

Introduced by

Senator Cook

1 A BILL for an Act to create and enact chapter 57-59.1 of the North Dakota Century Code,
2 relating to the multistate tax compact; to amend and reenact section 57-38.1-09 of the North
3 Dakota Century Code, relating to apportionment of business income; to repeal chapter 57-59 of
4 the North Dakota Century Code, relating to the multistate tax compact; and to provide an
5 effective date.

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

7 **SECTION 1. AMENDMENT.** Section 57-38.1-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-38.1-09. Business income.**

- 10 1. All business income must be apportioned to this state by multiplying the income by a
11 fraction, the numerator of which is the property factor plus the payroll factor plus the
12 sales factor, and the denominator of which is three.
- 13 2. A taxpayer may elect to apportion business income to this state by multiplying the
14 income by the sales factor. A taxpayer electing to file using a single sales factor must
15 comply with the following:
- 16 a. The election must be made on the return as originally and timely filed in the form
17 and manner prescribed by the tax commissioner.
- 18 b. The election is applicable for all companies in a unitary group and for all
19 companies filing a consolidated North Dakota return.
- 20 c. The election is binding for five consecutive taxable years after making the
21 election, at which time the election lapses.
- 22 d. Unless a taxpayer makes another election under this subsection in the taxable
23 year immediately following the final year of a prior single sales factor election, the

- 1 services measured by the price of the tangible personal property transferred or
2 services rendered and which is required by state or local law to be separately stated
3 from the sales price by the seller, or which is customarily separately stated from the
4 sales price, but does not include a tax imposed exclusively on the sale of a specifically
5 identified commodity or article or class of commodities or articles.
- 6 5. "State" means a state of the United States, the District of Columbia, the
7 commonwealth of Puerto Rico, or any territory or possession of the United States.
- 8 6. "Subdivision" means any governmental unit or special district of a state.
- 9 7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax,
10 and any other tax which has a multistate impact, except that the provisions of article III
11 of this compact shall apply only to the taxes specifically designated therein.
- 12 8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit,
13 or agency or person acting as a business entity in more than one state.
- 14 9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or
15 with respect to the exercise or enjoyment of any right or power over tangible personal
16 property incident to the ownership, possession, or custody of that property or the
17 leasing of that property from another including any consumption, keeping, retention, or
18 other use of tangible personal property, and (b) is complementary to a sales tax.

19 **ARTICLE III - ELEMENTS OF SALES AND USE TAX LAWS**

20 **Tax Credit**

- 21 1. Each purchaser liable for a use tax on tangible personal property shall be entitled to
22 full credit for the combined amount or amounts of legally imposed sales or use taxes
23 paid by the purchaser with respect to the same property to another state and any
24 subdivision thereof. The credit shall be applied first against the amount of any use tax
25 due the state, and any unused portion of the credit shall then be applied against the
26 amount of any use tax due a subdivision.

27 **Exemption Certificates, Vendors May Rely**

- 28 2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or
29 other exemption certificate or other written evidence of exemption authorized by the
30 appropriate state or subdivision taxing authority, the vendor shall be relieved of liability
31 for a sales or use tax with respect to the transaction.

ARTICLE IV - THE COMMISSION

Organization and Management

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3 1. a. The multistate tax commission is hereby established. It shall be composed of one
4 "member" from each party state who shall be the head of the state agency
5 charged with the administration of the types of taxes to which this compact
6 applies. If there is more than one such agency the state shall provide by law for
7 the selection of the commission member from the heads of the relevant agencies.
8 State law may provide that a member of the commission be represented by an
9 alternate but only if there is on file with the commission written notification of the
10 designation and identity of the alternate. The attorney general of each party state
11 or the attorney general's designee, or other counsel if the laws of the party state
12 specifically provide, shall be entitled to attend the meetings of the commission,
13 but shall not vote. Such attorneys general, designees, or other counsel shall
14 receive all notices of meetings required under subdivision e of subsection 1 of
15 this article.
16 b. Each party state shall provide by law for the selection of representatives from its
17 subdivisions affected by this compact to consult with the commission member
18 from that state.
19 c. Each member shall be entitled to one vote. The commission shall not act unless
20 a majority of the members are present, and no action shall be binding unless
21 approved by a majority of the total number of members.
22 d. The commission shall adopt an official seal to be used as it may provide.
23 e. The commission shall hold an annual meeting and such other regular meetings
24 as its bylaws may provide and such special meetings as its executive committee
25 may determine. The commission bylaws shall specify the dates of the annual and
26 any other regular meetings, and shall provide for the giving of notice of annual,
27 regular, and special meetings. Notices of special meetings shall include the
28 reasons therefor and an agenda of the items to be considered.
29 f. The commission shall elect annually, from among its members, a chairman, a
30 vice chairman, and a treasurer. The commission shall appoint an executive
31 director who shall serve at its pleasure, and it shall fix the executive director's

