must contain any other information required by the commissioner. The return must be accompanied by a remittance for the full tax liability shown, less 1.5 percent of the liability as compensation to reimburse

the distributor for expenses incurred in the administration of this chapter. The return for the May liability and 75 percent of the estimated June liability is due on the date payment of the tax is due.

Subd. 3. Use tax return; cigarette or tobacco products consumer. On or before the 18th day of each calendar month, a consumer who, during the preceding calendar month, has acquired title to or possession of cigarettes or tobacco products for use or storage in this state, upon which cigarettes or tobacco products the tax imposed by this chapter has not been paid, shall file a return with the commissioner showing the quantity of cigarettes or tobacco products so acquired. The return must be made in the form and manner prescribed by the commissioner, and must contain any other information required by the commissioner. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.

Subd. 4. Tax provisions applicable to consumers. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collection of taxes, apply to consumers.

Subd. 5. 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 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 is 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. 6. Accelerated tax payment; cigarette or tobacco products distributor. A cigarette or tobacco products distributor having a liability of \$120,000 or more during a fiscal year ending June 30, shall remit the June liability for the next year in the following manner:

(a) Two business days before June 30 of the year, the distributor shall remit the actual May liability and 75 percent of the estimated June liability to the commissioner and file the return in the form and manner prescribed by the commissioner.

(b) On or before August 18 of the year, the distributor shall submit a return showing the actual June liability and pay 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:

- (1) 70 percent of the actual June liability; or
- (2) 75 percent of the preceding May's liability.

Subd. 7. Electronic funds transfer. A cigarette or tobacco products distributor having a liability of \$120,000 or more during a fiscal year ending June 30 must remit all liabilities in the subsequent calendar year by means of a fund 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 day immediately following the date the tax is due.

Subd. 8. Order payments credited. All payments received may, in the discretion of the commissioner, be credited first to the oldest liability not secured by a judgment or lien, but in all cases must be credited first to penalties, next to interest, and then to the tax due.

Subd. 9. Interest. The amount of tax not timely paid, together with any penalty imposed in this section, bears interest at the rate specified in section 270.75 from the time such tax should have been paid until paid. Any interest and penalty is added to the tax and collected as a part of it.

History: 1997 c 106 art 1 s 9

297F.10 DEPOSIT OF PROCEEDS.

Subdivision 1. Tax and use tax on cigarettes. Revenue received from cigarette taxes, as well as related penalties, interest, license fees, and miscellaneous sources of revenue shall be deposited by the commissioner 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; and

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

Subd. 2. Tax and use tax on tobacco products. Revenue received from taxes on tobacco products, as well as related penalties, interest, and license fees shall be deposited by the commissioner in the state treasury and credited to the general fund.

History: 1997 c 106 art 1 s 10

297F.11 INFORMATIONAL REPORTS; CIGARETTES.

Subdivision 1. General rule. The following persons shall file with the commissioner a monthly informational report in the form and manner prescribed by the commissioner:

(1) a distributor licensed to ship cigarettes into Minnesota;

(2) a person who manufactures cigarettes within the state;

(3) any other person who imports cigarettes into Minnesota; and

(4) a person who possesses, receives, stores, or warehouses cigarettes in Minnesota, upon which the tax imposed by this chapter has not been paid.

The requirement of filing an informational report does not apply to a person conveying or possessing cigarettes described in this chapter, nor to any lawful manufacture of cigarettes within the state for personal consumption.

Subd. 2. Filing dates; failure to file. No payment of any tax is required to be remitted with the report required under subdivision 1. The report must be filed on or before the tenth day following the end of each calendar month, regardless of whether or not the person shipped, manufactured, possessed, received, stored, or warehoused any cigarettes into or within Minnesota during the previous month, unless the commissioner determines that a longer filing period is appropriate for a particular person.

Subd. 3. Common carriers. 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, licensed under the provisions of chapter 231. The reports must be filed monthly on or before the tenth day of each month and must 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 any other information the commissioner requires.

A common carrier or a contract carrier transporting cigarettes into Minnesota shall permit examination by the commissioner of its records relating to the shipment of cigarettes.

