CHAPTER 297

SALES TAXES; CERTAIN USES THEREOF

TAX ON CIGARETTES

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

Subd. 2. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.

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

Subd. 4. "Person" means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

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

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

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

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

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

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

(4) Any person who engages in this state in the business of selling packages of cigarettes which he purchases unstamped from a licensee under sections 297.01 to 297.13.

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

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

Subd. 10. "Retailer" means any person engaged in the business of selling cigarettes to ultimate consumers.

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

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

Subd. 13. "Stamp" means the adhesive stamp supplied by the tax commissioner or the imprint made by a tax meter machine authorized by the commissioner.

Subd. 14. "Subjobber" means any person who buys stamped cigarettes and sells them to persons other than ultimate consumers, and any licensed distributor who delivers to and sells or distributes stamped cigarettes from a place of business other than that for which he has obtained his distributor's license.

[1947 c 619 s 1; 1953 c 652 s 1; 1955 c 421 s 1]

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

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

(2) On cigarettes weighing more than three pounds per thousand, 12 mills on each such cigarette.

Subd. 2. **Denomination of stamp.** No stamp evidencing the tax herein levied shall be of a denomination less than one cent, and, whenever the tax on the cigarettes contained in a package, computed at the rates herein prescribed, shall be a specified amount plus a fractional part of one cent, the package shall be stamped for the next full cent.

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

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

Subd. 5. **Construction.** The tax imposed by this section shall not be construed as a cost of doing business or an overhead expense under Minnesota Statutes 1945, Section 325.01, Subdivision 7.

Subd. 6. **Sales by state.** The state of Minnesota or any of its agencies, instrumentalities, or governmental subdivisions except institutions under the control and management of the commissioner of corrections shall be subject to the tax imposed by this chapter on all cigarettes sold, in the same manner as distributors, if such unit is engaged in the purchase and sale of cigarettes.

[1947 c 619 s 2; 1949 c 703 s 1; Ex1959 c 70 art 6 s 1; 1961 c 272 s 1; Ex1961 c 91 art 3 s 1; 1963 c 790 art 4 s 1; 1965 c 136 s 1; 1965 c 141 s 1; 1965 c 831 s 1; 1969 c 881 s 12]

297.03 PAYMENT, STAMP ON PACKAGE. Subdivision 1. **Stamp put on by distributor; exception.** Except as otherwise provided in this section payment of the tax imposed by section 297.02 shall be evidenced by stamps affixed to each package. Before delivering, or causing to be delivered, any package to any person in this state, other than a licensed distributor, every distributor shall firmly affix to each package of cigarettes stamps in amounts equal to the tax on those cigarettes as provided for in section 297.02.

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

Subd. 3. **Section 6.22 superseded.** The provisions of sections 297.01 to 297.14 prescribing the powers and duties of the commissioner with relation to stamps supersede all the provisions of Minnesota Statutes 1945, Section 6.22 in conflict therewith.

Subd. 4. **Stamps; design, printing.** The commissioner shall adopt the design of the stamps and shall arrange for the printing thereof in such amounts and denominations as he deems necessary.

Subd. 5. **Sale of stamps.** The commissioner shall sell stamps to any person licensed as a distributor at a discount of 2.75 percent from the face amount of the stamps for the first $206,250 of such stamps purchased in any fiscal year; and at a discount of two percent for all additional stamps purchased in any fiscal year. He shall not sell stamps to any other person.

Subd. 6. **Tax meter machines.** The commissioner may authorize any person licensed as a distributor to stamp packages with a tax meter machine, approved by him, which shall be provided by the distributor. He may provide for the use of such a machine by the distributor, supervise and check its operation, provide for the payment of the tax on any package so stamped, subject to the discount provided in subdivision 5, and in that connection require the furnishing of a corporate surety bond in a suitable amount to guarantee the payment of the tax.

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

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

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

Subd. 10. **Distribution of free sample packages.** The commissioner may authorize distribution in Minnesota of free packages of cigarettes without affixing stamps to said packages by the following persons provided that monthly reports and payment of a tax at the same rates prescribed by section 297.02, subdivision 1, shall be made directly to the commissioner in the manner and under the terms provided for by him:

(1) Any manufacturer, providing such packages contain not more than ten cigarettes each;

(2) Any person engaged as a common carrier in the transportation of persons, who purchases packages of cigarettes from a manufacturer for distribution without charge, provided that no such package shall contain more than ten cigarettes.

