

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1099

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact section 5-03-06, subsections 3 and 5 of section
2 57-36-14, subsection 7 of section 57-40.2-07, and sections 57-40.3-09, 57-43.1-44, and
3 57-43.2-37 of the North Dakota Century Code, relating to direct sales of alcoholic beverages,
4 procedures available to the tax commissioner in case of seizure of tobacco products, reporting
5 and remittance of use tax collected during odd-numbered years, the definition of state for motor
6 vehicle excise tax reciprocity purposes, cooperative agreements for the exchange of motor fuels
7 tax information, and cooperative agreements for the exchange of special fuels tax information.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

11 **5-03-06. Examination by tax commissioner - Penalty for improper returns.**

12 The state tax commissioner may at any reasonable time make an examination of the books
13 and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery,
14 microbrew pub, direct shipper, or other person to determine if such person has fully complied
15 with all statutes and rules pertaining to the person's business. If any manufacturer, wholesaler,
16 domestic winery, domestic distillery, ~~or~~ microbrew pub, or direct shipper liable for any taxes
17 imposed by this chapter fails to pay such tax on the date payment is due, there must be added
18 to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is
19 greater, plus interest of one percent of the tax per month or fraction of a month of delay, except
20 the first month after the return or tax became due. Any manufacturer, wholesaler, domestic
21 winery, domestic distillery, ~~or~~ microbrew pub, or direct shipper failing to furnish reports when
22 required must be assessed a penalty of one hundred dollars for each day such reports are
23 delinquent. The state tax commissioner may forgive all or part of any penalty for good cause
24 shown. The tax commissioner shall give notice of the determination to the person liable for tax.

1 If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer,
2 notice of the determination must be given not later than three years after the last day on which
3 the return was due or three years after the return was filed, whichever is later. If it is determined
4 upon audit by the tax commissioner that the tax due was twenty-five percent or more above the
5 amount reported on the return, notice of determination of tax due must be given not later than
6 six years after the last day on which the return was due or six years after the return was filed,
7 whichever was later. Notice of determination of tax due for any reporting period for which a
8 taxpayer failed to file a return must be given not later than six years after the due date of the
9 return, but if fraudulent information is given in a return or the failure to file a return is due to the
10 fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time
11 limitation provided in this section for giving notice of the determination of tax due does not apply.
12 If any manufacturer, wholesaler, domestic winery, domestic distillery, ~~or microbrew pub~~, or direct
13 shipper files a fraudulent return, there must be added to the tax an amount equal to the tax
14 evaded or attempted to be evaded and such manufacturer, wholesaler, domestic winery,
15 domestic distillery, ~~or microbrew pub~~, or direct shipper is also guilty of a class C felony. All such
16 taxes and civil penalties may be collected by assessment or distraint, and no court of this state
17 may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic
18 beverages from a manufacturer after notice from the state tax commissioner that such
19 manufacturer has failed to file required reports with the tax commissioner's office. Any
20 manufacturer, wholesaler, domestic winery, domestic distillery, ~~or microbrew pub~~, or direct
21 shipper may have its license suspended or revoked for violation of any of the provisions of this
22 title after a hearing conducted similar to that prescribed by this law.

23 **SECTION 2. AMENDMENT.** Subsections 3 and 5 of section 57-36-14 of the North Dakota
24 Century Code are amended and reenacted as follows:

- 25 3. In case a judgment of forfeiture is entered, the tax commissioner, unless ~~such~~the
26 judgment is stayed pending an appeal to the supreme court, as soon as convenient,
27 shall ~~sell such~~destroy the forfeited property and ~~cover the proceeds, less court costs,~~
28 ~~into the common schools trust fund of the state.~~
- 29 5. In the event that no demand for judicial determination is made, ~~such~~the seized
30 property must be deemed forfeited to the state by operation of law, and the tax
31 commissioner ~~thereupon may sell~~shall destroy the same.

1 **SECTION 3. AMENDMENT.** Subsection 7 of section 57-40.2-07 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 7. If total sales and purchases subject to sales and use taxes for the preceding calendar
4 year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this
5 chapter is payable monthly on or before the last day of the next succeeding month,
6 ~~except for taxes collected during May of each odd-numbered year, which are payable~~
7 ~~on or before the twenty-second day of June of that year.~~ The amount of monthly tax
8 payable, manner of payment, filing of the return, penalty, and waiver of penalty must
9 be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for
10 failure to file a return or corrected return or to pay the tax imposed must be that
11 prescribed in section 57-40.2-15. If a person is required to file more than one return
12 pursuant to this section, the monthly payment requirement applies separately to each
13 return. If total sales and purchases subject to sales and use taxes for any succeeding
14 calendar year decrease below three hundred thirty-three thousand dollars, a person
15 may return to quarterly installments. In the event of a business reorganization in which
16 the ownership of the business organization remains in the same person or persons as
17 prior to the reorganization, the total sales subject to sales and use taxes for the
18 preceding calendar year for the business that was reorganized must be used to
19 determine whether the tax is payable monthly under this section.

