

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1099
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 2 of section 5-01-17, subsection 2 of section 5-01-19, section 5-03-06, subsections 3 and 5 of section 57-36-14, subsection 7 of section 57-40.2-07, and sections 57-40.3-09, 57-43.1-44, and 57-43.2-37 of the North Dakota Century Code, relating to special events permits for domestic wineries and domestic distilleries, direct shipments of alcoholic beverages, procedures available to the tax commissioner in case of seizure of tobacco products, reporting and remittance of use tax collected during odd-numbered years, the definition of state for motor vehicle excise tax reciprocity purposes, cooperative agreements for the exchange of motor fuels tax information, and cooperative agreements for the exchange of special fuels tax information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside of the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than twenty ~~day~~events per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at a designated trade show, convention, festival, or a similar event approved by the ~~state~~ tax commissioner. To participate in a pride of Dakota event sponsored by the department of agriculture, a domestic winery shall obtain a special events permit. Participation by a domestic winery in a pride of Dakota event sponsored by the department of agriculture does not count against the twenty special events limitation. A domestic winery may not engage in any wholesaling activities. All sales and deliveries of wines to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. For any month in which a domestic winery has made sales to a North Dakota wholesaler, that domestic winery shall file a report with the state tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.

SECTION 2. AMENDMENT. Subsection 2 of section 5-01-19 of the North Dakota Century Code is amended and reenacted as follows:

2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters] in a calendar year. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on

Sundays between twelve noon and twelve midnight. A domestic distillery may hold events inside and outside its premises, but only on contiguous property under common ownership, allowing free samples of its spirits and to sell its spirits by the glass or in closed containers. The tax commissioner may issue special events permits for not more than twenty ~~day~~ events per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or in closed containers, at a designated trade show, convention, festival, or similar event approved by the tax commissioner. To participate in a pride of Dakota event sponsored by the department of agriculture, a domestic distillery shall obtain a special events permit from the tax commissioner. Participation by a domestic distillery in a pride of Dakota event sponsored by the department of agriculture does not count against the twenty special events limitation. A domestic distillery may not engage in any wholesaling activities. All sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery. No later than the last business day of a calendar month, a farm distillery that has made sales to a North Dakota wholesaler during the preceding calendar month shall file a report with the tax commissioner reporting those sales.

SECTION 3. 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.

SECTION 4. AMENDMENT. Subsections 3 and 5 of section 57-36-14 of the North Dakota Century Code are amended and reenacted as follows:

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

SECTION 5. AMENDMENT. Subsection 7 of section 57-40.2-07 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 6. AMENDMENT. Section 57-40.3-09 of the North Dakota Century Code is amended and reenacted as follows:

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

If any motor vehicle has been subjected already to a sales tax, use tax, or motor vehicle excise tax by any other state, or political subdivision thereof, in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter apply, but at a rate measured by the difference only between the rate fixed in this chapter and the rate by which the previous tax paid in the other state, or political subdivision thereof, upon the sale or use was computed. If the rate of tax imposed in such other state, or political subdivision thereof, is the same or more than the rate of tax imposed by this chapter, then no tax is due on such motor vehicle. The provisions of this section apply only if such other state, or political subdivision thereof, allows a credit with respect to the excise tax imposed by this chapter which is substantially similar in effect to the credit allowed by this section. For purposes of this section, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 7. AMENDMENT. Section 57-43.1-44 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The director may enter into cooperative agreements ~~with other states~~ for exchange of information and auditing of users of motor 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 motor 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 motor 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 motor fuels.
4. An agreement may provide for ~~each state to audit the records of persons based in the state~~ audits of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally, to determine if the motor 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 motor fuels may be shared among parties to a cooperative agreement. For persons not based in this state and who have taxable use of motor 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.

SECTION 8. 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1099.

House Vote: Yeas 91 Nays 2 Absent 1

Senate Vote: Yeas 43 Nays 0 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State