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

Subd. 12. **Setting of tax meters.** The commissioner may designate the county treasurer of any county or any banking institution as defined by section 48.01, as the representative of the commissioner in the setting of a tax meter machine of any particular distributor and the collection of the cigarette tax upon such setting. The county treasurer or banking institution so designated shall be required to set tax meter machines following the method prescribed by the commissioner of taxation and to transmit the amount of tax collected and to report the setting of each tax meter to the commissioner on or before the next business day. For purposes of this paragraph, a business day shall not include Saturday. Such duties shall be within the coverage of the official bond of the county treasurer. The commissioner shall prescribe the form and amount of a surety bond which shall be furnished by a banking institution designated pursuant to this subdivision. The commissioner shall have the right to withdraw this designation without cause.

[*1947 c 619 s 3; 1949 c 703 s 2; 1951 c 569 s 1; Ex1959 c 70 art 6 s 2, 3; 1963 c 462 s 1; 1963 c 876 s 1; 1969 c 880 s 1; 1969 c 881 s 13; 1969 c 882 s 1*]

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

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

Subd. 3. **Non-resident.** A person without this state who ships or transports cigarettes to retailers in this state, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the commissioner, and thereafter be subject to all the provisions of sections 297.01 to 297.13 and entitled to act as a licensed distributor, provided he files proof with his application that he has appointed the secretary of state for service of process relating to any matter of issue arising under sections 297.01 to 297.13. A foreign corporation applying for a distributor's license need not qualify as such if it files the proof of appointment of the secretary of state for service of process as provided in this subdivision.

Subd. 4. **Distributor's application; fee, bond; subjobber's license.** Each application for a distributor's license shall be accompanied by a fee of $150 and a corporate surety bond issued by a surety licensed to do business in this state in the sum of $1,000, conditioned upon the true and faithful compliance by the licensee with all of the provisions of this act. This bond, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license. A separate application for license shall be made for each place of business at which a distributor proposes to engage in business as such under sections 297.01 to 297.13, provided that a separate application for a subjobber's license may be made by a licensed distributor for each place of business (other than that for which he has obtained his distributor's license) to which he delivers and from which he sells or distributes stamped cigarettes.

Each application for a subjobber's license shall be accompanied by a fee of $12.

A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be required to pay only one-half of the license fee provided for herein.

Subd. 5. **Issuance.** The commissioner, upon receipt of the application and bond in proper form, and payment of the license fee required by subdivision 4, shall, unless otherwise provided by sections 297.01 to 297.13, issue the applicant a license in form as prescribed by him, which said license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in his application.

Subd. 6. **Expiration.** Each license shall expire on June 30 following its date of issue unless sooner revoked by the commissioner or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the commissioner.

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

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

Subd. 9. **Revocation.** The commissioner may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of sections 297.01 to 297.13, or any other act applicable to the sale of cigarettes, or any rule or regulation promulgated by the commissioner, and may also revoke any such license or licenses of any distributor or subjobber for the violation of sections 297.31 to 297.39, or any other act applicable to the sale of tobacco products, or any rule or regulation promulgated by the commissioner in furtherance of sections 297.31 to 297.39. No license shall be revoked, canceled, or suspended except after notice and a hearing by the commissioner as provided in section 297.09.

Subd. 10. **License, revoked; bond, forfeited.** If a distributor or subjobber is convicted of the violation of any of the provisions of sections 297.01 to 297.13, or if his license is revoked and no review is had of the order of revocation, or if on review thereof the decision is adverse to the distributor or subjobber, any bond filed pursuant to this section shall thereupon be forfeited, and the commissioner may institute a suit upon such bond, in the name of the state, for the entire amount of that bond and costs. Such a suit upon the bond shall be in addition to any other remedy provided for herein.

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

[*1947 c 619 s 4; 1953 c 652 s 2; 1961 c 419 s 1; 1969 c 1148 s 42*]

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

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

(1) Cigarettes in the place of business or in the possession of a licensed distributor;

(2) Cigarettes in the possession of a common carrier or sleeping car company engaged in interstate commerce;

(3) Cigarettes held in a public warehouse of first destination in this state, subject to the provisions of and licensed under Minnesota Statutes 1945, Chapter 231, as amended, in the unbroken, original shipping containers, subject to delivery or shipping instructions from the manufacturer or a distributior;

(4) Cigarettes in the possession of a person other than a distributor in quantities of 200 cigarettes or less, when those cigarettes have had the individual packages or seals thereof broken, and when they are intended for personal use by that person and not to be sold or offered for sale;

(5) Packages of not more than ten cigarettes each, in the possession of a representative of either a manufacturer or a person authorized pursuant to section 297.03, subdivision 10, to distribute such packages.