Subd. 4. Cigarette consumers. A person who files a cigarette consumer return as required by this chapter may fulfill the requirements of this section by indicating on the cigarette consumer's return which of the items reported on the return were transported into the state by the consumer. The requirement of filing an informational report does not apply to consumers who import fewer than 200 cigarettes into this state.

History: 1997 c 106 art 1 s 11

297F.12 INFORMATIONAL REPORTS; TOBACCO PRODUCTS.

Subdivision 1. General rule. The transportation of tobacco products into this state by means other than common carrier must be reported to the commissioner within 30 days with the following exceptions:

(1) 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;

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

The report must be made in the form and manner prescribed by the commissioner.

Subd. 2. **Common carriers.** 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, licensed under the provisions of chapter 231. The reports must be filed monthly 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 any other information required by the commissioner.

A common carrier transporting tobacco products into Minnesota shall permit examination by the commissioner of its records relating to the shipment of tobacco products.

Subd. 3. **Manufacturers.** A manufacturer of tobacco products as defined by this chapter shall report in the form and manner 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 day of the month following the reporting period.

History: 1997 c 106 art 1 s 12

297F.13 REQUIRED RECORDS.

Subdivision 1. **Cigarette distributor.** (a) A distributor shall keep at each licensed place of business complete and accurate records for that place of business. The records must include: itemized invoices of cigarettes held, purchased, manufactured, or brought in or caused to be brought in from outside the state, and all sales of cigarettes made, except sales to the ultimate consumer. These records must show the names and addresses of purchasers, the inventory of all stamps affixed and unaffixed and all cigarettes on hand at the close of each period for which a return is required, and any other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes.

(b) A distributor or subjobber who sells cigarettes at retail must maintain a separate inventory, substantiated with invoices for cigarettes that were acquired for retail sale.

(c) When a licensed distributor sells cigarettes exclusively to the ultimate consumer at the address given in the license, no invoice of those sales is required, but itemized invoices must be made of all cigarettes transferred to other retail outlets owned or controlled by that licensed distributor.

(d) All books, records, and other documents required by this chapter shall be preserved for a period of at least 3-1/2 years after the date of the documents or the date of the entries appearing in the records, unless the commissioner in writing authorizes their destruction or disposal at an earlier date.

(e) To determine whether the distributor is in compliance with the provisions of this chapter, at any time during usual business hours the commissioner, or duly authorized agents or employees, may enter a place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the packages of cigarettes and the vending devices in that place of business. If the commissioner, or an agent or employee of the commissioner, is denied free access or is hindered or interfered with in making the examination, the commissioner may revoke the distributor's license.

Subd. 2. **Tobacco products distributor.** (a) A 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 outside the state, or shipped or transported to retailers in this state, and all sales of tobacco products made, except sales to the ultimate consumer.

(b) When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, no invoice of those sales is required, but itemized invoices must be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor.

(c) All books, records, and other documents required by this chapter must be preserved for a period of at least 3-1/2 years after the date of the documents or the date of the entries

appearing in the records, unless the commissioner authorizes in writing their destruction or disposal at an earlier date.

(d) To determine whether the distributor is in compliance with the provisions of this chapter, at any time during usual business hours the commissioner, or duly authorized agents or employees, may enter a place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products in that place of business. If the commissioner, or an agent or employee of the commissioner, is denied free access or is hindered or interfered with in making the examination, the commissioner may revoke the distributor's license.

Subd. 3. Distributor to preserve copies of invoices. A person who sells cigarettes or 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 3-1/2 years from the date of the sale.

Subd. 4. Retailer and subjobber to preserve purchase invoices. Every retailer and subjobber shall procure itemized invoices of all cigarettes or 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 invoice for one year from the date of purchase. Copies should be numbered and kept in chronological order.

To determine whether the business is in compliance with the provisions of this chapter and sections 325D.30 to 325D.42, at any time during usual business hours, the commissioner, or duly authorized agents and employees, may enter any place of business of a retailer or subjobber without a search warrant and inspect the premises, the records required to be kept under this chapter, and the packages of cigarettes, tobacco products, and vending devices contained on the premises.

