

SENATE BILL NO. 2318

Introduced by

Senator Kannianen

1 A BILL for an Act to amend and reenact subsection 4 of section 57-39.10-01 and sections
2 57-39.10-02, 57-39.10-03, and 57-39.10-05 of the North Dakota Century Code, relating to
3 state-tribal agreements for the administration and collection of alcoholic beverages wholesale
4 tax and alcoholic beverages gross receipts tax within the exterior boundaries of a reservation in
5 this state; and to provide for application.

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

7 **SECTION 1. AMENDMENT.** Subsection 4 of section 57-39.10-01 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 4. An agreement under this chapter ~~must include~~for the alcoholic beverages wholesale
10 tax, ~~tobacco products wholesale tax, and also must include~~ the alcoholic beverages
11 gross receipts tax.

12 **SECTION 2. AMENDMENT.** Section 57-39.10-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **57-39.10-02. Requirements for all state-tribal tax agreements.**

15 Any agreement entered under this chapter must comply with this section.

16 1. The agreement must include:

17 a. A statement that the parties to the agreement are not forfeiting any legal rights to
18 apply each party's respective taxes by entering an agreement, except as
19 specifically set forth in the agreement;

20 b. A statement recognizing the sovereign rights of the state and the tribe or tribes;
21 and

22 c. A statement that:

23 (1) The rights of each party must be determined by the terms of the agreement
24 with respect to the taxes subject to the agreement;

- 1 (2) Neither party may seek additional entitlement or seek to deny entitlement on
2 any federal ground, including federal pre-emption, whether statutorily
3 provided for or otherwise with respect to the taxes that are the subject of an
4 agreement;
- 5 (3) Both parties shall defend the agreement from attack by third parties;
- 6 (4) A taxpayer may not be required to pay both the state tax and the tribal tax
7 but shall pay only one tax to one government in an amount established by
8 the agreement; and
- 9 (5) The state and tribal government shall cooperate to collect only one tax and
10 share or refund the revenue as specified in the agreement.
- 11 2. Any tribally owned entity or other entity owned in whole or part by a tribal member,
12 whether chartered under state law or tribal law, and operating within the exterior
13 boundaries of a reservation, is subject to the state's tax or taxes and regulatory
14 requirements of the tax subject to an agreement.
- 15 3. The tax commissioner retains authority to collect, administer, and enforce the taxes
16 subject to an agreement under this chapter, including the authority to audit, assess,
17 refund, credit, or determine the exempt or nonexempt status of any transaction, for
18 taxes collected within the exterior boundaries of a reservation in this state in the
19 manner provided by the applicable state laws.
- 20 4. AnyWith the exception of an agreement entered under this chapter between the
21 governor and the governing body of the Three Affiliated Tribes of the Fort Berthold
22 Reservation, any controversy or claim between the tribe or tribes and the state, arising
23 out of or relating to an agreement under this chapter, is subject to binding arbitration in
24 accordance with the processes and procedures provided in the agreement between
25 the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to
26 impose a tax are expressly excluded from the scope of the arbitration. The federal
27 district court for the western division of North Dakota is the venue for any dispute
28 arising from an agreement under this chapter between the governor and the governing
29 body of the Three Affiliated Tribes of the Fort Berthold Reservation.

1 5. An agreement under this chapter must give the tax commissioner, after consulting with
2 the governor, and a tribe or tribes the authority to terminate an agreement with or
3 without cause.

4 6. An agreement may begin no sooner than the first day of a calendar quarter which is at
5 least ninety days after the agreement is signed by both parties. The tribe or tribes and
6 the state must provide the initial population required by ~~sections 57-39.10-03-~~
7 ~~and~~section 57-39.10-04 no fewer than sixty days before the effective date of the
8 agreement.

9 **SECTION 3. AMENDMENT.** Section 57-39.10-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-39.10-03. Alcoholic beverages wholesale tax agreement requirements.**

12 The governor may enter an alcoholic beverages wholesale tax agreement with a tribe or
13 tribes if the agreement complies with section 57-39.10-02 and this section.

14 1. The taxes subject to an agreement under this section are the state's alcoholic
15 beverages wholesale taxes under chapters 5-01, 5-02, and 5-03, as may be amended
16 subsequently by the legislative assembly, for alcoholic beverages sold by licensed
17 wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom
18 licensees, and direct shippers, for delivery to licensed retailers or sale directly to
19 consumers located within the exterior boundaries of the Fort Berthold Reservation,
20 that portion of the Lake Traverse Reservation located in this state, the Spirit Lake
21 Reservation, that portion of the Standing Rock Reservation located in this state, or the
22 Turtle Mountain Reservation.

23 2. A tribe or tribes shall impose taxes equal to the state's alcoholic beverages wholesale
24 taxes on all sales of alcoholic beverages sold by licensed wholesalers, domestic
25 wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct
26 shippers, for delivery to all persons within the exterior boundaries of the reservation in
27 this state.

28 3. Chapters 5-01, 5-02, and 5-03, and title 81 of the North Dakota Administrative Code,
29 not in conflict with federal law, govern the collection and administration of the taxes
30 subject to an agreement under this section.