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

[*1947 c 619 s 5; 1951 c 569 s 2; 1969 c 882 s 2, 3*]

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

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

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

[*1947 c 619 s 6*]

297.07 DISTRIBUTOR TO FILE RETURNS. Subdivision 1. **Monthly return filed with commissioner.** On or before the eighteenth day of each calendar month every distributor with a place of business in this state shall file a return with the commissioner showing the quantity of cigarettes manufactured or brought in from without the state or purchased during the preceding calendar month and the quantity of cigarettes sold or otherwise disposed of in this state and outside this state during that month. Every licensed distributor outside this state shall in like manner file a return showing the quantity of cigarettes shipped or transported into this state during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the commissioner and shall contain such other information as the commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

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

Subd. 3. **Dealer may protest; hearing.** If, within 20 days after mailing of notice of the proposed assessment, the distributor or his legal representative shall file a protest to said proposed assessment and request a hearing thereon, the commissioner shall give notice to that distributor or legal representative of the time and place fixed for the hearing, shall hold a hearing in conformity with the provisions of sections 297.01 to 297.13, and pursuant thereto shall issue a final assessment to the distributor or legal representative for the amount found to be due as a result of the hearing. This hearing shall be held within 45 days after filing of the protest. If a protest is not filed within the time herein prescribed, the commissioner shall issue a final assessment to the distributor or legal representative, as such. Any tax due and owing after a final assessment order has been issued to the distributor or legal representative of such distributor shall be paid within 30 days.

Subd. 4. **Monthly tax payments; penalty for non-payment.** All taxes shall be due and payable not later than the eighteenth day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the rate of six percent per annum. The commissioner in issuing his final assessment pursuant to subdivision 3 shall add to the amount of tax found due and unpaid a penalty of ten percent thereof, except that, if he finds that the distributor has made a false and fraudulent return with intent to evade the tax imposed by sections 297.01 to 297.13, the penalty shall be 25 percent of the entire tax as shown by the corrected return. If any such tax is not paid within the time herein specified for the payment thereof or within 30 days after final determination of an appeal to the Minnesota tax court relating thereto, there shall be added thereto a specific penalty equal to five percent of the amount so remaining unpaid.

Subd. 5. **Recovery by commissioner.** The commissioner may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under sections 297.01 to 297.13.

Subd. 6. **Penalty; maximum; minimum; extension.** If any return required to be filed under the provisions of this section is not filed within the time herein specified, a penalty of five percent of the unpaid tax remaining each month up to a maximum of 25 percent is herein imposed but in no event shall the penalty for failing to file such return timely be less than $10. The commissioner of taxation is authorized to extend the time for filing such return without penalty for good cause shown.

[*1947 c 619 s 7; 1969 c 883 s 1, 2; 1969 c 884 s 1-3*]

297.08 CONTRABAND. Subdivision 1. **Packages declared contraband.** The following are declared to be contraband:

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

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

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

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

Subd. 2. **Seizure.** Any cigarettes or other property made contraband by subdivision 1 may be seized by the commissioner or his authorized agents or by any sheriff or other police officer, with or without process, and shall be subject to forfeiture as provided in subdivision 3.

Subd. 3. **Inventory; judicial determination; appeal; disposition of seized property.** Within two days after the seizure of any alleged contraband, the person making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, if known, and file a copy with the commissioner. Within ten days after the date of service of the inventory, the person from whom the property was seized or any person claiming an interest in the property may file with the commissioner a demand for a judicial determination of the question as to whether the property was lawfully subject to seizure and forfeiture, and thereupon the commissioner, within 30 days, shall institute an action in the district court of the county where the seizure was made to determine the issue of forfeiture. The action shall be brought in the name of the state and shall be prosecuted by the county attorney or by the attorney general. The court shall hear the action without a jury and shall try and determine the issues of fact and law involved. Whenever a judgment of forfeiture is entered, the commissioner may, unless the judgment is stayed pending an appeal to the supreme court, either (1) deliver the forfeited property to the commissioner of public welfare for use by patients in state institutions or (2) cause the same to be destroyed. If a demand for judicial determination is made and no action is commenced as provided in this subdivision, the property shall be released by the commissioner and redelivered to the person entitled to it. If no demand is made, the property seized shall be deemed forfeited to the state by operation of law and may be disposed of by the commissioner as provided where there has been a judgment of forfeiture. Whenever the commissioner is satisfied that any person from whom property is seized under sections 297.01 to 297.13 was acting in good faith and without intent to evade the tax imposed by sections 297.01 to 297.13, he shall release the property seized, without further legal proceedings.

