

## CHAPTER 297

## SALES TAXES; CIGARETTES AND TOBACCO

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**297.01 DEFINITIONS.**

*[For text of subs 1 to 12, see M.S.1988]*

Subd. 13. "Stamp" means the adhesive stamp supplied by the revenue commissioner.

*[For text of subs 14 and 15, see M.S.1988]*

Subd. 16. "Licensing period" means a two-year period during which licenses are issued. A licensing period begins on January 1 of each even-numbered year and ends on December 31 of the following odd-numbered year.

**History: 1989 c 277 art 3 s 1,2**

**NOTE:** Subdivision 13, as amended by Laws 1989, chapter 277, article 3, section 1, is effective July 1, 1990. See Laws 1989, chapter 277, article 3, section 18.

**NOTE:** Subdivision 15 is repealed by Laws 1989, chapter 277, article 3, section 17, effective July 1, 1990, for provisions applying to stamps and tax meter machines. See Laws 1989, chapter 277, article 3, section 18.

**297.03 PAYMENT, STAMP ON PACKAGE.**

*[For text of subs 1 to 5a, see M.S.1988]*

Subd. 6. **Tax meter machines; stamping machines.** (a) Before July 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.

(b) After June 30, 1990, 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. 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.

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

(d) The commissioner shall annually establish the maximum amount of heat applied stamps that may be purchased each month. Notwithstanding any other provisions of this chapter, the tax due on the return will be based upon actual heat applied stamps purchased during the reporting period.

*[For text of subs 7 to 12, see M.S.1988]*

**History: 1989 c 277 art 3 s 3**

**NOTE:** Subdivision 6, as amended by Laws 1989, chapter 277, article 3, section 3, is effective July 1, 1990, for provisions applying to meter units. See Laws 1989, chapter 277, article 3, section 18.

**NOTE:** Subdivision 12 is repealed by Laws 1989, chapter 277, article 3, section 17, effective July 1, 1990, for provisions applying to stamps and tax meter machines. See Laws 1989, chapter 277, article 3, section 18.

**297.04 LICENSE.***[For text of subds 1 to 3, see M.S.1988]*

**Subd. 4. Distributor's application; fee; subjobber's license.** Each application for a distributor's license shall be accompanied by a fee of \$300. 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 \$24.

A distributor or subjobber applying for a license during the second year of a two-year licensing period 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 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 the commissioner, 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 the application.

**Subd. 6. Expiration.** Each license issued shall expire on December 31 of the second year of the licensing period unless sooner revoked by the commissioner or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the commissioner.

*[For text of subds 7 to 11, see M.S.1988]*

**History:** 1989 c 277 art 3 s 4-6

**NOTE:** Subdivision 10 is repealed by Laws 1989, chapter 277, article 3, section 17, effective July 1, 1990, for provisions applying to stamps and tax meter machines. See Laws 1989, chapter 277, article 3, section 18.

**297.041 SALES TO INDIAN TRIBES.**

**Subdivision 1. Wholesalers.** A wholesaler may set aside the part of the wholesaler's stock necessary to make sales to the established governing body of an Indian tribe recognized by the United States Department of Interior without paying the tax required by this chapter. The unstamped stock shall be kept separate and apart from stamped stock. When shipping or delivering unstamped stock to an Indian tribal organization, the wholesaler shall make a true duplicate invoice. The invoice must show the complete details of the sale or delivery. The wholesaler must send the duplicate to the commissioner not later than the 18th day of the following calendar month. If the wholesaler fails to comply with this section, the commissioner shall revoke the permission granted to the wholesaler to keep a stock of unstamped goods.

**Subd. 2. Retailers.** Retailers who are Indian tribal organizations may keep unstamped stock intended for sale to qualified purchasers.

*[For text of subd 3, see M.S.1988]*

**Subd. 4. Sales to nonqualified buyers.** A retailer who sells or otherwise disposes of unstamped cigarettes other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by section 297.02, subdivision 1, and remit the tax to the department of revenue at the same time and manner as required by section 297.07. If the retailer fails to collect the tax from the buyer or transferee, or fails to remit the tax, the retailer is personally responsible for the tax and the commissioner may seize any cigarettes destined to be delivered to the retailer. The cigarettes so seized shall be considered contraband and be subject to the procedures outlined in section 297.08, subdivision 3. The proceeds of the sale of the cigarettes may be applied to any tax liability owed by the retailer after deducting all costs and expenses.

This section does not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax.

**History:** 1989 c 277 art 1 s 9-11; art 3 s 7

## 297.07 DISTRIBUTOR TO FILE RETURNS.

*[For text of subds 1 and 2, see M.S.1988]*

**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, and 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.

*[For text of subds 4 and 5, see M.S.1988]*

**History:** 1989 c 209 art 1 s 31

## 297.08 CONTRABAND.

**Subdivision 1. Contraband defined.** 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, including all contents contained within the devices.

(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 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 authorized agents have been denied access for the inspection of contents. In lieu of seizure, the commissioner or an agent may seal the device to prevent its use until inspection of contents is permitted.

(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.

