

CHAPTER 297F

CIGARETTES AND TOBACCO TAXES

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297F.01 DEFINITIONS.

[For text of subs 1 to 10, see M.S.2004]

Subd. 10a. **Out-of-state retailer.** "Out-of-state retailer" means a person engaged outside of this state in the business of selling, or offering to sell, cigarettes or tobacco products to consumers located in this state.

[For text of subs 11 to 23, see M.S.2004]

History: 1Sp2005 c 3 art 6 s 11

297F.02 ADMINISTRATION.

[For text of subd 1, see M.S.2004]

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 chapter 270C, and the provisions of that chapter shall apply to all such investigations, inquiries, and hearings.

[For text of subd 3, see M.S.2004]

History: 2005 c 151 art 2 s 17

297F.031 REGISTRATION REQUIREMENT.

Prior to making delivery sales or shipping cigarettes or tobacco products in connection with any sales, an out-of-state retailer shall file with the Department of Revenue a statement setting forth the out-of-state retailer's name, trade name, and the address of the out-of-state retailer's principal place of business and any other place of business.

History: 1Sp2005 c 3 art 6 s 12

297F.04 LICENSE SUSPENSION OR REVOCATION.

[For text of subd 1, see M.S.2004]

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 270C.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.

[For text of subd 3, see M.S.2004]

History: 2005 c 151 art 2 s 17

297F.08 CIGARETTE STAMPS.

[For text of subds 1 to 3, see M.S.2004]

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 270C.19, 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.

[For text of subds 5 to 11, see M.S.2004]

Subd. 12. **Cigarettes in interstate commerce.** (a) A person may not transport or cause to be transported from this state cigarettes for sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold.

(b) A person may not affix to cigarettes the stamp required by another state or pay any other excise tax on the cigarettes imposed by another state if the other state prohibits stamps from being affixed to the cigarettes, prohibits the payment of any other excise tax on the cigarettes, or prohibits the sale of the cigarettes.

(c) Not later than 15 days after the end of each calendar quarter, a person who transports or causes to be transported from this state cigarettes for sale in another state shall submit to the commissioner a report identifying the quantity and style of each brand of the cigarettes transported or caused to be transported in the preceding calendar quarter, and the name and address of each recipient of the cigarettes. This reporting requirement only applies to cigarettes manufactured by companies that are not original or subsequent participating manufacturers in the Master Settlement Agreement with other states.

(d) For purposes of this section, "person" has the meaning given in section 297F.01, subdivision 12. Person does not include any common or contract carrier, or public warehouse that is not owned, in whole or in part, directly or indirectly by such person, and does not include a manufacturer that is an original or subsequent participating manufacturer in the Master Settlement Agreement with other states.

Subd. 13. **Bond.** The commissioner may require the furnishing of a corporate surety bond or a certified check in an amount suitable to guarantee payment of the tax stamps purchased by a distributor. The bond or certified check may be required when the commissioner determines that a distributor is (1) delinquent in the filing of any return required under this chapter, or (2) delinquent in the payment of any uncontested tax liability under this chapter. The distributor shall furnish the bond or certified check for a period of two years, after which, if the distributor has not been delinquent in the filing of any returns required under this chapter, or delinquent in the paying of any tax under this chapter, a bond or certified check is no longer required. The commissioner at any time may apply the bond or certified check to any unpaid taxes or fees, including interest and penalties, owed to the department by the distributor.

History: 2005 c 151 art 2 s 17; art 8 s 10,11

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. For distributors subject to the accelerated tax payment requirements in subdivision 10, the return for the May liability is due two business days before June 30th of the year and the return for the June liability is due on or before August 18th of the year.

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. For distributors subject to the accelerated tax payment requirements in subdivision 10, the return for the May liability is due two business days before June 30th of the year and the return for the June liability is due on or before August 18th of the year.

[For text of subs 3 and 4, see M.S.2004]

Subd. 4a. **Reporting requirements.** No later than the 18th day of each calendar month, an out-of-state retailer that has made a delivery of cigarettes or tobacco products or shipped or delivered cigarettes or tobacco products into the state in a delivery sale in the previous calendar month shall file with the Department of Revenue reports in the form and in the manner prescribed by the commissioner of revenue that provides for each delivery sale, the name and address of the purchaser and the brand or brands and quantity of cigarettes or tobacco products sold. A tobacco retailer that meets the requirements of United States Code, title 15, section 375 et seq. satisfies the requirements of this subdivision.

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 270C.40 from the date when the payment should have been made, if no extension had been granted, until the tax is paid.

[For text of subs 7 and 8, see M.S.2004]

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 270C.40 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.

[For text of subd 10, see M.S.2004]

History: 2005 c 151 art 2 s 17; art 8 s 12,13; 1Sp2005 c 3 art 6 s 13

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:

(1) \$22,220,000 for fiscal year 2006 and \$22,250,000 for fiscal year 2007 and each year thereafter must be credited to the Academic Health Center special revenue fund hereby created and is annually appropriated to the Board of Regents at the University of Minnesota for Academic Health Center funding at the University of Minnesota; and

(2) \$8,553,000 for fiscal year 2006 and \$8,550,000 for fiscal year 2007 and each year thereafter must be credited to the medical education and research costs account hereby created in the special revenue fund and is annually appropriated to the commissioner of health for distribution under section 62J.692, subdivision 4; and

(3) 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.

[For text of subd 2, see M.S.2004]

History: 1Sp2005 c 3 art 6 s 14

297F.14 REFUNDS.