[1947 c 619 s 8; 1953 c 624 s 1; 1959 c 267 s 3; 1963 c 712 s 1]

297.09 INVESTIGATIONS. Subdivision 1. **Powers of commissioner.** The commissioner, or his duly authorized agents, may conduct investigations, inquiries, and hearings under sections 297.01 to 297.13, and, in connection with such investigations, inquiries, and hearings, he and his duly authorized agents shall have all the powers conferred upon him and his examiners by Minnesota Statutes 1945, Sections 290.56 to 290.58, and the provisions of those sections shall apply to all such investigations, inquiries and hearings.

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

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

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

Subd. 5. **Appeal to tax court.** Any person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under section 297.07 may, within 30 days from the date of notice of the order, appeal to the tax court in the manner provided by law. Any other order of the commissioner under sections 297.01 to 297.13 shall be subject to review by certiorari.

[1947 c 619 s 9; 1965 c 698 s 3]

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

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

[1947 c 619 s 10]

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

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

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

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

Subd. 5. **Transporting unstamped packages.** No person shall transport into, or receive, carry, or move from place to place in this state, any packages of cigarettes not stamped in accordance with the provisions of this act except in the course of interstate commerce, unless the cigarettes are moving from a public warehouse to a distributor upon orders from the manufacturer or distributor or from one distributor to another. This subdivision shall not apply to a person carrying for his own use not more than 200 cigarettes when those cigarettes have had the individual packages or seals thereof broken and are intended for personal use by that person and not to be sold or offered for sale.

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

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

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

[*1947 c 619 s 11; 1951 c 569 s 3; 1965 c 456 s 1*]

297.12 OFFENSES. Subdivision 1. **Felony.** Any person violating section 297.11, subdivision 1, shall be guilty of a felony.

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

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

[*1947 c 619 s 12*]

297.13 REVENUE, DISPOSAL. Subdivision 1. M.S. 1965 [Repealed, Ex1967 c 48 s 48 subd 15]

Subdivision 1. **Cigarette tax apportionment fund.** Eight and three-tenths percent of the revenues received from taxes, penalties and interest under sections 297.01 to 297.13 shall be deposited by the commissioner of taxation in the state treasury and credited to a special fund to be known as the "natural resources fund," which is hereby created. Expenditures shall be made from said fund only as may be authorized by law to carry out the provisions of this act and in conformance with the provisions of chapter 16, and any act amendatory thereof. An additional 8.3 percent of the revenues received from taxes, penalties and interest under sections 297.01 to 297.13 shall be deposited by the commissioner of taxation in the general fund and said amount shall be considered for the purposes of section

297A.51 as if the tax were imposed by sections 297A.01 to 297A.44. The balance of the revenues derived from taxes, penalties, and interest under sections 297.01 to 297.13 and from license fees and miscellaneous sources of revenue shall be deposited by the commissioner in the state treasury and credited 18 percent to a special fund to be known as the "Cigarette Tax Apportionment Fund," which fund is hereby created, but in no event shall the amount credited to the fund be less than that credited to such fund in the fiscal year beginning July 1, 1968 and ending June 30, 1969, and the balance to the general fund. The revenues in the apportionment fund shall be apportioned as provided in subdivision 2 to the several counties, cities, villages and boroughs in this state, and the term "village" as used herein shall include those towns which have village powers as defined in section 368.01. In computing the population of counties, cities, villages and boroughs the state auditor shall add increases in population disclosed by reason of any special census conducted under subdivision 7 to the population of the political subdivision conducting the census and to the population of the county in which the political subdivision is located. Each county, city, village, and borough shall receive from the apportionment fund an amount bearing the same relation to the total amount to be apportioned as its population bears to the total population of all the counties, cities, villages and boroughs in this state; except, that for the purposes of sections 297.01 to 297.13, the population of a county shall be that part of its population exclusive of the population of the several cities, villages and boroughs within the county.