- 1 duties and compensation. The executive director shall be secretary of the
2 commission. The commission shall make provision for the bonding of such of its
3 officers and employees as it may deem appropriate.
- 4 (g) Irrespective of the civil service, personnel, or other merit system laws of any party
5 state, the executive director shall appoint or discharge such personnel as may be
6 necessary for the performance of the functions of the commission and shall fix
7 their duties and compensation. The commission bylaws shall provide for
8 personnel policies and programs.
- 9 (h) The commission may borrow, accept, or contract for the services of personnel
10 from any state, the United States, or any other governmental entity.
- 11 (i) The commission may accept for any of its purposes and functions any and all
12 donations and grants of money, equipment, supplies, materials, and services,
13 conditional or otherwise, from any governmental entity, and may utilize and
14 dispose of the same.
- 15 (j) The commission may establish one or more offices for the transacting of its
16 business.
- 17 (k) The commission shall adopt bylaws for the conduct of its business. The
18 commission shall publish its bylaws in convenient form, and shall file a copy of
19 the bylaws and any amendments thereto with the appropriate agency or officer in
20 each of the party states.
- 21 (l) The commission annually shall make to the governor and legislature of each
22 party state a report covering its activities for the preceding year. Any donation or
23 grant accepted by the commission or services borrowed shall be reported in the
24 annual report of the commission, and shall include the nature, amount, and
25 conditions, if any, of the donation, gift, grant, or services borrowed and the
26 identity of the donor or lender. The commission may make additional reports as it
27 may deem desirable.

Committees

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- 29 2. a. To assist in the conduct of its business when the full commission is not meeting,
30 the commission shall have an executive committee of seven members, including
31 the chairman, vice chairman, treasurer, and four other members elected annually

1 state and its subdivisions from income taxes, capital stock taxes, gross receipts
2 taxes, and sales and use taxes. In determining such amounts, the commission
3 shall employ such available public sources of information as, in its judgment,
4 present the most equitable and accurate comparisons among the party states.
5 Each of the commission's budgets of estimated expenditures and requests for
6 appropriations shall indicate the sources used in obtaining information employed
7 in applying the formula contained in this subsection.

8 c. The commission shall not pledge the credit of any party state. The commission
9 may meet any of its obligations in whole or in part with funds available to it under
10 subdivision i of subsection 1 of this article; provided, that the commission takes
11 specific action setting aside such funds prior to incurring any obligation to be met
12 in whole or in part in such manner. Except where the commission makes use of
13 funds available to it under subdivision i of subsection 1, the commission shall not
14 incur any obligation prior to the allotment of funds by the party states adequate to
15 meet the same.

16 d. The commission shall keep accurate accounts of all receipts and disbursements.
17 The receipts and disbursements of the commission shall be subject to the audit
18 and accounting procedures established under its bylaws. All receipts and
19 disbursements of funds handled by the commission shall be audited yearly by a
20 certified or licensed public accountant and the report of the audit shall be
21 included in and become part of the annual report of the commission.

22 e. The accounts of the commission shall be open at any reasonable time for
23 inspection by duly constituted officers of the party states and by any persons
24 authorized by the commission.

25 f. Nothing contained in this article shall be construed to prevent commission
26 compliance with laws relating to audit or inspection of accounts by or on behalf of
27 any government contributing to the support of the commission.

