

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:

(1) on cigarettes weighing not more than three pounds per thousand, 141.5 mills on each such cigarette; and

(2) on cigarettes weighing more than three pounds per thousand, 283 mills on each such cigarette.

Subd. 1a. **Annual indexing.** (a) Each year the commissioner shall adjust the tax rates under subdivision 1, including any adjustment made in prior years under this subdivision, by multiplying the mill rates for the current calendar year by an adjustment factor and rounding the result to the nearest mill. The adjustment factor equals the in-lieu sales tax rate that applies to the following calendar year divided by the in-lieu sales tax rate for the current calendar year. For purposes of this subdivision, "in-lieu sales tax rate" means the tax rate established under section 297F.25, subdivision 1. For purposes of the calculations under this subdivision to be made in any year in which an increase in the federal or state excise tax on cigarettes is implemented, the commissioner shall exclude from the calculated average price for the current year an amount equal to any increase in the state or federal excise tax rate.

(b) The commissioner shall publish the resulting rate by November 1 and the rate applies to sales made on or after January 1 of the following year.

(c) The determination of the commissioner under this subdivision is not a rule and is not subject to the Administrative Procedure Act in chapter 14.

[See Note.]

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) Except as provided in subdivision 3a, 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 95 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.

(b) Notwithstanding paragraph (a), a minimum tax equal to the rate imposed on a pack of 20 cigarettes weighing not more than three pounds per thousand, as established under subdivision 1, is imposed on each container of moist snuff.

For purposes of this subdivision, a "container" means the smallest consumer-size can, package, or other container that is marketed or packaged by the manufacturer, distributor, or retailer for separate sale to a retail purchaser. When more than one container is packaged together, each container is subject to tax.

Subd. 3a. **Rates; tobacco.** (a) A tax is imposed upon all premium cigars in this state and upon any person engaged in business as a tobacco product distributor, at the lesser of:

- (1) the rate of 95 percent of the wholesale sales price of the premium cigars; or
- (2) \$3.50 per premium cigar.

(b) The tax imposed under paragraph (a) is imposed at the time the tobacco products distributor:

- (1) brings, or causes to be brought, into this state from outside the state premium cigars for sale;
- (2) makes, manufactures, or fabricates premium cigars in this state for sale in this state; or
- (3) ships or transports premium cigars to retailers in this state, to be sold by those retailers.

Subd. 4. **Use tax; tobacco products.** Except as provided in subdivision 4a, 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 95 percent of the cost to the consumer of the tobacco products or the minimum tax under subdivision 3, paragraph (b), whichever is greater.

Subd. 4a. **Use tax; premium cigars.** A tax is imposed upon the use or storage by consumers of all premium cigars in this state, and upon such consumers, at the lesser of:

- (1) the rate of 95 percent of the cost to the consumer of the premium cigars; or
- (2) \$3.50 per premium cigar.

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; 2003 c 127 art 14 s 5; 2013 c 143 art 5 s 10-15

NOTE: Subdivision 1a, as added by Laws 2013, chapter 143, article 5, section 11, is effective July 1, 2014. Laws 2013, chapter 143, article 5, section 11, the effective date.