NOTE: Section 297.13, Subdivision 1, was also amended by Laws 1969, Chapter 399, Section 37, which reads:

"Subdivision 1. Twelve and one-half percent of the revenues received after July 1, 1967, and until June 30, 1973, from taxes, penalties and interest under sections 297.01 to 297.13 shall be deposited by the commissioner of taxation in the state treasury and credited to the general fund for the purposes of natural resources acceleration. Expenditures shall be made from said fund only as may be authorized by law to carry out the provisions of this act and in conformance with the provisions of Minnesota Statutes, Chapter 16, and any act amendatory thereof. The balance of the revenues derived from taxes, penalties, and interest under sections 297.01 to 297.13 and from license fees and miscellaneous sources of revenue shall be deposited by the commissioner in the state treasury and credited one-fourth to a special fund to be known as the "Cigarette Tax Apportionment Fund," which fund is hereby created, and the balance to the general fund. The revenues in the apportionment fund shall be apportioned as provided in subdivision 2 to the several counties, cities, villages and boroughs in this state, and the term "village" as used herein shall include those towns which have village powers as defined in Minnesota Statutes, Section 368.01. In computing the population of counties, cities, villages and boroughs the state auditor shall add increases in population disclosed by reason of any special census conducted under subdivision 7 to the population of the political subdivision conducting the census and to the population of the county in which the political subdivision is located. Each county, city, village, and borough shall receive from the apportionment fund an amount bearing the same relation to the total amount to be apportioned as its population bears to the total population of all the counties, cities, villages and boroughs in this state; except, that for the purposes of sections 297.01 to 297.13, the population of a county shall be that part of its population exclusive of the population of the several cities, villages and boroughs within the county."

Subd. 2. **Warrants, apportionment.** On or before February 15, 1948, the state auditor shall apportion the amount which has been credited to said special fund prior to January 1, 1948, and issue his warrant in favor of the treasurer of each county, city, village and borough. The state auditor shall make a similar apportionment on or before August 15, 1948, of the moneys which have been credited to the apportionment fund prior to July 1, 1948; and he shall make a like apportionment on or before February 15th and August 15th in each year after 1948; provided, however, that at the end of each fiscal year the commissioner shall certify to the state auditor the total amount of refunds made and the total cost of administration of sections 297.01 to 297.13 for such year, and the state auditor shall then transfer an amount equal to one-fourth of the total amount of such refunds and administration costs from the special apportionment fund to the general fund.

Each county shall apportion the amount received by it to the various towns of the county not having village powers as defined in 368.01 in proportion to their population, excluding villages located within a town, which villages have already received distribution, except that the county shall retain for its use any portion attributable to the population of unorganized territory within the county.

Subd. 3. **Political subdivisions; certified list; population.** The secretary of state shall deliver to the state auditor, within 90 days after the passage of Laws 1947, Chapter 619, a certified list of all the counties, cities, villages, boroughs, and those towns having village powers as defined in Minnesota Statutes, Section 368.01, of the state with their respective populations according to the federal census of 1940. In the case of municipalities incorporated after a federal census the population shown shall be that given in the incorporation census. Upon the taking of each federal census the secretary of state shall deliver to the state auditor a like certificate within 30 days after the governor has filed with him the certified copies of the census obtained from the director of the federal census. Until the receipt of such a certificate, the state auditor shall make his apportionment upon the basis of the population of the various political subdivisions last certified to him.

Subd. 4. **Change of name or dissolution of municipality; new incorporation.** If any municipality changes its name or is dissolved, or if any new municipality is incorporated, the secretary of state shall immediately certify that fact to the state auditor, indicating in the case of a new municipality the population shown by the census taken before incorporation. If any municipality is consolidated with another municipality, the secretary of state shall likewise certify that fact to the state auditor, who shall issue his warrant to the consolidated municipality according to the combined population resulting.

Subd. 5. **Statutory or charter limitation not to apply to municipal expenditures.** Expenditures made from amounts paid to any city, village, or borough under sections 297.01 to 297.13 shall not be considered as part of its cost of government within the meaning of any statutory or charter limitation on expenditures.

Subd. 6. **Appropriation.** There is hereby appropriated to the county, city, village, and borough entitled to such payments as are authorized under this section, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the payment.

Subd. 7. **Special census.** In the year 1965, and each tenth year thereafter, the governing body of any city, village, borough, or town having village powers under Minnesota Statutes, Section 368.01, or under special law, may, by resolution, request the federal director of the census to take a special census for the purpose of determining the population for the purpose of receiving tax distributions under this section. A certified copy of the results of such census shall be filed with the state auditor by the political subdivision conducting the census and after such filing and until the completion of the next federal decennial census the population of the city, village, town or borough shall be that disclosed by the special census. The expense of taking such census shall be paid by the municipality requesting such census.

