

CHAPTER 297

SALES TAXES; CIGARETTES AND TOBACCO

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297.01 DEFINITIONS.

[For text of subd 1, see M.S.1986]

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

[For text of subd 3, see M.S.1986]

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

[For text of subs 5 and 6, see M.S.1986]

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 is on direct purchase from a cigarette manufacturer and applies cigarette stamps or indicia on at least 50 percent of cigarettes sold by that person.

A distributor who also sells at retail must maintain a separate inventory, substantiated with invoices for cigarettes that were acquired for retail sale.

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

[For text of subs 8 and 9, see M.S.1986]

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

[For text of subs 11 to 13, see M.S.1986]

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

machine operator is any person whose principal business is operating, or owning and leasing to operators, machines for the vending of merchandise or service.

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

History: 1987 c 268 art 13 s 1-5

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, 19 mills on each such cigarette;

(2) On cigarettes weighing more than three pounds per thousand, 38 mills on each such cigarette.

[For text of subs 3 to 5, see M.S.1986]

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

History: 1987 c 268 art 13 s 6,7

297.03 PAYMENT, STAMP ON PACKAGE.

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

[For text of subd 2, see M.S.1986]

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

[For text of subd 4, see M.S.1986]

Subd. 5. **Sale of stamps.** The commissioner shall sell stamps to any person licensed as a distributor at a discount of 1.25 percent from the face amount of the stamps for the first \$1,500,000 of such stamps purchased in any fiscal year; and at a discount of .75 percent on the remainder of such stamps purchased in any fiscal year. The commissioner shall not sell stamps to any other person. The commissioner may prescribe the method of shipment of the stamps to the distributor as well as the quantities of stamps purchased.

Subd. 6. **Tax meter machines.** (1) Before January 1, 1990, the commissioner may authorize any person licensed as a distributor to stamp packages with a tax meter machine, approved by the commissioner, which shall be provided by the distributor. The commissioner 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, check guarantee bond, or certified check in a suitable amount to guarantee the payment of the tax.

(2) Before January 1, 1990, the commissioner may authorize, and after December 31, 1989, the commissioner shall require any person licensed as a distributor to stamp

packages with a heat-applied tax stamping machine, approved by the commissioner, which shall be provided by the distributor. The commissioner shall supervise and check the operation of the machines and shall provide for the payment of the tax on any package so stamped, subject to the discount provided in subdivision 5. The commissioner may sell heat-applied stamps on a credit basis under conditions prescribed by the commissioner, and in that connection require the furnishing of a corporate surety bond, check guarantee bond, or certified check in an amount suitable to guarantee payment of the tax stamps so purchased by a distributor. The stamps shall be sold by the commissioner at a price which includes the tax after giving effect to the discount provided in subdivision 5. The commissioner shall recover the actual costs of the stamps from the distributor.

(3) If the commissioner finds that a stamping machine is not printing or affixing a legible stamp on the package, the commissioner may order the distributor to immediately cease the stamping process until the machine is functioning properly.

[For text of subs 7 to 12, see M.S.1986]

History: 1987 c 268 art 13 s 8-10; 1987 c 384 art 2 s 72

297.04 LICENSE.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. Distributor's application; fee, bond; certified check; subjobber's license.

(a) Except as otherwise provided in paragraph (b), 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 licensed in the distributor's license) to which the distributor delivers and from which the distributor sells or distributes stamped cigarettes.

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

A distributor or subjobber applying for a license between July 1 and December 31 of any year shall be required to pay only one-half of the license fee provided for herein.

(b) In lieu of the bond required in paragraph (a), a certified check made payable to the commissioner may be filed with the commissioner. The department of revenue shall not pay interest on funds encumbered by the check.

[For text of subd 5, see M.S.1986]

Subd. 6. Expiration. Each license issued shall expire on December 31 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.

[For text of subs 7 and 8, see M.S.1986]

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

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

[For text of subds 10 and 11, see M.S.1986]

History: 1987 c 268 art 13 s 11-13

297.07 DISTRIBUTOR TO FILE RETURNS.

Subdivision 1. Monthly return filed with commissioner. On or before the 18th day of each calendar month every distributor with a place of business in this state shall file a return with the commissioner showing the quantity of cigarettes manufactured or brought in from without the state or purchased during the preceding calendar month and the quantity of cigarettes sold or otherwise disposed of in this state and outside this state during that month. Every licensed distributor outside this state shall in like manner file a return showing the quantity of cigarettes shipped or transported into this state during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the commissioner and shall contain such other information as the commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

[For text of subd 2, see M.S.1986]

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

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

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

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

Subd. 5. Offset. Upon audit, if a distributor's return reflects an overpayment, the overpayment may only be offset against an additional tax liability for the month immediately preceding or immediately after the month of overpayment.

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

History: 1987 c 268 art 13 s 14-17

297.11 PROHIBITIONS.

[For text of subds 1 and 2, see M.S.1986]

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

[For text of subd 4, see M.S.1986]

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. This subdivision shall not apply to a person carrying for personal use not more than 200 cigarettes when those cigarettes have had the individual packages or seals thereof broken and are intended for personal use by that person and not to be sold or offered for sale.