Subd. 5. Cigarettes and tobacco products; records of delivery and shipment. Records of all deliveries or shipments of cigarettes or tobacco products from any public warehouse of first destination in this state (which is subject to the provisions of and licensed under chapter 231), must be kept by the warehouse and made available to the commissioner for inspection. The records must show the name and address of the consignee, the date, the quantity of cigarettes or tobacco products delivered, and any other information required by the commissioner. These records must be preserved for one year from the date of delivery of the cigarettes or tobacco products.

History: 1997 c 106 art 1 s 13

297F.14 REFUNDS.

Subdivision 1. General right to refund. If cigarettes or tobacco products, upon which the tax imposed by this chapter has been reported and paid, are shipped or transported by the distributor to consumers to be consumed outside the state, or to retailers or subjobbers outside the state to be sold by those retailers or subjobbers outside the state, or are returned to the manufacturer by the distributor, or destroyed by the distributor, refund of the tax or credit may be made to the distributor.

Subd. 2. Overpayment of tax. An overpayment of the tax imposed under this chapter may be refunded to the taxpayer.

Subd. 3. Credit against tax. The commissioner may credit the amount determined under this section against taxes otherwise payable under this chapter by the taxpayer.

Subd. 4. Bad debt. The commissioner may adopt rules providing a refund of the tax paid under this chapter if the tax paid qualifies as a bad debt under section 166(a) of the Internal Revenue Code.

Subd. 5. Source of refund; cigarettes. The commissioner of finance shall pay the cigarette tax refund out of the general fund. The refunds are apportioned to the same accounts and funds in the general fund to which the tax payments were deposited, except no refunds may be apportioned to the general obligation special tax bond debt service account.

Subd. 6. Source of refund; tobacco products. The commissioner of finance shall pay the tobacco products tax refund out of the general fund.

Subd. 7: **Annual appropriation.** There is appropriated annually from the general fund to the commissioner of finance the amount necessary to make the refunds provided by this section.

History: 1997 c 106 art 1 s 14

297F.15 EXAMINATIONS AND AUDITS.

Subdivision 1. **Examination of taxpayer.** To determine the accuracy of a return or a report, or for the purpose of collection, or in fixing liability or verifying information under any tax under this chapter, the commissioner may make reasonable examinations or investigations of a taxpayer's place of business, tangible personal property, equipment, computer systems and facilities, pertinent books, records, papers, vouchers, computer printouts, accounts, and documents.

Subd. 2. **Access to records.** When conducting an investigation or an audit of a taxpayer, or for the purpose of collection, or in fixing liability or verifying information under any tax under this chapter, the commissioner may examine, except where privileged by law, the relevant records and files of any person, business, institution, financial institution, state agency, agency of the United States government, or agency of any other state where permitted by statute, agreement, or reciprocity. The commissioner may compel production of these records by subpoena. A subpoena may be served directly by the commissioner.

Subd. 3. **Power to compel testimony.** In the administration of any tax under this chapter, the commissioner may:

(1) administer oaths or affirmations and compel by subpoena the attendance of witnesses, testimony, and the production of a person's pertinent books, records, papers, and other data for inspection and copying;

(2) examine under oath or affirmation any person regarding the business of any taxpayer concerning any relevant matter incident to the administration of any tax under this chapter. The fees of witnesses required by the commissioner to attend a hearing are equal to those allowed to witnesses appearing before courts of this state. The fees must be paid in the manner provided for the payment of other expenses incident to the administration of any tax under this chapter; and

(3) in addition to other remedies that may be available, bring an action in equity by the state against a taxpayer for an injunction ordering the taxpayer to file a complete and proper return or amended return. The district courts of this state have jurisdiction over the action and disobedience of an injunction issued under this clause may be punished as a contempt of district court.