Subd. 8. **Use of special census.** If the results of a special census taken in accordance with Laws 1963, Chapter 282, show a population gain of less than five percent or of less than 250 people, whichever is greater, the state auditor shall not make any change in the distribution of cigarette or liquor tax proceeds.

[*1947 c 619 s 13; 1949 c 703 s 3; 1953 c 623 s 1; 1955 c 376 s 1,2; 1959 c 158 s 25; 1963 c 282 s 1, 2, 5; 1963 c 790 art 4 s 2; 1965 c 810 s 8; 1967 c 598 s 1; Ex1967 c 48 s 48 subd 14; 1969 c 399 s 49; 1969 c 881 s 14*]

297.14 [Obsolete]

PLEDGING BY MUNICIPALITIES OF CERTAIN SALES TAX RECEIPTS

297.15 CITIES, VILLAGES; APPORTIONMENT RECEIPTS PLEDGED TO PAYMENT OF BONDS. Any city or village may irrevocably pledge for the payment of principal of and interest on its bonds, except principal and interest payable from special assessments or the income of revenue producing conveniences, any part of the apportionment of taxes to be received by it under the provisions of Minnesota Statutes, sections 297.13, 297.26, and 340.60; provided, however, that nothing herein shall in any way curtail the authority of the state to alter or abolish said tax or change the distribution thereof. The part of the apportionments which is so pledged may be 100 percent or a lesser percentage of the annual receipts of such apportionments, or a minimum annual dollar amount thereof, or both; provided, the amount of apportionments pledged shall not be more than will suffice to pay principal and interest on the bonds as they come due.

[*1957 c 845 s 1*]

297.16 PLEDGE, RESOLUTION, SUBMISSION TO ELECTORS. Such pledge may be made by resolution of the governing body of the city or village, unless the proposition of the issuance of the bonds is required to be submitted to the electors, in which event the question of making such pledge shall likewise be submitted to the electors at a general or special election, either separate from or combined with the question of issuing the bonds. When the question of making such pledge has been so submitted, it shall be deemed to have carried if approved by a majority of the electors voting on the question.

[*1957 c 845 s 2*]

TAX UPON USE OR STORAGE OF CIGARETTES BY CONSUMERS

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

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

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

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

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

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

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

[*1949 c 553 s 1*]

297.22 TAX. Subdivision 1. A tax is hereby imposed upon the use or storage by consumers of cigarettes in this state, and upon such consumers, at the following rates:

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

(2) On cigarettes weighing more than three pounds per thousand, 12 mills on each such cigarette.

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

Subd. 3. This tax shall not apply to the use or storage of cigarettes in quantities of 200 or less in the possession of any one consumer.

[*1949 c 553 s 2; 1951 c 570 s 1; Ex1959 c 70 art 6 s 4; Ex1961 c 91 art 3 s 2; 1965 c 134 s 1; 1969 c 881 s 15*]

297.221 ADDITIONAL TAX. In addition to the tax imposed by section 297.22, subdivision 1, upon use or storage by consumers of cigarettes in this state, and upon such consumers, the following tax is imposed:

(1) On cigarettes weighing not more than three pounds per thousand, one half mill on each such cigarette.

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

The proceeds of the tax imposed by this section shall be deposited in the state treasury and credited to the general fund. The tax imposed by section 297.22, shall not be subject to section 297.31, subdivisions 5 and 6, insofar as the provisions are applicable, but shall otherwise be subject to all the other provisions of chapter 297, as far as the same are applicable.

[*1969 c 879 s 3*]

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

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

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

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

[1949 c 553 s 3; 1969 c 883 s 3]

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

[1949 c 553 s 4]

297.25 REFUSAL OR NEGLECT TO FILE RETURN. Subdivision 1. Any person required by sections 297.21 to 297.26 to make and file a return with the commissioner, who neglects or refuses to make such return, or neglects or refuses to pay the tax levied by sections 297.21 to 297.26, or neglects or refuses to pay any lawful assessment made by the commissioner, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50 or more than $100.

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

[1949 c 553 s 5]

297.26 REVENUES, DISTRIBUTION. All revenues derived from taxes, penalties and interest under sections 297.21 to 297.26 shall be deposited by the commissioner in the state treasury and credited one-fourth to the cigarette tax apportionment fund and the balance to the general fund.