[For text of subs 1 to 3, see M.S.2004]

Subd. 4. **Bad debt.** For any reporting period, a taxpayer may offset against taxes payable under this chapter the amount of taxes previously paid under this chapter that is attributable to a bad debt. The taxes must have been included in a transaction the consideration for which was a debt owed to the taxpayer and which became uncollectible, but only in proportion to the portion of debt that became uncollectible. To qualify for offset under this subdivision, the debt must have qualified as a bad debt under section 166(a) of the Internal Revenue Code. The taxpayer may claim the offset within the time period prescribed in section 297F.17, subdivision 6. If the taxpayer is no longer liable for taxes imposed under this chapter, the commissioner shall refund to the taxpayer the amount of the taxes attributable to the bad debt. Any recovery of the tax claimed as a refund or credit must be reported to the commissioner on the tax return for the month in which the recovery is made. If the taxpayer is no longer required to file returns under this chapter, the taxpayer must reimburse the commissioner for tax recovered in the month following the recovery.

[For text of subs 5 to 7, see M.S.2004]

History: 2005 c 151 art 8 s 14

297F.15 PHYSICAL INVENTORY; OFFSET.

Subdivision 1. [Repealed, 2005 c 151 art 1 s 117]

Subd. 2. [Repealed, 2005 c 151 art 1 s 117]

Subd. 3. [Repealed, 2005 c 151 art 1 s 117]

Subd. 4. [Repealed, 2005 c 151 art 1 s 117]

Subd. 5. [Repealed, 2005 c 151 art 1 s 117]

Subd. 6. [Repealed, 2005 c 151 art 1 s 117]

Subd. 7. [Repealed, 2005 c 151 art 1 s 117]

Subd. 8. [Repealed, 2005 c 151 art 1 s 117]

[For text of subs 9 and 10, see M.S.2004]

297F.16 [Repealed, 2005 c 151 art 1 s 117]

297F.18 INTEREST.

Subdivision 1. **Interest rate.** When interest is required under this section, interest is computed at the rate specified in section 270C.40.

[For text of subs 2 to 5, see M.S.2004]

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 270C.40 from the date the judgment is entered until the date of payment.

[For text of subd 7, see M.S.2004]

History: 2005 c 151 art 2 s 17

297F.185 REVOCATION OF SALES AND USE TAX PERMITS.

(a) If a retailer purchases for resale from an unlicensed seller more than 20,000 cigarettes or \$500 or more worth of tobacco products, the commissioner may revoke the person's sales and use tax permit as provided in section 270C.722.

(b) The commissioner may revoke a retailer's sales or use permit as provided in section 270C.722 if the retailer, directly or indirectly, purchases for resale cigarettes without the proper stamp affixed.

History: 2005 c 151 art 2 s 17; 1Sp2005 c 4 art 4 s 3

297F.19 CIVIL PENALTIES.

[For text of subs 1 to 5, see M.S.2004]

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 270C.34.

[For text of subs 7 to 9, see M.S.2004]

History: 2005 c 151 art 2 s 17

297F.22 [Repealed, 2005 c 151 art 1 s 117]

297F.25 CIGARETTE SALES TAX.

Subdivision 1. **Imposition.** A tax is imposed on distributors on the sale of cigarettes by a cigarette distributor to a retailer or cigarette subjobber for resale in this state. The tax is equal to 6.5 percent of the weighted average retail price. The weighted average retail price must be expressed in cents per pack when rounded to the nearest one-tenth of a cent. The weighted average retail price must be determined annually, with new rates published by May 1, and effective for sales on or after August 1. The weighted average retail price must be established by surveying cigarette retailers statewide in a manner and time determined by the commissioner. The determination of the commissioner pursuant to this subdivision is not a "rule" and is not subject to the Administrative Procedure Act contained in chapter 14. As of August 1, 2005, the tax is 25.5 cents per pack of 20 cigarettes. For packs of cigarettes with other than 20 cigarettes, the tax must be adjusted proportionally.

Subd. 2. **Payment.** Each taxpayer must remit payments of the taxes to the commissioner on the same dates prescribed under section 297F.09, subdivision 1, for cigarette tax returns, including the accelerated remittance of the June liability.

Subd. 3. **Return.** A taxpayer must file a return with the commissioner on the same dates prescribed under section 297F.09, subdivision 1, for cigarette tax returns. Notwithstanding any other provisions of this chapter, the tax due on the return is based upon actual stamps purchased during the reporting period.

Subd. 4. **Form of return.** The return must contain the information and be in the form prescribed by the commissioner.

Subd. 5. **Tax as debt.** The tax that is required to be paid by the distributor is a debt from the retailer or cigarette subjobber to the distributor recoverable at law in the same manner as other debts. A cigarette retailer or subjobber must pay the tax imposed under subdivision 1 to the distributor before the 12th day of the month following the month in which the cigarettes were purchased from the distributor.

Subd. 6. **Sales tax stamp.** Payment of the tax imposed under section 297F.05 and by this section must be evidenced by a dual-purpose single stamp affixed to each package.

Subd. 7. **Administration.** The stamping, audit, assessment, interest, penalty, appeal, refund, and collection provisions applicable to the taxes imposed under this chapter apply to taxes imposed under this section.

Subd. 8. **Deposit of revenues.** Notwithstanding the provisions of section 297F.10, the commissioner shall deposit all revenues, including penalties and interest, derived from the tax imposed by this section, in the general fund.

History: 1Sp2005 c 3 art 6 s 15