State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0253

HOUSE TAXATION COMMITTEE ENGROSSED NO. SB 41 - 02/22/2007

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

FOR AN ACT ENTITLED, An Act to revise the procedures used to assess and collect unpaid cigarette taxes, to establish certain penalties, to revise certain provisions regarding the seizure of contraband cigarettes, and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-50-6 be amended to read as follows:

10-50-6. ~~Any~~ No cigarette on which the tax imposed by this chapter has been paid, ~~such~~ the payment being evidenced by the affixing of ~~such stamp or imprint, is not~~ the stamp required by § 10-50-18 is subject to a further tax under this chapter. ~~However, any person, who possesses two thousand or more cigarettes that do not bear a tax stamp or imprint indicating that the South Dakota cigarette tax has been paid, shall pay the tax imposed pursuant to § 10-50-3 plus a penalty equal to ten percent of the total tax due.~~ Any person who possesses or receives any cigarettes that do not bear a tax stamp indicating that the tax imposed by this chapter has been paid, shall pay the tax imposed pursuant to § 10-50-3, plus interest at the rate of one and one-quarter percent for each month or part of a month the tax is unpaid, beginning thirty days after the person's first possession or receipt of the cigarettes.

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

Any person who possesses or receives:

(1) More than two thousand but less than six thousand cigarettes that do not bear a tax stamp indicating that the tax imposed by this chapter has been paid, shall pay the tax imposed pursuant to § 10-50-3, and interest imposed by this Act, plus a penalty of twenty percent of the total tax due; and

(2) Six thousand or more cigarettes that do not bear a tax stamp indicating that the tax imposed by this chapter has been paid, shall pay the tax imposed pursuant to § 10-50-3, and interest imposed by this Act, plus a penalty of one hundred percent of the total tax due.

In addition to the requirements to pay the tax, penalty, and interest, any person who possesses or receives:

(1) Six thousand or more but less than fourteen thousand cigarettes that do not bear a tax stamp indicating that the tax imposed by this chapter has been paid is guilty of a Class 1 misdemeanor; and

(2) Fourteen thousand or more cigarettes that do not bear a tax stamp or imprint indicating that the tax imposed by this chapter has been paid is guilty of a Class 4 felony.

Except as otherwise provided in this section, the provisions of chapter 10-59 apply to the assessment and collection of the tax, penalty, and interest.

Section 2. That § 10-50-61 be amended to read as follows:

10-50-61. In addition to the tax imposed by § 10-50-3, there is imposed, whether or not a sale occurs, a tax upon all tobacco products in this state and upon any person engaged in business as a licensed distributor or licensed wholesaler thereof, at the rate of thirty-five percent of the wholesale purchase price of such tobacco products. ~~Such~~ The tax shall be imposed at the

time the distributor or wholesaler brings or causes to be brought into this state tobacco products for sale; makes, manufactures, or fabricates tobacco products in this state for sale in this state; ~~or~~ ships or transports tobacco products to dealers in this state to be sold by those dealers; or at the time a person possesses or receives untaxed tobacco products. For the purposes of this chapter, wholesale purchase price is the price for which a manufacturer sells tobacco products to a licensed distributor or licensed wholesaler exclusive of any discount or other reduction.

Section 3. That § 10-50-35 be amended to read as follows:

10-50-35. Any cigarettes found at any place in this state without the stamps ~~affixed thereto or without bearing the imprint impressed by a suitable metering machine approved by the secretary of revenue and regulation as required~~ required to be affixed by this chapter ~~unless such cigarettes shall be in the possession of a licensed distributor or wholesaler in the original unopened shipping package or unless they shall be in a course of transit from without this state and consigned to a licensed distributor or a licensed wholesaler~~ are declared to be contraband goods and may be seized by the secretary~~, his agents, or employees,~~ or by any peace officer of this state ~~when directed by the secretary to do so~~, without a warrant, unless the cigarettes are in:

(1) The possession of a licensed distributor or wholesaler in the original unopened shipping package; or

(2) A course of transit from without this state and consigned to a licensed distributor or a licensed wholesaler.

Section 4. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.