[1949 c 553 s 6; 1951 c 570 s 2; 1969 c 399 s 49]

TAX ON TOBACCO PRODUCTS

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

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

Subd. 3. "Person" means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

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

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

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

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

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

Subd. 6. "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

Subd. 7. "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

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

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

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

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

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

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

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

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

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

[*Ex1955 c 2 art 5 s 1; Ex1957 c 1 art 5 s 1-3*]

297.32 TAX ON TOBACCO PRODUCTS. Subdivision 1. A tax is hereby imposed upon all tobacco products in this state and upon any person engaged in business as a distributor thereof, at the rate of 20 percent of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (1) brings, or causes to be brought, into this state from without the state tobacco products for sale; (2) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or (3) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

Subd. 1a. [Expired]

Subd. 2. A tax is hereby imposed upon the use or storage by consumers of tobacco products in this state, and upon such consumers, at the rate of 20 percent of the cost of such tobacco products.

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

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

1. Less than 25 cigars;
2. Less than 10 oz. snuff or snuff powder;
3. Less than 1 lb. smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

Subd. 2a. [Expired]

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

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

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

Subd. 6. The tax imposed by this section shall not be construed as a cost of doing business or an overhead expense under Minnesota Statutes, Section 325.01, Subdivision 7.

Subd. 7. Any distributor having in his possession on July 1, 1961, any tobacco products which were subject to tax at the rate of 20 percent of the wholesale sales price thereof shall be entitled to a credit at the rate of ten percent of the wholesale sales price of such tobacco products. This credit may be applied against any future tax due from the distributor. Each distributor claiming this credit shall, on or before July 20, 1961, file a report with the commissioner in such form as the commissioner may prescribe, showing the tobacco products on hand at 12:01 A.M. on July 1, 1961, and shall provide such other information as the commissioner may require.

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

[Ex1955 c 2 art 5 s 2; Ex1957 c 1 art 5 s 4, 5; Ex1959 c 70 art 7 s 1-4; 1961 c 271 s 1, 2; Ex 1961 c 91 art 4 s 1-3; 1965 c 136 s 2; 1965 c 141 s 2; 1965 c 831 s 2; 1969 c 881 s 16, 17]

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

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

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

Subd. 4. Each application for a distributor's license shall be accompanied by a fee of $37.50. The application shall also be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of $1,000, conditioned upon the true and faithful compliance by the distributor with all the provisions of sections 297.31 to 297.39 and the payment when due of all taxes, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state of Minnesota. This bond shall be in a form to be fixed by the commissioner and approved by the attorney general. Whenever it is the opinion of the commissioner that the bond given by a licensee is inadequate in amount to fully protect the state, he shall require either an increase in the amount of said bond or additional bond, in such amount as he deems sufficient. Any bond required by this subdivision, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license.

A separate application for license shall be made for each place of business at which a distributor proposes to engage in business as such under sections 297.31 to 297.39.

Subd. 5. Each application for a subjobber's license shall be accompanied by a fee of $10.

Subd. 6. A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be required to pay only one-half of the license fee provided for herein.

Subd. 7. The commissioner, upon receipt of the application (and bond, in the case of the distributor) in proper form, and payment of the license fee required by subdivision 4 or subdivision 5, shall, unless otherwise provided by sections 297.31 to 297.39, issue the applicant a license in form as prescribed by him, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in his application. The commissioner shall assign a permit number to each person licensed as a distributor at the time of issuance of his first license, which shall be inscribed upon all licenses issued to that distributor.

Subd. 8. Each license shall expire on June 30 following its date of issue unless sooner revoked by the commissioner or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the commissioner.

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

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

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

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

Subd. 13. When the surety upon any bond issued pursuant to the provisions of sections 297.31 to 297.39 shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of the person bonded under sections 297.31 to 297.39, such surety shall be subrogated to all the rights of the state in connection with the transaction wherein such loss occurred.

[*Ex1955 c 2 art 5 s 3; Ex 1957 c 1 art 5 s 6; 1969 c 1148 s 43*]

297.34 LICENSEES, DUTIES. Subdivision 1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

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

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

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

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

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

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

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

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

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

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

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

[*Ex1955 c 2 art 5 s 4; Ex1957 c 1 art 5 s 7; 1965 c 455 s 1*]

297.35 DISTRIBUTORS, MONTHLY RETURNS. Subdivision 1. On or before the eighteenth day of each calendar month every distributor with a place of business in this state shall file a return with the commissioner showing the quantity and wholesale sales price of each tobacco product (1) brought, or caused to be brought, into this state for sale; and (2) made, manufactured or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the commissioner and shall contain such other information as the commissioner may require. Each return shall be accompanied by a remittance for the full tax liability shown therein, less 2½ percent of such liability as compensation to reimburse the distributor for his expenses incurred in the administration of sections 297.31 to 297.39.

