

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2053
(Senators Solberg, Lee, Lyson)
(Representatives Brusegaard, Pollert, Wald)

AN ACT to create and enact a new section to chapter 5-03 of the North Dakota Century Code, relating to deposit of taxes and fees from beer and liquor wholesalers in the state general fund; to amend and reenact sections 2-05-15.1, 5-01-04, 5-01-11, 5-01-16, 5-03-01, 5-03-01.1, 5-03-01.2, 5-03-02, 5-03-04, 5-03-05, 5-03-06, 5-03-06.1, 57-32-03, 57-32-04, 57-32-05, and 57-32-06 of the North Dakota Century Code, relating to transfer of tax collection responsibilities from the state treasurer to the state tax commissioner; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-15.1 of the North Dakota Century Code is amended and reenacted as follows:

2-05-15.1. Bond required. Before issuance or transfer of any common carrier certificate by aircraft as provided for in section 2-05-15 to any entity, the North Dakota aeronautics commission shall require such entity to post a bond issued by a licensed surety company, or in cash with the North Dakota aeronautics commission payable to the North Dakota aeronautics commission as trustee for the state ~~treasurer~~ tax commissioner, in an amount equal to the estimated annual ~~utility~~ taxes to be assessed upon such air transportation entity and assessed and collected pursuant to chapters 57-06, 57-07, 57-08, 57-13, and 57-32, ~~as amended~~, for each calendar year that such air transportation entity holds a common carrier certificate issued or transferred to it by the state aeronautics commission, authorizing such holder to engage in the business of common carrier by aircraft operating on a definite schedule between fixed termini in North Dakota. The state aeronautics commission shall consult with the state tax commissioner and such air transportation entity to determine the estimated annual ~~utility~~ taxes to be assessed to each such air transportation entity and the state aeronautics commission shall set the bond amount based on reasonable estimates. The bond amount posted and required for each such air transportation entity must be secured by the state aeronautics commission, after such ~~utility~~ taxes become delinquent, in an amount equal to such ~~utility~~ taxes and penalties and the state aeronautics commission shall pay such proceeds to the state ~~treasurer~~ tax commissioner, after the state ~~treasurer~~ tax commissioner has notified the state aeronautics commission in writing that the ~~utility~~ taxes on such air transportation entity are delinquent and unpaid with the amount of taxes and penalties due. In the event such air transportation entity fails to sufficiently maintain its bond at any time, the state aeronautics commission shall take action to revoke any common carrier certificate by aircraft that such air transportation entity holds that was issued by the North Dakota aeronautics commission.

SECTION 2. AMENDMENT. Section 5-01-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions. A person may manufacture malt beverages and wine for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the bureau of alcohol, tobacco and firearms of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the United States treasury department, is guilty of a class A misdemeanor and property used for same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages or a distillery or other plant for the distilling, manufacturing, or processing of liquor within this state if the person has secured a license from the state ~~treasurer~~ tax commissioner. Such license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state ~~treasurer~~ tax

commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. Said license shall allow sale to only licensed wholesalers.

SECTION 3. AMENDMENT. Section 5-01-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-11. Unfair competition - Penalty. A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state ~~treasurer~~ tax commissioner may determine by ~~regulation~~ rule the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense does not exceed fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed one hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to two hundred fifty dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers. The state ~~treasurer~~ tax commissioner may, to keep current with market conditions, adjust the limitation amount for the point-of-sale items on an annual basis upon consultation with representatives of the alcohol beverage industry.

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor. A microbrew pub is exempt from the provisions of this section to the extent that this section restricts the coownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

SECTION 4. AMENDMENT. Section 5-01-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-16. Direct sale from out-of-state seller to consumer - Penalty.

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state ~~treasurer~~ tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.

This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person as described under subsection 1 or 2. Every package of alcoholic beverages shipped directly to

an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state.

SECTION 5. AMENDMENT. Section 5-03-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-01. State wholesale license required - Qualifications - Penalty - Exception. Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state ~~treasurer~~ tax commissioner. A lender who acquires an inventory of beer or liquor by reason of foreclosure of a security interest in the inventory is exempt from obtaining a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory. The license must only allow sale to licensed retailers, licensed wholesalers, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No license may be issued unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of this state and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a resident of this state, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
2. The state ~~treasurer~~ tax commissioner may require the applicant to set forth other information necessary to enable the state ~~treasurer~~ tax commissioner to determine if a license should be granted.
3. A person is not eligible for such a license unless that person has a warehouse and office in this state, in which is kept a complete set of records relative to that person's alcoholic beverage transactions in this state.
4. The applicant may not have any financial interest in any retail alcoholic beverage business.
5. The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

Any person distributing alcoholic beverages in this state without compliance with this title is guilty of a class B misdemeanor.