(5) Any device including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner or of a person operating with the consent of the owner for the storage or transportation of more than 5,000 cigarettes which are contraband under this subdivision. When cigarettes are being transported in the course of interstate commerce, or are in movement from either a public warehouse to a distributor upon orders from a manufacturer or distributor, or from one distributor to another, the cigarettes are not contraband, notwithstanding the provisions of clause (1).

*[For text of subds 2 to 4, see M.S.1988]*

**History:** 1989 c 277 art 3 s 8

**NOTE:** Subdivision 1, as amended by Laws 1989, chapter 277, article 3, section 8, is effective July 1, 1990. See Laws 1989, chapter 277, article 3, section 18.

## 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 the state treasury and credited as follows:

(a) first to the general obligation special tax bond debt service account in each fiscal year the amount required to increase the balance on hand in the account on each December 1 to an amount equal to the full amount of principal and interest to come

due on all outstanding bonds whose debt service is payable primarily from the proceeds of the tax to and including the second following July 1; and

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

(1) the revenue produced by one mill of the tax on cigarettes weighing not more than three pounds a thousand and two mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to the Minnesota future resources fund;

(2) 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:** 1989 c 282 art 3 s 93; 1989 c 335 art 1 s 190; art 4 s 77

## **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 state treasury and disposed of in the same manner as provided by section 297.13 for revenues received under sections 297.01 to 297.13.

**History:** 1989 c 335 art 4 s 78

## **297.31 DEFINITIONS.**

*[For text of subs 1 to 16, see M.S.1988]*

Subd. 17. "Licensing period" means a two-year period during which licenses are issued. A licensing period begins on January 1 of each even-numbered year and ends on December 31 of the following odd-numbered year.

**History:** 1989 c 277 art 3 s 9

## **297.32 TAX ON TOBACCO PRODUCTS.**

*[For text of subs 1 to 8, see M.S.1988]*

Subd. 9. Revenue derived from the taxes imposed by this section must be deposited by the commissioner in the state treasury and credited to the general fund.

**History:** 1989 c 335 art 4 s 79

## **297.33 LICENSES; DISTRIBUTORS, SUBJOBBER.**

*[For text of subs 1 to 3, see M.S.1988]*

Subd. 4. Each application for a distributor's license shall be accompanied by a fee of \$75.

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.

Subd. 5. (a) Each application for a subjobber's license shall be accompanied by a fee of \$20.

(b) All licenses expire on December 31 of the second year of the licensing period in which they were issued.

Subd. 6. A distributor or subjobber applying for a license during the second year of a licensing period shall be required to pay only one-half of the license fee provided for herein.

Subd. 7. The commissioner, upon receipt of the application 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 the commissioner, 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 the application. The commissioner shall assign a permit number to each person licensed as a distributor at the time of issuance of the first license, which shall be inscribed upon all licenses issued to that distributor.

Subd. 8. Each license shall expire on December 31 of the second year of the licensing period unless sooner revoked by the commissioner or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the commissioner.

*[For text of subds 9 to 13, see M.S.1988]*

**History:** 1989 c 277 art 3 s 10-14

**NOTE:** Subdivision 13, is repealed by Laws 1989, chapter 277, article 3, section 17, effective July 1, 1990, for provisions applying to stamps and tax meter machines. See Laws 1989, chapter 277, article 3, section 18.

## 297.335 SALES TO INDIAN TRIBES.

Subdivision 1. **Wholesalers.** A wholesaler may set aside the part of the wholesaler's stock necessary to make sales to the established governing body of an Indian tribe recognized by the United States Department of the Interior without paying the tax required by this chapter. When shipping or delivering untaxed stock to an Indian tribal organization, the wholesaler shall make a true duplicate invoice. The invoice must show the complete details of the sale or delivery. The wholesaler must send the duplicate to the commissioner not later than the 18th day of the following calendar month. If the wholesaler fails to comply with this section, the commissioner shall revoke the permission granted to the wholesaler to keep a stock of untaxed goods.

Subd. 2. **Retailers.** Retailers who are Indian tribal organizations may keep untaxed stock intended for sale to qualified purchasers.

Subd. 3. **Qualified purchasers.** A qualified purchaser of untaxed tobacco means only an enrolled member of the Indian tribe offering the tobacco for sale.

Subd. 4. **Sales to nonqualified buyers.** A retailer who sells or otherwise disposes of untaxed tobacco other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by this chapter and remit the tax to the department of revenue at the same time and manner as required by this chapter. If the retailer fails to collect the tax from the buyer or transferee, or fails to remit the tax, the retailer is personally responsible for the tax, and the commissioner may seize any tobacco destined to be delivered to the retailer. The procedures for seized contraband outlined in section 297.08, subdivision 3, apply to the seized tobacco. The proceeds of the sale of the tobacco may be applied to any tax liability owed by the retailer after deducting all costs and expenses.

This section does not relieve the buyer or possessor of untaxed tobacco from personal liability for the tax.

**History:** 1989 c 277 art 1 s 12

## 297.35 DISTRIBUTORS, MONTHLY RETURNS.

*[For text of subds 1 and 2, see M.S.1988]*

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, and 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.

*[For text of subds 5 to 10, see M.S.1988]*

**History:** 1989 c 209 art 1 s 32

#### **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, 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.

*[For text of subds 2 to 9, see M.S.1988]*

**History:** 1989 c 324 s 27