

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2129
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; to amend and reenact subdivision ee of subsection 2 of section 12-60-24, sections 57-01-13 and 57-37.1-06, subsection 2 of section 57-39.2-11, and sections 57-39.2-27, 57-40.2-17, and 57-40.3-09 of the North Dakota Century Code, relating to criminal history record checks, alcoholic beverage gross receipts taxes, estate tax return filing requirements, sales and use taxes, and motor vehicle excise tax credits; to repeal section 57-39.2-24 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision ee of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- ee. The office of tax commissioner for aall employees, final applicantapplicants for a specified occupationemployment with the tax commissioner as designated by the tax commissioner, and contractors with access to federal tax information.

SECTION 2. AMENDMENT. Section 57-01-13 of the North Dakota Century Code is amended and reenacted as follows:

57-01-13. (Contingent expiration date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and business and corporation privilegealcoholic beverage gross receipts taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38, 57-39.2, and 57-40.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilegealcoholic beverage gross receipts taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilegealcoholic beverage gross receipts taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment. The notices must be sent by first-class mail to the taxpayer at the taxpayer's last-known mailing address. The third notice must be sent with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilegealcoholic beverage gross receipts taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.
2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected.

Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes, including penalties and interest actually collected.

- b. All funds collected by the collection or credit agency must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner. The tax commissioner shall transfer the funds to the state treasurer for deposit in the state general fund. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract authorized by this section is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under the contract.
 - c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and ~~business and corporation privilege~~ tax laws.

(Contingent effective date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and ~~business and corporation privilege~~alcoholic beverage gross receipts taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment. The notices must be sent by regular mail to the taxpayer at the taxpayer's last-known mailing address. The third notice must be sent with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.
2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income,

or ~~business and corporation privilege~~ alcoholic beverage gross receipts taxes, including penalties and interest actually collected.

- b. All funds collected, less the fees for collection services, as provided in the contract, must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner.
 - c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and ~~business and corporation privilege tax laws.~~

SECTION 3. AMENDMENT. Section 57-37.1-06 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-06. Estate tax return required - Tax commissioner to assess tax - District court to apportion federal and state estate taxes.

~~If an estate owes tax under this chapter, the~~ personal representative of ~~an~~the estate shall file with the tax commissioner the estate tax return required by this chapter. The tax commissioner shall assess the tax payable pursuant to the provisions of this chapter and furnish the personal representative with a statement thereof; if all or any part of the property included in the federal gross estate is being administered by the district court serving any county in this state, the tax commissioner shall also furnish a copy of the statement to that district court. The federal and North Dakota estate taxes must be apportioned as provided in section 30.1-20-16.

SECTION 4. AMENDMENT. Subsection 2 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. ~~Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is allowed under this section if the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07.~~ If the retailer's filing responsibility has been assumed by a certified service provider, the retailer may authorize the certified service provider to claim on behalf of the retailer all or part of the compensation to which the retailer is entitled under sections 57-39.2-12.1 and 57-40.2-07.1.

SECTION 5. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Claim for refund.

1. A taxpayer may file a claim for refund of tax that was not due, or for which a refund is authorized under this chapter or chapter 57-40.2. A refund claim must be filed in the manner provided in this section.
2. A taxpayer shall file a claim for refund with the tax commissioner within three years after the due date of the return or the date the return was filed, whichever is later.
3. For purposes of this section, "taxpayer" means a person who is required under this chapter or chapter 57-40.2 to file a return and who has remitted to the tax commissioner the tax for which a refund is claimed.

SECTION 6. AMENDMENT. Section 57-39.2-27 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-27. Disposition of excess tax collections.

Whenever a retailer has collected a sales tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer must be paid by the retailer to the tax commissioner in the quarterly return filed for the period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, ~~as a credit against the retailer's sales tax liability on the next return that the retailer is required to file, the amount of sales tax properly refunded to the customer. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess must be allowed as a credit against future sales tax due from the retailer. If the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer~~ file an amended return with the tax commissioner for the period the excess tax was collected and file a claim for refund.

SECTION 7. AMENDMENT. Section 57-40.2-17 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-17. Disposition of excess tax collections.

Whenever a retailer maintaining a place of business in this state has collected a use tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer must be paid by the retailer to the tax commissioner in the quarterly return filed for the period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, ~~as a credit against the retailer's use tax liability on the next return that the retailer is required to file, the amount of use tax properly refunded to the customer. In the event such deduction exceeds the amount of use tax due the state by the retailer in the next regular return, such excess must be allowed as a credit against future use tax due from the retailer. If the credit, or any part of it cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer~~ file an amended return with the tax commissioner for the period the excess tax was collected and file a claim for refund.

SECTION 8. 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 sales tax, use tax, or motor vehicle excise tax has been paid on a motor vehicle has been subjected already to a sales tax, use tax, or motor vehicle excise tax by in 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 in an amount equal to the difference only between the rate fixed in tax imposed by 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~~ paid in such the 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 the motor vehicle. The provisions of this section apply only if such the other state, or political subdivision thereof, allows a tax credit with respect to the excise tax imposed by this chapter which is substantially similar in effect to the credit allowed by this section. The tax commissioner may require the purchaser to provide written proof from the other state, or political subdivision thereof, that the tax was legally due and paid. 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 9. REPEAL. Section 57-39.2-24 of the North Dakota Century Code is repealed.

SECTION 10. EFFECTIVE DATE. This Act becomes effective July 1, 2017.

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-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2129.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State