Subd. 4. **Third-party subpoena where taxpayer's identity is known.** An investigation may extend to a person that the commissioner determines has access to information that may be relevant to the examination or investigation. When a subpoena requiring the production of records as described in subdivision 2 is served on a third-party recordkeeper, written notice of the subpoena must be mailed to the taxpayer and to any other person who is identified on the subpoena. The notices must be given within three days of the day on which the subpoena is served. Notice to the taxpayer required by this section is sufficient if it is mailed to the last address on record with the commissioner. The provisions of this subdivision relating to notice to the taxpayer or other parties identified in the subpoena do not apply if there is reasonable cause to believe that the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

Subd. 5. **Third-party subpoena where taxpayer's identity is not known.** A subpoena that does not identify the person or persons whose tax liability is investigated may be served only if:

(1) the subpoena relates to the investigation of a particular person or an ascertainable group or class of persons;

(2) there is reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with the tax laws administered by the commissioner;

(3) the information sought to be obtained from the examination of the records, and the identity of the person or persons with respect to whose liability the subpoena is issued, is not readily available from other sources;

(4) the subpoena is clear and specific concerning the information sought to be obtained; and

(5) the information sought to be obtained is limited solely to the scope of the investigation.

The party served with a subpoena that does not identify the person or persons with respect to whose tax liability the subpoena is issued may, within 20 days after service of the subpoena, petition the district court in the judicial district in which that party is located for a determination whether the commissioner has complied with all the requirements in clauses (1) to (5), and thus, whether the subpoena is enforceable. If no petition is made by the party served within the time prescribed, the subpoena has the effect of a court order.

Subd. 6. Request by taxpayer for subpoena. When the commissioner has the power to issue a subpoena for investigative or auditing purposes, the commissioner shall honor a reasonable request by the taxpayer to issue a subpoena on the taxpayer's behalf in connection with the investigation or audit.

Subd. 7. Application to court for enforcement of subpoena. Disobedience of subpoenas issued under this section shall be punished by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court.

Subd. 8. Cost of production of records. The cost of producing records of a third party required by a subpoena must be paid by the taxpayer, if the taxpayer requests the subpoena to be issued, or if the taxpayer has the records available but has refused to provide them to the commissioner. In other cases when the taxpayer cannot produce records and the commissioner then initiates a subpoena for third-party records, the commissioner shall pay the reasonable cost of producing the records. The commissioner may later assess the reasonable costs against the taxpayer if the records contribute to the determination of an assessment of tax against the taxpayer.

Subd. 9. Physical inventory. The commissioner or the commissioner's authorized agents may, as considered necessary, require a cigarette or tobacco products distributor to furnish a physical inventory of all cigarettes or tobacco products in stock. The inventory must contain the information that the commissioner requests and must be certified by an officer of the corporation.

Subd. 10. Offset. Upon audit, if a distributor's return reflects an overage resulting from an inventory counting error, the overage shall be offset against a shortage, if any, in the month immediately preceding the month of the overage. If any overage remains after that offset, the remainder may only be offset against a shortage, if any, in the month immediately following the month of the overage. If the commissioner determines that the overage is attributable to a mistake by the distributor other than an inventory counting error, the commissioner may permit the overage to be offset against a shortage in any month or months during the 12-month period immediately following the month when the overage was discovered upon audit.

History: 1997 c 106 art 1 s 15

297F.16 ASSESSMENTS.

Subdivision 1. General rule. The commissioner shall make determinations, corrections, and assessments with respect to any tax under this chapter, including interest, additions to taxes, and assessable penalties.

Subd. 2. Commissioner filed returns. If a taxpayer fails to file a required return, the commissioner, from information in the commissioner's possession or obtainable by the commissioner, may make a return for the taxpayer. The return is prima facie correct and valid. The commissioner may use statistical or other sampling techniques consistent with generally accepted auditing standards in examining returns or records and making assessments.

Subd. 3. Order of assessment; notice and demand to taxpayer. (a) When a return has been filed and the commissioner determines that the tax disclosed by the return is different

than the tax determined by the examination, the commissioner shall send an order of assessment to the taxpayer. When no return has been filed, the commissioner may make a return for the taxpayer under subdivision 2 or may send an order of assessment under this subdivision. The order must explain the basis for the assessment and must explain the taxpayer's appeal rights. An order of assessment is final when made but may be reconsidered by the commissioner under this chapter.