- 1 4. The amount of tax revenue ~~allocated to the tribe~~ must receive eighty percent of the
2 revenue collected pursuant to an agreement under this section ~~must be equal to an~~
3 ~~amount determined by multiplying the enrolled membership of the tribe by the state~~
4 ~~alcohol revenue per capita. The state alcohol revenue per capita is the quarterly~~
5 ~~collections of the state's alcoholic beverages wholesale taxes designated for deposit in~~
6 ~~the state general fund divided by the state's total population as determined in the most~~
7 ~~recent actual or estimated census data published by the United States census bureau.~~
8 5. ~~Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership~~
9 ~~of the tribe must be certified to the state by September thirtieth of each year during the~~
10 ~~term of the agreement. The enrolled membership of the tribe must consist of the~~
11 ~~number of enrolled members of the tribe physically residing within the exterior~~
12 ~~boundaries of the portion of the tribe's reservation located in this state. The enrolled~~
13 ~~membership of the tribe must be based on the tribe's enrollment office records, the~~
14 ~~bureau of Indian affairs enrollment records, or other records maintained by the tribe.~~
15 ~~The previous year's certified enrollment number must be used if the tribe does not~~
16 ~~issue a certification by September thirtieth, unless the tribe demonstrates the certified~~
17 ~~enrollment number has increased or decreased. The manner in which the state and~~
18 ~~tribe resolve issues arising under this subsection must be specified in the agreement.~~
19 The state must receive the remainder of the revenue collected.

20 **SECTION 4. AMENDMENT.** Section 57-39.10-05 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-39.10-05. Alcoholic beverages gross receipts tax agreement requirements.**

23 The governor may enter an alcoholic beverages gross receipts tax agreement with a tribe or
24 tribes if the agreement complies with the requirements of section 57-39.10-02 and this section.

- 25 1. The taxes subject to an agreement under this chapter are the state's alcoholic
26 beverages gross receipts tax under chapter 57-39.6, as may be amended
27 subsequently by the legislative assembly, for taxable transactions and activities
28 occurring exclusively within the exterior boundaries of the Fort Berthold Reservation,
29 that portion of the Lake Traverse Reservation located in this state, the Spirit Lake
30 Reservation, that portion of the Standing Rock Reservation located in this state, or the
31 Turtle Mountain Reservation.

- 1 2. A tribe or tribes shall impose a tax equal to the state's alcoholic beverages gross
2 receipts tax on all sales at retail of alcoholic beverages within the exterior boundaries
3 of the reservation in this state.
- 4 3. Chapters 57-39.2 and 57-39.6, and title 81 of the North Dakota Administrative Code,
5 not in conflict with federal law, govern the administration of the taxes subject to an
6 agreement under this section.
- 7 4. The governor and the tribe or tribes must agree the tribe or tribes may not impose any
8 direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the
9 tax agreement. This subsection does not apply to business and alcohol license fees or
10 tribal employment rights office fees.
- 11 5. ~~The amount of tax revenue allocated to the tribe must receive eighty percent of the~~
12 revenue collected pursuant to an agreement under this section ~~must be equal to an~~
13 ~~amount determined by multiplying the enrolled membership of the tribe by the state~~
14 ~~alcoholic beverages gross receipts tax revenue per capita. The state alcoholic~~
15 ~~beverages gross receipts tax revenue per capita is the quarterly collections of the~~
16 ~~state's alcoholic beverages gross receipts tax designated for deposit in the state~~
17 ~~general fund divided by the state's total population as determined in the most recent~~
18 ~~actual or estimated census data published by the United States census bureau.~~
- 19 6. ~~Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership~~
20 ~~of the tribe must be certified to the state by September thirtieth of each year during the~~
21 ~~term of the agreement. The enrolled membership of the tribe must consist of the~~
22 ~~number of enrolled members of the tribe physically residing within the exterior~~
23 ~~boundaries of the portion of the tribe's reservation located in this state. The enrolled~~
24 ~~membership of the tribe must be based on the tribe's enrollment office records, the~~
25 ~~bureau of Indian affairs enrollment records, or other records maintained by the tribe.~~
26 ~~The previous year's certified enrollment number must be used if the tribe does not~~
27 ~~issue a certification by September thirtieth, unless the tribe demonstrates the certified~~
28 ~~enrollment number has increased or decreased. The manner in which the state and~~
29 ~~tribe resolve issues arising under this subsection must be specified in the agreement.~~
30 The state must receive the remainder of the revenue collected.

1 7-6. a. Notwithstanding any other provision of state law, the agreement must contain
2 provisions in which:

3 (1) Except as otherwise provided by law, the tax commissioner shall maintain
4 the confidentiality of tax information relating to and gathered under the
5 terms of an agreement as provided in section 57-39.2-23;

6 (2) The tribe or tribes may receive a list of retailers located within the exterior
7 boundaries of the reservation and the amount of tax collected from each
8 retailer during a reporting period; and

9 (3) The tribe or tribes agree to protect the confidentiality of tax information
10 received from the tax commissioner.

11 b. The agreement must specify the processes or procedures necessary to
12 safeguard the confidential nature of the tax information.

13 ~~8-7.~~ Alcoholic beverages gross receipts taxes imposed under chapters 11-09.1 and
14 40-05.1 are not subject to allocation under an agreement entered under this chapter.

15 **SECTION 5. APPLICATION.** This Act applies to agreements entered on or after the
16 effective date of this Act.