SECTION 6. AMENDMENT. Section 5-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-03-01.1. Conviction not bar to licensure - Exceptions. Conviction of an offense shall not disqualify a person from licensure under this chapter unless the state ~~treasurer~~ tax commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a beer or liquor wholesaler, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 7. AMENDMENT. Section 5-03-01.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-01.2. Brand registration - Penalty. Before any brand of alcoholic beverage may be offered for sale in this state, the primary source of supply for the brand must register the brand annually with the state ~~treasurer~~ tax commissioner. Only registered brands may be sold or transported within the state. Only licensed wholesalers may purchase registered brands from the primary source of

supply. A brand is defined as having the same characteristics as required by the bureau of alcohol, tobacco and firearms of the United States treasury department for certification of label or bottle approval. A violation of this section is a class B misdemeanor.

The state ~~treasurer~~ tax commissioner may adopt rules and prescribe the necessary forms to administer this section.

SECTION 8. AMENDMENT. Section 5-03-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-02. Fees. The fee for an annual wholesale liquor license is one thousand dollars. The fee for an annual wholesale beer license is two hundred dollars. Fees must be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state ~~treasurer~~ tax commissioner. When an application clearly indicates that the applicant does not desire to exercise the privileges granted by the license applied for until on or after the beginning of the quarterly period following the quarterly period in which the application is filed with the department, the fees must be reduced twenty-five percent for each full quarter of a year elapsing between the first day of the year for which the license is issued and the date indicated on the application. A license may not be issued for any period for a fee less than one-half of the annual license fee.

SECTION 9. AMENDMENT. Section 5-03-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-04. Collection of taxes. The taxes imposed by this chapter are payable as follows:

1. Except as provided in subsection 3, wholesalers shall pay the tax to the state ~~treasurer~~ tax commissioner on or before the fifteenth day of each month.
2. Liquor wholesalers shall make the payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make the payments based on the total gallonage purchased from brewers the preceding calendar month. Microbrew pubs shall make payments based on the total gallonage sold on premises during the preceding calendar month.
3. Sales of alcoholic beverages for export through a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse are excluded from the computation of the gallonage tax. If the alcoholic beverages are returned to this state from the federally bonded warehouse, the foreign trade zone, or the export bonded warehouse, the exemption no longer applies.
4. Upon satisfactory proof, a tax credit is allowed beer wholesalers for beer purchased, but which cannot be sold in this state. A tax credit is allowed wholesalers on bad accounts which are charged off for income tax purposes, but a pro rata tax is again payable on any accounts subsequently collected.
5. If any wholesaler makes an overpayment of taxes due, the state ~~treasurer~~ tax commissioner shall issue a credit applicable to future obligations or certify that amount to the office of management and budget for a refund.
6. Any remittance within one dollar of the correct amount due may be accepted by the state ~~treasurer~~ tax commissioner as the correct amount due.

SECTION 10. AMENDMENT. Section 5-03-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-05. ~~Treasurer Tax commissioner to enact regulations~~ adopt rules - Appeal. The state ~~treasurer~~ tax commissioner, pursuant to chapter 28-32, shall ~~adopt rules and regulations~~ governing retailers, wholesalers, and manufacturers necessary to carry out the provisions of this title and to ensure efficient collection of beer and liquor taxes. All decisions of the state ~~treasurer~~ tax commissioner are subject to court review.

SECTION 11. AMENDMENT. Section 5-03-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-06. Examination by ~~treasurer~~ tax commissioner - Penalty for improper returns. The state ~~treasurer~~ tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, microbrew pub, or other person to determine if such person has fully complied with all statutes and ~~regulations~~ rules pertaining to the person's business. If any wholesaler or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax five percent per month of the total amount of the tax unpaid from the due date of payment until paid. Any wholesaler or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state ~~treasurer~~ tax commissioner may forgive all or part of any penalty for good cause shown. If any wholesaler or microbrew pub files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such wholesaler or microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state ~~treasurer~~ tax commissioner that such manufacturer has failed to file required reports with ~~his~~ the tax commissioner's office. Any wholesaler or microbrew pub may have ~~his~~ its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

SECTION 12. AMENDMENT. Section 5-03-06.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-06.1. Hearing on alleged violations - Denial of license. On licenses that are renewable annually, the state ~~treasurer~~ tax commissioner may not revoke or suspend a license or deny a renewal prior to conducting a hearing in accordance with chapter 28-32.