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

Subd. 3. If, within 20 days after mailing of notice of the proposed assessment, the taxpayer or his legal representative shall file a protest to said proposed assessment and request a hearing thereon, the commissioner shall give notice to that taxpayer or legal representative of the time and place fixed for the hearing, shall hold a hearing on such protest, and shall issue a final assessment to the taxpayer or legal representative for the amount found to be due as a result of the hearing. This hearing shall be held within 45 days after filing of the protest. If a protest is not filed within the time herein prescribed, the commissioner shall issue a final assessment to the taxpayer or legal representative, as such. Any such assessment made by the commissioner shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 4. If any taxpayer required by sections 297.31 to 297.39 to file any return shall fail to do so within the time prescribed by sections 297.31 to 297.39, he shall, on the written demand of the commissioner, file such return within 20 days after the mailing of such written demand and at the same time pay the tax due on the basis thereof. If such taxpayer shall fail within that time to file such return, the commissioner shall make for him a return, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax shall be paid within ten days after the commissioner has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the taxpayer to make a return shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 5. All taxes shall be due and payable not later than the eighteenth day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the rate of six percent per annum.

Where, under the provisions of subdivisions 2 and 3 of this section, the amount of tax due for a given period is assessed without allocating it to any particular month or months, the interest shall commence to run from the date of such assessment.

The commissioner shall have power to reduce or abate interest when in his opinion the facts warrant such reduction or abatement. The exercise of this power shall be subject to the provisions of chapter 270 if the reduction or abatement exceeds $500.

Subd. 6. The commissioner in issuing his final assessment pursuant to subdivision 3 shall add to the amount of tax found due and unpaid a penalty of ten percent thereof, except that, if he finds that the taxpayer has made a false and fraudulent return with intent to evade the tax imposed by sections 297.31 to 297.39, the penalty shall be 25 percent of the entire tax as shown by the return as corrected. The commissioner in assessing a tax on the basis of a return made pursuant to subdivision 4 shall add to the amount of tax found due and unpaid a penalty of 25 percent thereof.

The commissioner shall have power to abate penalties, when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general if the abatement exceeds $500.

Subd. 7. The commissioner may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under sections 297.31 to 297.39.

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

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

[*Ex1955 c 2 art 5 s 5; Ex1957 c 1 art 5 s 8-13; Ex1959 c 70 art 7 s 5; 1969 c 97 s 6, 7; 1969 c 883 s 4-6; 1969 c 884 s 4*]

297.36 REFUNDS, CREDITS. Where tobacco products upon which the tax imposed by sections 297.31 to 297.39 has been reported and paid, are shipped or transported by the distributor to consumers, to be consumed without the state, or to retailers or subjobbers without the state, to be sold by those retailers, or subjobbers without the state, or are returned to the manufacturer by the disbributor or destroyed by the distributor, refund of such tax or credit may be made to the distributor in accordance with regulations prescribed by the commissioner. Any overpayment of the tax imposed under section 297.32 may be made to the taxpayer in accordance with regulations prescribed by the commissioner. The state auditor shall cause any such refund of tax to be paid out of the general fund, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[*Ex1955 c 2 art 5 s 6; Ex1957 c 1 art 5 s 14; 1965 c 135 s 1; 1969 c 399 s 49*]

297.37 INVESTIGATIONS AND HEARINGS, TESTIMONIAL POWERS. Subdivision 1. The commissioner, or his duly authorized agents, may conduct investigations, inquiries, and hearings for the purpose of enforcing the provisions of sections 297.31 to 297.39, and, in connection with such investigations, inquiries, and hearings, he and his duly authorized agents shall have all the powers conferred upon him and his examiners by Minnesota Statutes, Sections 290.56 to 290.58, and the provisions of those sections shall apply to all such investigations, inquiries and hearings.

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

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

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

Subd. 5. Any person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under section 297.35 may, within 30 days from the date of notice of the order, appeal to the tax court in the manner provided by law. Any other order of the commissioner under sections 297.31 to 297.39 shall be subject to review by certiorari.

[*Ex1955 c 2 art 5 s 7; 1965 c 698 s 1*]

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

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

[*Ex1955 c 2 art 5 s 8*]

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

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

[*Ex1955 c 2 art 5 s 9*]

NOTE: Ex Laws 1955, Chapter 2, Article V, Section 10, reads: "All revenues derived from taxes, penalties, interest and license fees under this act shall be deposited by the commissioner in the state treasury and credited to the general revenue fund."