

January 11, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1099

Page 1, line 1, after "reenact" insert "section 5-03-06,"

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after "57-43.1-44" insert ", and 57-43.2-37"

Page 1, line 3, after the first "to" insert "direct sales of alcoholic beverages,"

Page 1, line 5, remove "and"

Page 1, line 6, after "information" insert ", and cooperative agreements for the exchange of special fuels tax information"

Page 1, after line 7, insert:

**"SECTION 1. AMENDMENT.** Section 5-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-06. Examination by tax commissioner - Penalty for improper returns.**

The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery, microbrew pub, direct shipper, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any manufacturer, wholesaler, domestic winery, domestic distillery, ~~or~~ microbrew pub, or direct shipper 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 a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay, except the first month after the return or tax became due. Any manufacturer, wholesaler, domestic winery, domestic distillery, ~~or~~ microbrew pub, or direct shipper failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever was later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due does not apply. If any manufacturer, wholesaler, domestic winery, domestic distillery, ~~or~~ microbrew pub, or direct shipper 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 manufacturer, wholesaler, domestic winery, domestic

distillery, or microbrew pub, or direct shipper 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 tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any manufacturer, wholesaler, domestic winery, domestic distillery, or microbrew pub, or direct shipper may have 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."

Page 2, line 29, after "**Cooperative**" insert "**motor vehicle fuels**"

Page 2, line 29, overstrike "**between states**"

Page 3, line 19, overstrike "which"

Page 3, line 20, after "has" insert "that"

Page 3, line 22, remove "tax"

Page 3, line 24, remove "tax"

Page 3, after line 29, insert:

**"SECTION 6. AMENDMENT.** Section 57-43.2-37 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-37. Cooperative special fuels agreements-between-states.**

1. The director may enter into cooperative agreements ~~with other states~~ for exchange of information and auditing of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of special fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward ~~to officers of another state~~ any information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any person. The director may disclose ~~to officers of another state~~ the location of officers, motor vehicles, and other real and personal property of users of special fuels.
4. An agreement may provide for ~~each state to audit the records of persons based in the state~~ audits of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally, to determine if the special fuel taxes due each state are properly reported and paid. ~~Each state shall forward the~~ The findings of the audits performed

on persons ~~based in the state, to each state in which the person has that~~  
have a taxable use of special fuels may be shared among parties to a  
cooperative agreement. For persons not based in this state and who have  
taxable use of special fuel in this state, the director or the commissioner  
may serve the audit findings ~~received from another state~~, in the form of an  
assessment, on the person as though an audit was conducted by the  
director or the commissioner.

5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner."

Renumber accordingly