(b) Penalties under this chapter are not imposed and no collection action can be taken, including the filing of liens under section 270.69, if the amount shown on the order is paid to the commissioner:

(1) within 60 days after notice of the amount and demand for its payment have been mailed to the taxpayer by the commissioner; or

(2) if an administrative appeal is filed under this chapter, or a tax court appeal is filed under chapter 271, within 60 days following final determination of the appeal if the appeal is based upon a constitutional challenge to the tax, and if not, when the decision of the tax court is made.

Subd. 4. Erroneous refunds or credits. An erroneous refund or credit is considered an underpayment of tax on the date made. An assessment of a deficiency arising out of an erroneous refund or credit must be made within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed within the extended time, or two years from the time the tax is paid in full, whichever period expires later.

Subd. 5. Assessment presumed valid. A return or assessment of tax made by the commissioner is prima facie correct and valid. The taxpayer has the burden of establishing its incorrectness or invalidity in any related action or proceeding.

Subd. 6. Aggregate refund or assessment. The commissioner, on examining returns of a taxpayer for more than one year or period, may issue one order covering the period under examination that reflects the aggregate refund or additional tax due.

Subd. 7. Sufficiency of notice. An order of assessment, sent postage prepaid by United States mail to the taxpayer at the taxpayer's last known address, is sufficient even if the taxpayer is deceased or is under a legal disability, or, in the case of a corporation, has terminated its existence, unless the department has been provided with a new address by a party authorized to receive notices of assessment.

History: 1997 c.106 art 1 s 16

297F.17 LIMITATIONS ON TIME FOR ASSESSMENT OF TAX.

Subdivision 1. General rule. Except as otherwise provided in this chapter, the amount of any tax due must be assessed within 3-1/2 years after a return 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 notice of tax assessment must be sent by mail to the post office address given in the return and the record of the mailing is presumptive evidence of the giving of such notice, and such records must be preserved by the commissioner.

Subd. 2. Date of filing. For purposes of this chapter, a return filed before the last day prescribed by law for its filing is considered filed on the last day.

Subd. 3. False or fraudulent return or claim for refund; no return. When a person required to file a return under this chapter files a false or fraudulent return or claim for refund, or fails to file a return, the tax may be assessed, and a proceeding in court for the collection of such tax may be begun at any time.

Subd. 4. 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 6-1/2 years after the return was filed.

Subd. 5. Time limit for refunds. Unless otherwise provided in this chapter, a claim for a refund of an overpayment of tax must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed

within the extended time, or one year after the date of assessment, whichever period expires later.

Subd. 6. **Time limit for bad debt deduction.** 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 subdivision are subject to the notice requirements of section 289A.38, subdivision 7.

Subd. 7. **Consent to extend time.** If before the expiration of the time prescribed in this section for the assessment of the tax, the commissioner and the person 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. 8. **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 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 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: 1997 c 106 art 1 s 17

297F.18 INTEREST.

Subdivision 1. **Interest rate.** When interest is required under this section, interest is computed at the rate specified in section 270.75.

Subd. 2. **Late payment.** If a tax under this chapter is not paid within the time named by law for payment, the unpaid tax bears interest from the date the tax should have been paid until the date the tax is paid.

Subd. 3. **Extensions.** When an extension of time for payment has been granted, interest must be paid from the date the payment should have been made, if no extension had been granted, until the date the tax is paid.

Subd. 4. **Additional assessments.** When a taxpayer is liable for additional taxes because of a redetermination by the commissioner, or for any other reason, the additional taxes bear interest from the time the tax should have been paid, without regard to an extension allowed, until the date the tax is paid.

Subd. 5. **Erroneous refunds.** In the case of an erroneous refund, interest begins to accrue from the date the refund was paid unless the erroneous refund results from a mistake of the department, in which case no interest or penalty is imposed; unless the deficiency assessment is not satisfied within 60 days of the order.

Subd. 6. **Interest on judgments.** Notwithstanding section 549.09, if judgment is entered in favor of the commissioner with regard to any tax under this chapter, the judgment bears interest at the rate given in section 270.75 from the date the judgment is entered until the date of payment.

