15.8198.01002

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2292

Introduced by

Senator Cook

A BILL for an Act to create and enact chapter 57-59.1 of the North Dakota Century Code, relating to the multistate tax compact; to amend and reenact subsection 5 of section 57-38-04 and section 57-38.1-09 of the North Dakota Century Code, relating to apportionment of business income; to repeal chapter 57-59 of the North Dakota Century Code, relating to the multistate tax compact; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state.

SECTION 2. AMENDMENT. Section 57-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-09. Business income.

1. ~~All~~Except as permitted under subsections 2 through 4, all business income must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

2. ~~A taxpayer~~For the first two taxable years beginning after December 31, 2014, a taxpayer that is not a passthrough entity may elect to apportion business income to

this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.

b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.

c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.

d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.

3. For the first two taxable years beginning after December 31, 2016, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.

a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.

b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.

c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.

d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.

4. For taxable years beginning after December 31, 2018, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by the sales factor. A taxpayer electing to file using a single sales factor must comply with the following:
   a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
   b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
   c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses.
   d. Unless a taxpayer makes another election under this subsection in the taxable year immediately following the final year of a prior single sales factor election, the taxpayer must file under subsection 1 for a period of three taxable years before it ~~can~~may make a new single sales factor election.

SECTION 3. Chapter 57-59.1 of the North Dakota Century Code is created and enacted as follows:

MULTISTATE TAX COMPACT

57-59.1-01. Multistate tax compact.

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

MULTISTATE TAX COMPACT ARTICLE I - PURPOSES

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

ARTICLE II - DEFINITIONS

As used in this compact:

1. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
2. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
3. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
4. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
5. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
6. "Subdivision" means any governmental unit or special district of a state.
7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of article III of this compact shall apply only to the taxes specifically designated therein.
8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.
9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

ARTICLE III - ELEMENTS OF SALES AND USE TAX LAWS

Tax Credit

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

Exemption Certificates, Vendors May Rely

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

ARTICLE IV - THE COMMISSION

Organization and Management

1. a. The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.

   b. Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

c. Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

d. The commission shall adopt an official seal to be used as it may provide.

e. The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

f. The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

g. Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

h. The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

i. The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

j. The commission may establish one or more offices for the transacting of its business.

k. The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of

the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

l. The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

2. a. To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

b. The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

c. The commission may establish such additional committees as its bylaws may provide.

Powers

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

a. Study state and local tax systems and particular types of state and local taxes.

b. Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

c. Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

d. Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

4. a. The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

b. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

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

d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit

and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

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

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

ARTICLE V - UNIFORM REGULATIONS AND FORMS

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms.

2. Prior to the adoption of any regulation, the commission shall:

   a. As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

   b. Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VI - INTERSTATE AUDITS

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident; provided, that such state has adopted this article.

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

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to

a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

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

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

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

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

ARTICLE VII - ENTRY INTO FORCE AND WITHDRAWAL

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

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

ARTICLE VIII - EFFECT ON OTHER LAWS AND JURISDICTION

Nothing in this compact shall be construed to:

1. Affect the power of any state or subdivision thereof to fix rates of taxation.

2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition of "tax" in subsection 9 of article VI may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to subsection 3 of article IV may apply.

3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
4. Supersede or limit the jurisdiction of any court of the United States.

ARTICLE IX - CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

57-59.1-02. Optional computation.

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

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

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

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

57-59.1-04. Designation of an alternate.

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

57-59.1-05. Legal counsel.

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

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

The state tax commissioner shall appoint two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact from among persons nominated by the association of counties and league of cities. The state tax commissioner, and any alternate designated by the state tax commissioner, shall consult with these appointees, in accordance with subdivision b of subsection 1 of article IV of section 57-59.1-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article IV of section 57-59.1-01.

57-59.1-07. Interaudits.

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

SECTION 4. REPEAL. Chapter 57-59 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2014.