SECTION 13. A new section to chapter 5-03 of the North Dakota Century Code is created and enacted as follows:

Taxes and fees deposited in the general fund. All moneys collected by the tax commissioner under this chapter must be transferred to the state treasurer, within ten days after the end of the month in which they were collected, and deposited in the state general fund.

SECTION 14. AMENDMENT. Section 57-32-03 of the North Dakota Century Code is amended and reenacted as follows:

57-32-03. ~~Tax certified to statements prepared by state treasurer tax commissioner -~~ When due and delinquent. On or before the thirty-first day of March in each year, the tax commissioner shall ~~file with the state treasurer a certified list of all companies provide each company assessed under the provisions of this chapter a statement of its taxes due for the preceding year, together with the valuations and taxes assessed in each case.~~ Such taxes are due upon the fifteenth day of April next following the date of ~~certification~~ the statement of taxes due. The taxes become delinquent on the first day of May next following the due date and, if not paid on or before said date, are subject to a penalty of two percent and, on June first following delinquency, an additional penalty of two percent and, on July first following delinquency, an additional penalty of two percent and, an additional penalty of two percent on October fifteenth following delinquency. From and after January first of the year following the year in which the taxes became due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until such taxes and penalties are paid, with such interest charges to be prorated to the nearest full month for a fractional year of delinquency. All the provisions of the law respecting delinquency of personal property assessments generally so far as may be consistent with the provisions of this chapter are applicable equally to the assessments and taxes provided for in this chapter.

SECTION 15. AMENDMENT. Section 57-32-04 of the North Dakota Century Code is amended and reenacted as follows:

57-32-04. Allocation of tax. The taxes imposed by this chapter upon express companies must be collected by the state tax commissioner and transferred to the state treasurer and deposited for deposit in the state general fund.

The taxes imposed by this chapter upon air transportation companies must be collected by the state tax commissioner and deposited with the state treasurer, who shall credit the same to the air transportation fund, but within ninety days after receipt thereof, these funds must be allocated and remitted as herein provided by the state treasurer to the cities or municipal airport authorities where such transportation companies make regularly scheduled landings. The taxes collected from each company must be allocated to each city or municipal airport authority where that company makes regularly scheduled landings by multiplying the total tax collected by a fraction, the numerator of which is the value of the company's property at a given city or municipal airport and the denominator of which is the total value of the property located in North Dakota that is subject to the assessment. It is the duty of the tax commissioner to certify to the state treasurer the names of such air transportation companies and the amount of tax of each company that must be allocated by the state treasurer to each city or municipal airport authority.

SECTION 16. AMENDMENT. Section 57-32-05 of the North Dakota Century Code is amended and reenacted as follows:

57-32-05. Collection of tax. If any tax required to be paid by any company under the provisions of this chapter has not been paid on or before October first of the year following the year of delinquency, the state ~~treasurer~~ tax commissioner shall seize personal property belonging to such company found within this state, sufficient to pay the amount of such tax with penalty and interest. The state ~~treasurer~~ tax commissioner, immediately after seizing said property, shall proceed to advertise the same for sale by publishing a notice at least two times in a newspaper published in Burleigh County. Such notice must describe the property seized, the amount of the tax and penalty for which the property has been seized, and the day and hour when and the place where said property will be sold. If the tax and penalty, with interest due thereon, have not been paid before the time appointed for sale, which may not be less than ten days after the first publication of such notice, the state ~~treasurer~~ tax commissioner shall proceed to sell such property, or so much thereof as may be necessary, to pay such tax, penalty, interest, and the costs of such seizure and sale, at public auction to the highest bidder.

SECTION 17. AMENDMENT. Section 57-32-06 of the North Dakota Century Code is amended and reenacted as follows:

57-32-06. Legal proceedings to enforce payment of tax. If the state ~~treasurer~~ tax commissioner is unable to find within this state sufficient personal property belonging to any company charged with the taxes prescribed by this chapter, to pay the same, with the penalty and interest thereon, the state ~~treasurer~~ tax commissioner shall notify the attorney general of the amount of such delinquent taxes, with penalty and interest accrued thereon, and it is the duty of ~~such officer~~ the attorney general to institute an action in the district court of Burleigh County to collect the same. Upon the institution of any such action, an attachment may be issued and any property owned by such company may be attached.

SECTION 18. EFFECTIVE DATE. Sections 1, 14, 15, 16, and 17 of this Act are effective for taxable years beginning after December 31, 2000. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of this Act are effective for taxable events occurring after June 30, 2001.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2053.

Senate Vote: Yeas 29 Nays 20 Absent 0

House Vote: Yeas 51 Nays 47 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State