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

All common carriers 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.

History: 1987 c 268 art 13 s 18,19

297.13 REVENUE, DISPOSAL.

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

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

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

(1) the revenue produced by one mill of the tax on cigarettes weighing not more than three pounds a thousand and two mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to a Minnesota resources fund for purposes of natural resources acceleration as provided in chapter 86;

(2) the revenue produced by two mills of the tax on cigarettes weighing not more than three pounds a thousand and four mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to the Minnesota state water pollution control fund created in section 116.16, provided that, if the tax on cigarettes imposed by United States Code, title 26, section 5701, as amended, is reduced after June 1, 1985, an additional one mill of the tax on cigarettes weighing not more than three pounds a thousand and two mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to the Minnesota state water pollution control fund created in section 116.16 less any amount credited to the general obligation special tax debt service account under paragraph (a), with respect to bonds issued for the prevention, control, and abatement of water pollution;

(3) the revenue produced by one mill of the tax on cigarettes weighing not more than three pounds a thousand and two mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to a public health fund, provided that if the tax on cigarettes imposed by United States Code, title 26, section 5701, as amended, is reduced after June 1, 1985, an additional two-tenths of one mill of the tax on cigarettes weighing not more than three pounds a thousand and an additional four-tenths of one mill of the tax on cigarettes weighing more than three pounds a thousand must be credited to the public health fund;

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

History: 1987 c 268 art 13 s 20

297.23 CONSUMERS TO FILE RETURN.

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

[For text of subs 2 to 4, see M.S.1986]

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

History: 1987 c 268 art 13 s 21

297.26 REVENUE DISTRIBUTION.

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

History: 1987 c 268 art 13 s 22

297.31 DEFINITIONS.

[For text of subd 1, see M.S.1986]

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

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

[For text of subs 4 to 6, see M.S.1986]

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

[For text of subs 8 to 16, see M.S.1986]

History: 1987 c 268 art 13 s 23-25

297.32 TAX ON TOBACCO PRODUCTS.

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

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

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

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

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

[For text of subs 3 to 7, see M.S.1986]

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

[For text of subd 9, see M.S.1986]

History: 1987 c 268 art 13 s 26-28

297.33 LICENSES; DISTRIBUTORS, SUBJOBBER.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. (a) Except as otherwise provided in paragraph (b), 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, the commissioner shall require either an increase in the amount of said bond or additional bond, in such amount as the commissioner 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. A separate application for a subjobber's license may be made by a licensed distributor for each place of business, other than that licensed in the distributor's license, to which the distributor sells or distributes tobacco products upon which the tax imposed by this chapter has been imposed to other than the ultimate consumer.

(b) In lieu of the bond required in paragraph (a), a certified check may be filed with the commissioner. The check must be made payable to the commissioner and in an amount to be established by the commissioner or the commissioner's designee but not less than twice the average monthly liability of the taxpayer. The department of revenue shall pay no interest on funds encumbered by the check.

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

(b) All licenses expire on December 31 of the year they were issued.

[For text of subs 6 to 13, see M.S.1986]

History: 1987 c 268 art 13 s 29,30

297.35 DISTRIBUTORS, MONTHLY RETURNS.

Subdivision 1. On or before the 18th day of each calendar month every distributor with a place of business in this state shall file a return with the commissioner showing the quantity and wholesale sales price of each tobacco product (1) brought, or caused to be brought, into this state for sale; and (2) made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the commissioner and shall contain such other information as the commissioner may require. Each return shall be accompanied by a remittance for the full tax liability shown therein, less 1.5 percent of such liability as compensation to reimburse the distributor for expenses incurred in the administration of sections 297.31 to 297.39.

[For text of subd 2, see M.S.1986]

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

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

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

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

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

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

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

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

[For text of subd 9, see M.S.1986]

History: 1987 c 268 art 13 s 31-34

297.36 REFUNDS, CREDITS.

Where tobacco products upon which the tax imposed by sections 297.31 to 297.39 has been reported and paid, are shipped or transported by the distributor to consumers,

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

History: 1987 c 268 art 13 s 35

297.41 PERSONAL DEBT.

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

History: 1987 c 268 art 13 s 36

297.42 FAILURE TO FILE RETURN.

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

History: 1987 c 268 art 13 s 37

297.43 PENALTIES.

Subdivision 1. Penalty on unpaid tax. If a tax imposed by this chapter, or any part of it, is not paid within the time required for the payment, or an extension of time, or within 30 days after final determination of an appeal to the tax court relating to it if the taxpayer is not required to pay the amount in dispute pending appeal under section 271.061, there shall be added to the tax a penalty equal to three percent of the amount remaining unpaid if the failure is for not more than 30 days, with an additional penalty of three percent of the amount of tax remaining unpaid during each additional 30 days or fraction thereof, not exceeding 24 percent in the aggregate.

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

bear interest at the rate specified in section 270.75 from the time the tax should have been paid, unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

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

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

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

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

Subd. 6. Interest. The amount of tax not timely paid, together with any penalty imposed in this section, shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and collected as a part of it.

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

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

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

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

History: 1987 c 268 art 13 s 38