Subd. 7. **Interest on penalties.** (a) A penalty imposed under section 297F.19, subdivisions 2 to 7, bears interest from the date the return or payment was required to be filed or paid, including any extensions, to the date of payment of the penalty.

(b) A penalty not included in paragraph (a) bears interest only if it is not paid within ten days from the date of the notice. In that case interest is imposed from the date of notice to the date of payment.

History: 1997 c 106 art 1 s 18.

297F.19 CIVIL PENALTIES.

Subdivision 1. **Civil action; general rule.** The commissioner may recover the amount of any tax due and unpaid under this chapter, as well as 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. 2. Penalty for failure to pay tax. If a tax imposed by this chapter is not paid within the time specified for payment, a penalty is added to the amount required to be shown as tax. The penalty is five percent of the tax not paid on or before the date specified for payment of the tax if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

Subd. 3. Penalty for failure to make and file return. If a taxpayer fails to make and file a return within the time prescribed, including an extension, a penalty of five percent of the amount of tax not timely paid is added to the tax.

Subd. 4. Combined penalties. When penalties are imposed under subdivisions 2 and 3, the penalties imposed under both subdivisions combined must not exceed 20 percent in the aggregate.

Subd. 5. Penalty for intentional disregard of law or rules. If part of an additional assessment is due to negligence or intentional disregard of the provisions of the applicable tax laws or rules of the commissioner, but without intent to defraud, there must be added to the tax an amount equal to ten percent of the additional assessment.

Subd. 6. Penalty for repeated failures to file returns or pay taxes. If there is a pattern by a person of repeated failures to timely file returns or timely pay taxes; and written notice is given that a penalty will be imposed if such failures continue, a penalty of 25 percent of the amount of the tax not timely paid as a result of each such subsequent failure is added to the tax. The penalty can be abated under the abatement authority in section 270.07, subdivisions 1, paragraph (e), and 6.

Subd. 7. Penalty for false or fraudulent return; evasion. If a person files a false or fraudulent return, or attempts in any manner to evade or defeat a tax or payment of tax, there is imposed on the person a penalty equal to 50 percent of the tax due for the period to which the return related, less amounts paid by the person on the basis of the false or fraudulent return.

Subd. 8. Payment of penalties. The penalties imposed by this section are collected and paid in the same manner as taxes.

Subd. 9. Penalties are additional. The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

History: 1997, c 106 art 1 s 19; 1Sp1997 c 5 s 32

297F.20 CRIMINAL PENALTIES.

Subdivision 1. Penalties for failure to file or pay. (a) A person required to file a return, report, or other document with the commissioner who fails to do so is guilty of a misdemeanor.

(b) A person required to pay or to collect and remit a tax under this chapter, who fails to do so when required, is guilty of a misdemeanor.

Subd. 2. Penalties for knowing failure to file or pay. (a) A person required to file a return, report, or other document with the commissioner, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.

(b) A person required to pay or to collect and remit a tax under this chapter, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.

Subd. 3. False or fraudulent returns; penalties. (a) A person who files with the commissioner a return, report, or other document, known by the person to be fraudulent or false concerning a material matter, is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the return, report, or other document, is guilty of a felony.

Subd. 4. **Counterfeiting.** Any person who makes, alters, forges, or counterfeits a stamp, or who possesses an altered, forged, or counterfeit stamp is guilty of a felony.

Subd. 5. **Unstamped cigarettes; presumption.** (a) Except as provided in paragraph (b), 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 this chapter, it is presumed that those cigarettes are kept there or held by that person illegally.

(b) This presumption does 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, 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 broken, and when they are intended for personal use and not to be sold or offered for sale;

(5) cigarettes sold under circumstances in which the tax cannot legally be imposed because of the laws or Constitution of the United States.

Subd. 6. **Unstamped cigarettes; untaxed tobacco products.** (a) A person who possesses, receives, or transports more than 200 but fewer than 5,000 unstamped cigarettes, or up to \$100 worth of untaxed tobacco products is guilty of a misdemeanor.