28 **ARTICLE V - UNIFORM REGULATIONS AND FORMS**

29 1. Whenever any two or more party states, or subdivisions of party states, have uniform
30 or similar provisions of law relating to an income tax, the commission may adopt

- 1 uniform regulations for any phase of the administration of such law, including assertion
2 of jurisdiction to tax, or prescribing uniform tax forms.
- 3 2. Prior to the adoption of any regulation, the commission shall:
- 4 a. As provided in its bylaws, hold at least one public hearing on due notice to all
5 affected party states and subdivisions thereof and to all taxpayers and other
6 persons who have made timely request of the commission for advance notice of
7 its regulation-making proceedings.
- 8 b. Afford all affected party states and subdivisions and interested persons an
9 opportunity to submit relevant written data and views, which shall be considered
10 fully by the commission.
- 11 3. The commission shall submit any regulations adopted by it to the appropriate officials
12 of all party states and subdivisions to which they might apply. Each such state and
13 subdivision shall consider any such regulation for adoption in accordance with its own
14 laws and procedures.

ARTICLE VI - INTERSTATE AUDITS

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- 16 1. This article shall be in force only in those party states that specifically provide therefor
17 by statute.
- 18 2. Any party state or subdivision thereof desiring to make or participate in an audit of any
19 accounts, books, papers, records, or other documents may request the commission to
20 perform the audit on its behalf. In responding to the request, the commission shall
21 have access to and may examine, at any reasonable time, such accounts, books,
22 papers, records, and other documents and any relevant property or stock of
23 merchandise. The commission may enter into agreements with party states or their
24 subdivisions for assistance in performance of the audit. The commission shall make
25 charges, to be paid by the state or local government or governments for which it
26 performs the service, for any audits performed by it in order to reimburse itself for the
27 actual costs incurred in making the audit.
- 28 3. The commission may require the attendance of any person within the state where it is
29 conducting an audit or part thereof at a time and place fixed by it within such state for
30 the purpose of giving testimony with respect to any account, book, paper, document,
31 other record, property, or stock of merchandise being examined in connection with the

1 audit. If the person is not within the jurisdiction, the person may be required to attend
2 for such purpose at any time and place fixed by the commission within the state of
3 which the person is a resident; provided, that such state has adopted this article.

4 4. The commission may apply to any court having power to issue compulsory process for
5 orders in aid of its powers and responsibilities pursuant to this article and any and all
6 such courts shall have jurisdiction to issue such orders. Failure of any person to obey
7 any such order shall be punishable as contempt of the issuing court. If the party or
8 subject matter on account of which the commission seeks an order is within the
9 jurisdiction of the court to which application is made, such application may be to a
10 court in the state or subdivision on behalf of which the audit is being made or a court in
11 the state in which the object of the order being sought is situated. The provisions of
12 this subsection apply only to courts in a state that has adopted this article.

13 5. The commission may decline to perform any audit requested if it finds that its available
14 personnel or other resources are insufficient for the purpose or that, in the terms
15 requested, the audit is impracticable of satisfactory performance. If the commission,
16 on the basis of its experience, has reason to believe that an audit of a particular
17 taxpayer, either at a particular time or on a particular schedule, would be of interest to
18 a number of party states or their subdivisions, it may offer to make the audit or audits,
19 the offer to be contingent on sufficient participation therein as determined by the
20 commission.

21 6. Information obtained by any audit pursuant to this article shall be confidential and
22 available only for tax purposes to party states, their subdivisions, or the United States.
23 Availability of information shall be in accordance with the laws of the states or
24 subdivisions on whose account the commission performs the audit, and only through
25 the appropriate agencies or officers of such states or subdivisions. Nothing in this
26 article shall be construed to require any taxpayer to keep records for any period not
27 otherwise required by law.

28 7. Other arrangements made or authorized pursuant to law for cooperative audit by or on
29 behalf of the party states or any of their subdivisions are not superseded or invalidated
30 by this article.

31 8. In no event shall the commission make any charge against a taxpayer for an audit.

1 9. As used in this article, "tax", in addition to the meaning ascribed to it in article II,
2 means any tax or license fee imposed in whole or in part for revenue purposes.

3 **ARTICLE VII - ENTRY INTO FORCE AND WITHDRAWAL**

4 1. This compact shall enter into force when enacted into law by any seven states. Thereafter,
5 this compact shall become effective as to any other state upon its enactment thereof. The
6 commission shall arrange for notification of all party states whenever there is a new enactment
7 of the compact.

