

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2258
(Senators Cook, Heckaman, Wardner)
(Representatives Boschee, Headland, Pollert)

AN ACT to create and enact chapter 57-39.9 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-39.9 of the North Dakota Century Code is created and enacted as follows:

57-39.9-01. Authority to enter state-tribal sales, use, and gross receipts tax agreements.

The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Spirit Lake Tribe, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, which comply with this chapter relating to the collection, administration, enforcement, and allocation of state sales, use, and gross receipts taxes imposed and collected within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced. An agreement under this chapter must include the sales tax, use tax, farm machinery gross receipts tax, and the alcoholic beverages gross receipts tax.

57-39.9-02. Agreement requirements.

The governor may enter an agreement with a tribe or tribes if the agreement complies with this section.

1. The taxes subject to an agreement under this chapter are the state's sales, use, and gross receipts taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, as may be amended subsequently by the legislative assembly, for taxable transactions and activities occurring exclusively within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. Except as otherwise provided in this chapter, the state's sales, gross receipts, and use taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, must apply to all transactions and activities by all persons and entities occurring within the boundaries of the reservation.
3. A tribe or tribes shall impose taxes equal to the state's taxes which conform in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, but must be applied only to those taxable transactions and activities occurring within the exterior boundaries of a reservation which are exempt from state taxes because the transactions or activities occur within the tribe's or tribes' jurisdiction.

4. Chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this chapter.
5. Except as provided in subsection 6, tribally owned and tribal member-owned business entities operating within the boundaries of a reservation are subject to the state's tax or taxes contained in the agreement.
6. Any tax subject to an agreement may not be imposed on a tribally owned entity that solely performs a governmental function or provides essential government services that directly impact the health, welfare, or safety of the tribe and its members, if the tribal entity is identified as such in the agreement. Any other tribally owned business enterprise whose moneys are used, in whole or in part, to fund governmental functions or services, is not subject to the exemption provided under this subsection.
7. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal employment rights office fees.
8. The tax commissioner retains authority to collect, administer, and enforce the taxes as provided in chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the reservation under an agreement.
9. Any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.
10. The amount of state sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or tribes under an agreement must be calculated as follows:
 - a. Fifty percent of the taxes collected from retailers within the exterior boundaries of the reservation. The state shall receive the remainder.
 - b. An amount of estimated use taxes paid or collected from enrolled tribal members residing within the exterior boundaries of the reservation determined by multiplying the enrolled membership of the tribe by the estimated per capita use tax. The estimated per capita use tax is ten percent of the per capita sales tax burden. The per capita sales tax burden is determined by multiplying the state tax rate factor by one third of the sales tax burden reported by the most recent "Tax Rates and Tax Burdens in the District of Columbia - A Nationwide Comparison", published by the government of the District of Columbia office of revenue analysis, for a family of three living in the largest city in North Dakota, and earning fifty thousand dollars per year. The state tax rate factor is a fraction representing the state general sales tax rate as a share of the combined state and local sales tax rate for the North Dakota city referenced in this subdivision.
 - c. Except as provided in subdivision d, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.

- d. The tribe or tribes shall provide the initial population required by subdivision c no less than sixty days before the effective date of the agreement.
 - e. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.
- 11. The amount of alcoholic beverages gross receipts tax allocated to the tribe under an agreement must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcohol revenue per capita.
 - a. The state alcohol revenue per capita is the monthly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
 - b. The enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
 - c. The tribe or tribes shall provide the initial population required by this subsection no less than sixty days before the effective date of the agreement.
 - d. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.
- 12. An agreement under this chapter must give the tax commissioner, after consulting with the governor, and a tribe or tribes the authority to terminate an agreement with or without cause.
- 13. An agreement under this chapter must include:
 - a. A statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering an agreement, except as specifically set forth in the agreement;
 - b. A statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established by the agreement;
 - c. A statement that the state and the tribal government shall cooperate to collect only one tax and share or refund the revenue as specified in the agreement;
 - d. A statement recognizing the sovereign rights of the state and the tribe or tribes; and
 - e. A statement that:
 - (1) The rights of each party must be determined by the terms of the agreement with respect to the taxes subject to the agreement;
 - (2) Neither party may seek additional entitlement or seek to deny entitlement on any federal ground, including federal pre-emption, whether statutorily provided for or otherwise with respect to the taxes that are the subject of an agreement; and
 - (3) Both parties shall defend the agreement from attack by third parties.

14. a. Notwithstanding any other provision of state law, the agreement must contain provisions in which:
 - (1) Except as otherwise provided by law, the tax commissioner shall maintain the confidentiality of tax information relating to and gathered under the terms of an agreement as provided in section 57-39.2-23;
 - (2) The tribe or tribes may receive a list of retailers located within the boundaries of the reservation and the amount of tax collected from each retailer during a reporting period; and
 - (3) The tribe or tribes agree to protect the confidentiality of tax information received from the tax commissioner.
- b. The agreement must specify the processes or procedures necessary to safeguard the confidential nature of the tax information.
15. The administration, collection, and enforcement of the taxes under an agreement may begin no sooner than the first day of a calendar quarter which is at least ninety days after the agreement is signed by the parties.
16. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under an agreement entered under this chapter.

57-39.9-03. Inapplicability of chapter 54-40.2.

Chapter 54-40.2 does not apply to an agreement entered under this chapter.

57-39.9-04. Revenue allocation and distribution - Refunds - Continuing appropriation.

The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 10 of section 57-39.9-02. Tax revenues collected under this chapter are not subject to section 57-39.2-26.1, and are provided as a standing and continuing appropriation to the state treasurer for distribution on a monthly basis.

57-39.9-05. Refunds - Continuing appropriation.

1. Refunds of the tax imposed under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, which are subject to an agreement under this chapter, must be paid from the state general fund, and are provided to the state treasurer as a standing and continuing appropriation.
2. Refunds of taxes paid under this section must be reimbursed to the state general fund, with interest at the rate prescribed in section 57-39.2-25, from the first available moneys deposited in the tribal allocation fund.
3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund is attributable. The refund, including interest, must be reimbursed from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

SECTION 2. REPEAL. Chapter 57-39.8 of the North Dakota Century Code is repealed.

SECTION 3. APPLICATION. Section 1 of this Act applies to agreements entered after the effective date of this Act.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

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 Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2258 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 42 Nays 3 Absent 2

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 77 Nays 15 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,
at _____ o'clock _____ M.

Secretary of State