(b) A person who possesses, receives, or transports 5,000 or more, but fewer than 20,001 unstamped cigarettes, or up to \$500 worth of untaxed tobacco products is guilty of a gross misdemeanor.

(c) A person who possesses, receives, or transports more than 20,000 unstamped cigarettes, or \$500 or more worth of untaxed tobacco products is guilty of a felony.

Subd. 7. **Sale of cigarette packages with Indian stamp.** (a) A retailer doing business off of an Indian reservation who sells or offers to sell more than 200 but fewer than 5,000 cigarettes with Indian stamps is guilty of a misdemeanor.

(b) A retailer doing business off of an Indian reservation who sells or offers to sell 5,000 or more, but fewer than 20,001 cigarettes with Indian stamps is guilty of a gross misdemeanor.

(c) A retailer doing business off of an Indian reservation who sells or offers to sell more than 20,000 cigarettes with Indian stamps is guilty of a felony.

Subd. 8. **Sales after license revocation.** A person selling cigarettes or tobacco products after the person's license has been revoked is guilty of a felony.

Subd. 9. **Purchases from unlicensed sellers.** (a) A retailer, subjobber, or consumer who purchases from an unlicensed seller more than 200 but fewer than 5,000 cigarettes or up to \$100 worth of tobacco products is guilty of a misdemeanor.

(b) A retailer, subjobber, or consumer who purchases from an unlicensed seller 5,000 or more, but fewer than 20,001 cigarettes or up to \$500 worth of untaxed tobacco products is guilty of a gross misdemeanor.

(c) A retailer, subjobber, or consumer who purchases from an unlicensed seller more than 20,000 cigarettes or \$500 or more worth of tobacco products is guilty of a felony.

Subd. 10. **Penalties are additional.** Criminal penalties imposed by this section are in addition to any civil penalties imposed by this chapter.

Subd. 11. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon a criminal offense named in this section, in the proper court within six years after the offense is committed.

Subd. 12. **Other penalties.** A violation of this chapter unless otherwise specified is a misdemeanor.

History: 1997 c 106 art 1 s 20

297F.21. CONTRABAND.

Subdivision 1. **Contraband defined.** The following are declared to be contraband and therefore subject to civil and criminal penalties under this chapter:

(a) Cigarette packages which do not have stamps affixed to them as provided in this chapter, including but not limited to (i) packages with illegible stamps and packages with stamps that are not complete or whole even if the stamps are legible, and (ii) all devices for the vending of cigarettes in which packages as defined in item (i) are found, including all contents contained within the devices.

(b) A device for the vending of cigarettes and all packages of cigarettes, 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 this chapter, it shall be presumed that all packages contained in the device are unstamped and contraband.

(c) A 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.

(d) A 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.

(e) A 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 (a).

(f) Cigarette packages or tobacco products obtained from an unlicensed seller.

(g) Cigarette packages offered for sale or held as inventory in violation of section 297F.20, subdivision 7.

(h) Tobacco products on which the tax has not been paid by a licensed distributor.

Subd. 2. **Seizure.** Cigarettes, tobacco products, 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 are subject to forfeiture as provided in subdivisions 3 and 4.

Subd. 3. **Inventory; judicial determination; appeal; disposition of seized property.**

(a) Within ten days after the seizure of any alleged contraband, the person making the seizure shall make available 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 60 days, shall institute an action in the district court of the county where the seizure was made to determine the issue of forfeiture.

(b) The action must be brought in the name of the state and must 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.

(c) When 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.

(d) If a demand for judicial determination is made and no action commenced as provided in this subdivision, the property must be released by the commissioner and returned to the person entitled to it. If no demand is made, the property seized is considered forfeited to the state by operation of law and may be disposed of by the commissioner as provided in the

case of a judgment of forfeiture. When the commissioner is satisfied that a person from whom property is seized was acting in good faith and without intent to evade the tax imposed by this chapter, the commissioner shall release the property seized without further legal proceedings.

Subd. 4. Disposal of other property. (a) The property described in subdivision 1, clause (e), must 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 must be served upon the defendant or person in charge of the property at the time of seizure, if any.

(b) 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 fail to file their answer within the prescribed time, the property will be ordered sold by the commissioner or the commissioner's agents.