20 **SECTION 4. AMENDMENT.** Section 57-40.3-09 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-40.3-09. Credit for excise tax paid in other states - Reciprocity.**

23 If any motor vehicle has been subjected already to a sales tax, use tax, or motor vehicle
24 excise tax by any other state, or political subdivision thereof, in respect to its sale or use in an
25 amount less than the tax imposed by this chapter, the provisions of this chapter apply, but at a
26 rate measured by the difference only between the rate fixed in this chapter and the rate by
27 which the previous tax paid in the other state, or political subdivision thereof, upon the sale or
28 use was computed. If the rate of tax imposed in such other state, or political subdivision thereof,
29 is the same or more than the rate of tax imposed by this chapter, then no tax is due on such
30 motor vehicle. The provisions of this section apply only if such other state, or political
31 subdivision thereof, allows a credit with respect to the excise tax imposed by this chapter which

1 is substantially similar in effect to the credit allowed by this section. For purposes of this section,
2 "state" means a state, territory, or possession of the United States, the District of Columbia, or
3 the Commonwealth of Puerto Rico.

4 **SECTION 5. AMENDMENT.** Section 57-43.1-44 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-43.1-44. Cooperative motor vehicle fuels agreements ~~between states~~.**

- 7 1. The director may enter into cooperative agreements ~~with other states~~ for exchange of
8 information and auditing of users of motor fuels used in fleets of motor vehicles
9 operated or intended to operate interstate or internationally. An agreement or
10 amendment to an agreement is not effective until filed in writing with the director.
- 11 2. An agreement under this section may provide for determining the base state for users,
12 users' records requirements, audit procedures, exchange of information, persons
13 eligible for tax licensing, defining qualified motor vehicles, determining if bonding is
14 required, specifying reporting requirements and periods including defining the uniform
15 penalty and interest rates for late reporting, determining methods for collecting and
16 forwarding of motor fuel taxes and penalties to another jurisdiction, and other
17 provisions as will facilitate the administration of the agreement.
- 18 3. The director may, as required by the terms of the agreement, forward ~~to officers of~~
19 ~~another state any~~ information in the director's or commissioner's possession relative to
20 the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any
21 person. The director may disclose ~~to officers of another state~~ the location of officers,
22 motor vehicles, and other real and personal property of users of motor fuels.
- 23 4. An agreement may provide for each state ~~to audit the records of persons based in the~~
24 ~~state~~ audits of users of motor fuels used in fleets of motor vehicles operated or
25 intended to operate interstate or internationally, to determine if the motor fuel taxes
26 due each state are properly reported and paid. ~~Each state shall forward the~~ The
27 findings of the audits performed on persons ~~based in the state, to each state in which~~
28 ~~the person has~~ that have a taxable use of motor fuels may be shared among parties to
29 a cooperative agreement. For persons not based in this state and who have taxable
30 use of motor fuel in this state, the director or the commissioner may serve the audit

1 findings received from another state, in the form of an assessment, on the person as
2 though an audit was conducted by the director or the commissioner.

3 5. Any agreement entered under this section does not preclude the director or the
4 commissioner from auditing the records of any person covered by the provisions of
5 this chapter.

6 6. The provisions of any agreement entered into under this section prevail over any
7 conflicting rules adopted by the director or the commissioner.

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

10 **57-43.2-37. Cooperative special fuels agreements between states.**

11 1. The director may enter into cooperative agreements with other states for exchange of
12 information and auditing of users of special fuels used in fleets of motor vehicles
13 operated or intended to operate interstate or internationally. An agreement or
14 amendment to an agreement is not effective until filed in writing with the director.

15 2. An agreement under this section may provide for determining the base state for users,
16 users' records requirements, audit procedures, exchange of information, persons
17 eligible for tax licensing, defining qualified motor vehicles, determining if bonding is
18 required, specifying reporting requirements and periods including defining the uniform
19 penalty and interest rates for late reporting, determining methods for collecting and
20 forwarding of special fuel taxes and penalties to another jurisdiction, and other
21 provisions as will facilitate the administration of the agreement.

22 3. The director may, as required by the terms of the agreement, forward to officers of
23 another state any information in the director's or commissioner's possession relative to
24 the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any
25 person. The director may disclose to officers of another state the location of officers,
26 motor vehicles, and other real and personal property of users of special fuels.

27 4. An agreement may provide for each state to audit the records of persons based in the
28 state audits of users of special fuels used in fleets of motor vehicles operated or
29 intended to operate interstate or internationally, to determine if the special fuel taxes
30 due each state are properly reported and paid. Each state shall forward the
31 findings of the audits performed on persons based in the state, to each state in which

- 1 ~~the person has~~that have a taxable use of special fuels may be shared among parties
2 to a cooperative agreement. For persons not based in this state and who have taxable
3 use of special fuel in this state, the director or the commissioner may serve the audit
4 findings ~~received from another state~~, in the form of an assessment, on the person as
5 though an audit was conducted by the director or the commissioner.
- 6 5. Any agreement entered under this section does not preclude the director or the
7 commissioner from auditing the records of any person covered by the provisions of
8 this chapter.
- 9 6. The provisions of any agreement entered into under this section prevail over any
10 conflicting rules adopted by the director or the commissioner.