8 2. Any party state may withdraw from this compact by enacting a statute repealing the same.
9 No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to
10 the time of such withdrawal.

11 **ARTICLE VIII - EFFECT ON OTHER LAWS AND JURISDICTION**

12 Nothing in this compact shall be construed to:

- 13 1. Affect the power of any state or subdivision thereof to fix rates of taxation.
14 2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax
15 on motor fuel, other than a sales tax; provided, that the definition of "tax" in subsection
16 9 of article VI may apply for the purposes of that article and the commission's powers
17 of study and recommendation pursuant to subsection 3 of article IV may apply.
18 3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or
19 body with respect to any person, corporation, or other entity or subject matter, except
20 to the extent that such jurisdiction is expressly conferred by or pursuant to this
21 compact upon another agency or body.
22 4. Supersede or limit the jurisdiction of any court of the United States.

23 **ARTICLE IX - CONSTRUCTION AND SEVERABILITY**

24 This compact shall be liberally construed so as to effectuate the purposes thereof. The
25 provisions of this compact shall be severable and if any phrase, clause, sentence, or provision
26 of this compact is declared to be contrary to the constitution of any state or of the United States
27 or the applicability thereof to any government, agency, person, or circumstance is held invalid,
28 the validity of the remainder of this compact and the applicability thereof to any government,
29 agency, person, or circumstance shall not be affected thereby. If this compact shall be held
30 contrary to the constitution of any state participating therein, the compact shall remain in full

1 force and effect as to the remaining party states and in full force and effect as to the state
2 affected as to all severable matters.

3 **57-59.1-02. Optional computation.**

4 Any taxpayer whose income is subject to the apportionment and allocation provisions of
5 chapter 57-38 or 57-38.1 has the option to elect to report and pay any income tax due under the
6 provisions of chapter 57-38 on the basis of the following rates applied to the taxpayer's gross
7 sales in North Dakota rather than on the basis provided in chapter 57-38:

- 8 1. On the first twenty thousand dollars of gross sales in North Dakota, a tax of six-tenths
9 of one percent;
- 10 2. On all gross sales in North Dakota above twenty thousand dollars and not in excess of
11 fifty-five thousand dollars, a tax of eight-tenths of one percent; and
- 12 3. On all gross sales in North Dakota above fifty-five thousand dollars and not in excess
13 of one hundred thousand dollars, a tax of one percent.

14 **57-59.1-03. Membership of multistate tax commission.**

15 The state tax commissioner shall represent the state of North Dakota on the multistate tax
16 commission.

17 **57-59.1-04. Designation of an alternate.**

18 The state tax commissioner may be represented on the multistate tax commission by an
19 alternate designated by the state tax commissioner. Any alternate must be a principal deputy or
20 assistant of the state tax commissioner.

21 **57-59.1-05. Legal counsel.**

22 The chief counsel of the state tax department or the chief counsel's designee shall attend
23 the meetings of the multistate tax commission as the legal counsel representing the state of
24 North Dakota as provided for by subdivision a of subsection 1 of article IV of section 57-59.1-01.

25 **57-59.1-06. Selection of representatives to meet with commission member.**

26 The state tax commissioner shall appoint two persons who are representatives of
27 subdivisions affected or likely to be affected by the multistate tax compact from among persons
28 nominated by the association of counties and league of cities. The state tax commissioner, and
29 any alternate designated by the state tax commissioner, shall consult with these appointees, in
30 accordance with subdivision b of subsection 1 of article IV of section 57-59.1-01. The state tax
31 commissioner shall also consult regularly with the chairman and ranking minority party member

1 of the finance and taxation committees of the senate and house of representatives as provided
2 for in subdivision b of subsection 2 of article IV of section 57-59.1-01.

3 **57-59.1-07. Interaudits.**

4 Article VI of the multistate tax compact relating to interaudits shall be in force in and with
5 respect to the state of North Dakota.

6 **SECTION 3. REPEAL.** Chapter 57-59 of the North Dakota Century Code is repealed.

7 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
8 December 31, 2014.