(c) The court shall cause the order to be served on 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 on unknown persons by publication, as provided for service of summons in a civil action. If an 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. 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. Seventy-five percent of the proceeds of the sale of forfeited property, after payment of seizure, storage, forfeiture, and sale expenses, must be forwarded to the commissioner for deposit as a supplement to its operating fund or similar fund for official use, and 25 percent must be forwarded to the county attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes.

(d) At the time fixed for hearing, unless continued for cause, the matter must 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, and 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, and shall pay the balance of the proceeds to the commissioner for official use and sharing in the manner provided in paragraph (c). A sale under the provisions of this section operates to free the property sold from any and all liens on it. An appeal from the order of the district court lies as in other civil cases.

(e) At any time after seizure of the articles specified in this subdivision, and before the hearing provided for, the property must 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 considers it in the best interests of the state to do so.

History: 1997 c 106 art 1 s 21

297F.22 ADMINISTRATIVE REVIEW.

Subdivision 1. **Taxpayer right to reconsideration.** A taxpayer may obtain reconsideration by the commissioner of an order assessing any tax imposed by this chapter, a denial of a request for abatement of penalty, or a denial of a claim for refund by filing an administrative appeal under subdivision 3. A taxpayer cannot obtain reconsideration under this section if the action taken by the commissioner is the outcome of an administrative appeal.

Subd. 2. **Notice date.** For purposes of this section, the term "notice date" means the date of the order adjusting the tax or order denying a request for abatement, or, in the case of a denied refund, the date of the notice of denial.

Subd. 3. **Time and content for administrative appeal.** Within 60 days after the notice date, the taxpayer must file a written appeal with the commissioner. The appeal need not be in any particular form but must contain the following information:

- (1) the name and address of the taxpayer;
- (2) if a corporation, the state of incorporation of the taxpayer, and the principal place of business of the corporation;
- (3) the Minnesota identification number or social security number of the taxpayer;
- (4) the type of tax involved;
- (5) the date;
- (6) the tax years or period involved and the amount of tax involved for each year or period;
- (7) the findings in the notice that the taxpayer disputes;
- (8) a summary statement that the taxpayer relies on for each exception; and
- (9) the taxpayer's signature or signature of the taxpayer's duly authorized agent.

Subd. 4. **Extensions.** When requested in writing and within the time allowed for filing an administrative appeal, the commissioner may extend the time for filing an appeal for a period of not more than 30 days from the expiration of the 60 days from the notice date.

Subd. 5. **Determination of appeal.** On the basis of applicable law and available information, the commissioner shall determine the validity, if any, in whole or part of the appeal and notify the taxpayer of the decision. This notice must be in writing and contain the basis for the determination.

Subd. 6. **Agreement determining tax liability.** When it appears to be in the best interests of the state, the commissioner may settle any taxes, penalties, or interest that the commissioner has under consideration by virtue of an appeal filed under this section. An agreement must be in writing and signed by the commissioner and the taxpayer, or the taxpayer's representative authorized by the taxpayer to enter into an agreement. The agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon.

Subd. 7. **Appeal of an administrative determination.** Following the determination of an appeal and notwithstanding any period of limitations for making assessments or other determinations to the contrary, the commissioner must issue an order reflecting that disposition. If the statute of limitations for making assessments or other determinations would have expired before the issuance of this order, except for this section, the order is limited to issues or matters contained in the appealed determination. The order is appealable to the Minnesota tax court under section 271.06.

Subd. 8. **Appeal where no determination.** If the commissioner does not make a determination within six months of the filing of an administrative appeal, the taxpayer may appeal to tax court.

Subd. 9. **Inapplicability of Administrative Procedure Act.** An appeal under this section is not a contested case governed by chapter 14.

History: 1997 c 106 art 1 s 22; 1998 c 300 art 3 s 11,12

297F.23 JUDICIAL REVIEW.

In lieu of an administrative appeal under this chapter, a person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under this chapter may, within 60 days from the date of the notice of the order, appeal to the tax court in the manner provided under section 271.06.

History: 1997 c 106 art 1 s 23.