

CHAPTER 297F

CIGARETTES AND TOBACCO TAXES

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297F.04 LICENSE SUSPENSION OR REVOCATION.

Subdivision 1. **Powers of commissioner.** The commissioner may revoke or suspend the license or licenses of any distributor or subjobber for violation of this chapter, any other act applicable to the sale of cigarettes or tobacco products, or any rule promulgated by the commissioner, in furtherance of this chapter.

[For text of subds 2 and 3, see M.S.2000]

History: 1Sp2001 c 5 art 20 s 10

297F.09 RETURNS; PAYMENT OF TAX.

[For text of subds 1 to 6, see M.S.2000]

Subd. 7. **Electronic payment.** A cigarette or tobacco products distributor having a liability of \$120,000 or more during a fiscal year ending June 30 must remit all liabilities in the subsequent calendar year by electronic means.

[For text of subds 8 and 9, see M.S.2000]

History: 1Sp2001 c 5 art 17 s 17

297F.13 REQUIRED RECORDS.

[For text of subds 1 to 3, see M.S.2000]

Subd. 4. **Retailer and subjobber to preserve purchase invoices.** Every retailer and subjobber shall procure itemized invoices of all cigarettes or tobacco products purchased.

The retailer and subjobber shall preserve a legible copy of each invoice for one year from the date of the invoice. The retailer and subjobber shall preserve copies of the invoices at each retail location or at a central location provided that the invoice must be produced and made available at a retail location within one hour when requested by the commissioner or duly authorized agents and employees. Copies should be numbered and kept in chronological order.

To determine whether the business is in compliance with the provisions of this chapter, at any time during usual business hours, the commissioner, or duly authorized agents and employees, may enter any place of business of a retailer or subjobber without a search warrant and inspect the premises, the records required to be kept under this chapter, and the packages of cigarettes, tobacco products, and vending devices contained on the premises.

[For text of subd 5, see M.S.2000]

History: 1Sp2001 c 5 art 20 s 11

297F.16 ASSESSMENTS.

[For text of subds 1 to 3, see M.S.2000]

Subd. 4. **Erroneous refunds.** An erroneous refund is considered an underpayment of tax on the date made. An assessment of a deficiency arising out of an erroneous refund must be made within two years from the making of the refund. If part of the

refund was induced by fraud or misrepresentation of a material fact, the assessment may be made at any time.

[For text of subds 5 to 7, see M.S.2000]

History: 1Sp2001 c 5 art 7 s 56

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

If a retailer purchases for resale from an unlicensed seller more than 20,000 cigarettes or \$500 or more worth of tobacco products, the commissioner may revoke the person's sales and use tax permit as provided in section 297A:86.

History: 1Sp2001 c 5 art 12 s 86

297F.20 CRIMINAL PENALTIES.

[For text of subds 1 and 2, see M.S.2000]

Subd. 3. **False or fraudulent returns; penalties.** (a) A person who files with the commissioner a return, report, or other document, or who maintains or provides invoices subject to review by the commissioner under this chapter, known by the person to be fraudulent or false concerning a material matter, is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, invoice, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the return, report, invoice, or other document, is guilty of a felony.

[For text of subds 4 to 12, see M.S.2000]

History: 1Sp2001 c 5 art 11 s 6

297F.21 CONTRABAND.

Subdivision 1. **Contraband defined.** The following are declared to be contraband and therefore subject to civil and criminal penalties under this chapter:

(a) Cigarette packages which do not have stamps affixed to them as provided in this chapter, including but not limited to (i) packages with illegible stamps and packages with stamps that are not complete or whole even if the stamps are legible, and (ii) all devices for the vending of cigarettes in which packages as defined in item (i) are found, including all contents contained within the devices.

(b) A device for the vending of cigarettes and all packages of cigarettes, 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 this chapter, it shall be presumed that all packages contained in the device are unstamped and contraband.

(c) A 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.

(d) A 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.

(e) A 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 (a).

(f) A 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 untaxed tobacco products intended for sale in Minnesota other than those in the possession of a licensed distributor on or before the due date for payment of the tax under section 297F.09, subdivision 2.

(g) Cigarette packages or tobacco products obtained from an unlicensed seller.

(h) Cigarette packages offered for sale or held as inventory in violation of section 297F.20, subdivision 7.

(i) Tobacco products on which the tax has not been paid by a licensed distributor.

(j) Any cigarette packages or tobacco products offered for sale or held as inventory for which there is not an invoice from a licensed seller as required under section 297F.13, subdivision 4.

(k) Cigarette packages which have been imported into the United States in violation of United States Code, title 26, section 5754. All cigarettes held in violation of that section shall be presumed to have entered the United States after December 31, 1999, in the absence of proof to the contrary.

Subd. 2. Seizure. Cigarettes, tobacco products, or other property made contraband by subdivision 1 may be seized by the commissioner or authorized agents or by any sheriff or other police officer, with or without process, and are subject to forfeiture as provided in subdivision 3.

Subd. 3. Inventory; judicial determination; appeal; disposition of seized property.

(a) Within ten days after the seizure of any alleged contraband, the person making the seizure shall serve by certified mail an inventory of the property seized on the person from whom the seizure was made, if known, and on any person known or believed to have any right, title, interest, or lien in the property, at the last known address, and file a copy with the commissioner. The notice must include an explanation of the right to demand a judicial forfeiture determination.

(b) Within 60 days after the date of service of the inventory, which is the date of mailing, the person from whom the property was seized or any person claiming an interest in the property may file a demand for a judicial determination of the question as to whether the property was lawfully subject to seizure and forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the commissioner of revenue, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property is \$7,500 or less, the claimant may file an action in conciliation court for recovery of the property. If the value of the seized property is less than \$500, the claimant does not have to pay the conciliation court filing fee.

(c) The complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff's interest in the property seized. No responsive pleading is required of the commissioner, and no court fees may be charged for the commissioner's appearance in the matter. The proceedings are governed by the Rules of Civil Procedure. Notwithstanding any law to the contrary, an action for the return of property seized under this section may not be maintained by or on behalf of any person who has been served with an inventory unless the person has complied with this subdivision. The court shall decide whether the alleged contraband is contraband, as defined in subdivision 1. The court shall hear the action without a jury and shall try and determine the issues of fact and law involved.

(d) When a judgment of forfeiture is entered, the commissioner may, unless the judgment is stayed pending an appeal, either:

(1) deliver the forfeited cigarette packages or tobacco products to the commissioner of human services for use by patients in state institutions;

(2) cause the property in clause (1) to be destroyed; or

(3) cause the forfeited property to be sold at public auction as provided by law.

The person making a sale, after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are established as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation. The balance of the proceeds must be paid 75 percent to the department of revenue for deposit as a supplement to its operating fund or similar fund for official use, and 25 percent to the county attorney or other prosecuting agency that handled the court proceeding, if there is one, for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes. If there is no prosecuting authority involved in the forfeiture, the 25 percent of the proceeds otherwise designated for the prosecuting authority must be deposited into the general fund.

(e) If no demand for judicial determination is made, the property seized is considered forfeited to the state by operation of law and may be disposed of by the commissioner as provided in the case of a judgment of forfeiture.

Subd. 4. [Repealed, 1Sp2001 c 5 art 18 s 11]

History: *1Sp2001 c 5 art 18 s 6-8*