

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2377

Introduced by

Senators Patten, Kannianen

Representative Headland

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

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

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

9 **57-39.10-01. Authority to enter state-tribal alcoholic beverages wholesale tax,**
10 **tobacco products wholesale tax, and alcoholic beverages gross receipts tax agreements.**

11 1. The governor, in consultation with the tax commissioner, may enter separate
12 agreements on behalf of the state with the governing body of the Three Affiliated
13 Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake
14 Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle
15 Mountain Band of Chippewa Indians. Each agreement must comply with this chapter
16 relating to the collection, administration, enforcement, and allocation of the state
17 alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03 for sales of
18 alcoholic beverages, including beer, wine, sparkling wine, and distilled spirits, for
19 delivery to licensed retailers or sale directly to consumers located within the exterior
20 boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse
21 Reservation located in this state, the Spirit Lake Reservation, that portion of the
22 Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
23 The tax commissioner shall conduct a review of any proposed agreement under this
24 chapter to determine if its provisions can be administered and enforced.

1 2. The governor, in consultation with the tax commissioner, may enter separate
2 agreements on behalf of the state with the governing body of the Three Affiliated
3 Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake
4 Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle
5 Mountain Band of Chippewa Indians. Each agreement must comply with this chapter
6 relating to the collection, administration, enforcement, and allocation of the state
7 tobacco products wholesale taxes under chapter 57-36 for tobacco products sold by
8 licensed wholesalers for delivery to licensed retailers or sold by licensed retailers
9 directly to consumers within the exterior boundaries of the Fort Berthold Reservation,
10 that portion of the Lake Traverse Reservation located in this state, the Spirit Lake
11 Reservation, that portion of the Standing Rock Reservation located in this state, or the
12 Turtle Mountain Reservation. The tax commissioner shall conduct a review of any
13 proposed agreement under this chapter to determine if its provisions can be
14 administered and enforced.

15 3. The governor, in consultation with the tax commissioner, may enter separate
16 agreements on behalf of the state with the governing body of the Three Affiliated
17 Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake
18 Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle
19 Mountain Band of Chippewa Indians. Each agreement must comply with this chapter
20 relating to the collection, administration, enforcement, and allocation of the state
21 alcoholic beverages gross receipts tax under chapter 57-39.6, imposed and collected
22 within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake
23 Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of
24 the Standing Rock Reservation located in this state, or the Turtle Mountain
25 Reservation. The tax commissioner shall conduct a review of any proposed agreement
26 under this chapter to determine if its provisions can be administered and enforced.

27 4. ~~An agreement under this chapter must include the alcoholic beverages wholesale tax,~~
28 ~~tobacco products wholesale tax, and the alcoholic beverages gross receipts tax.~~

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

1 **57-39.10-02. Requirements for all state-tribal tax agreements.**

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

3 1. The agreement must include:

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

7 b. A statement recognizing the sovereign rights of the state and the tribe or tribes;
8 and

9 c. A statement that:

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

12 (2) Neither party may seek additional entitlement or seek to deny entitlement on
13 any federal ground, including federal pre-emption, whether statutorily
14 provided for or otherwise with respect to the taxes that are the subject of an
15 agreement;

16 (3) Both parties shall defend the agreement from attack by third parties;

17 (4) A taxpayer may not be required to pay both the state tax and the tribal tax
18 but shall pay only one tax to one government in an amount established by
19 the agreement; and

20 (5) The state and tribal government shall cooperate to collect only one tax and
21 share or refund the revenue as specified in the agreement.

22 2. Any tribally owned entity or other entity owned in whole or part by a tribal member,
23 whether chartered under state law or tribal law, and operating within the exterior
24 boundaries of ~~a reservation~~the Fort Berthold Reservation, that portion of the Lake
25 Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of
26 the Standing Rock Reservation located in this state, or the Turtle Mountain
27 Reservation; is subject to the state's tax or taxes and regulatory requirements of the
28 tax subject to an agreement.

29 3. The tax commissioner retains authority to collect, administer, and enforce the taxes
30 subject to an agreement under this chapter, including the authority to audit, assess,
31 refund, credit, or determine the exempt or nonexempt status of any transaction, for

1 taxes collected within the exterior boundaries of a reservation in this state the Fort
2 Berthold Reservation, that portion of the Lake Traverse Reservation located in this
3 state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation
4 located in this state, or the Turtle Mountain Reservation in the manner provided by the
5 applicable state laws.

6 4. ~~Any~~ The federal district court for the western division of North Dakota is the venue for
7 any controversy or claim between the tribe or tribes and the state, arising out of or
8 relating to an agreement under this chapter, ~~is subject to binding arbitration in~~
9 ~~accordance with the processes and procedures provided in the agreement between~~
10 ~~the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to~~
11 ~~impose a tax are expressly excluded from the scope of the arbitration.~~

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

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

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

22 **57-39.10-03. Alcoholic beverages wholesale tax agreement requirements.**

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

25 1. The taxes subject to an agreement under this section are the state's alcoholic
26 beverages wholesale taxes under chapters 5-01, 5-02, and 5-03, as may be amended
27 subsequently by the legislative assembly, for alcoholic beverages sold by licensed
28 wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom
29 licensees, and direct shippers, for delivery to licensed retailers or sale directly to
30 consumers located within the exterior boundaries of the Fort Berthold Reservation,
31 that portion of the Lake Traverse Reservation located in this state, the Spirit Lake

- 1 Reservation, that portion of the Standing Rock Reservation located in this state, or the
2 Turtle Mountain Reservation.
- 3 2. A tribe or tribes shall impose taxes equal to the state's alcoholic beverages wholesale
4 taxes on all sales of alcoholic beverages sold by licensed wholesalers, domestic
5 wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct
6 shippers, for delivery to all persons within the exterior boundaries of the reservation in
7 this state Fort Berthold Reservation, that portion of the Lake Traverse Reservation
8 located in this state, the Spirit Lake Reservation, that portion of the Standing Rock
9 Reservation located in this state, or the Turtle Mountain Reservation.
- 10 3. ~~Chapters~~ A tribe or tribes shall adopt ordinances in conformity with chapters 5-01, 5-02,
11 and 5-03, and title 81 of the North Dakota Administrative Code ~~govern~~ governing the
12 collection and administration by the tax commissioner of the taxes subject to an
13 agreement under this section.
- 14 4. ~~The amount of tax revenue allocated to the tribe~~ collected from taxable transactions
15 and activities within the exterior boundaries of the Fort Berthold Reservation, that
16 portion of the Lake Traverse Reservation located in this state, the Spirit Lake
17 Reservation, that portion of the Standing Rock Reservation located in this state, or the
18 Turtle Mountain Reservation, pursuant to an agreement under this section must be
19 equal to an amount determined by multiplying the enrolled membership of the tribe by
20 the state alcohol revenue per capita. ~~The state alcohol revenue per capita is the~~
21 ~~quarterly collections of the state's alcoholic beverages wholesale taxes designated for~~
22 ~~deposit in the state general fund divided by the state's total population as determined~~
23 ~~in the most recent actual or estimated census data published by the United States~~
24 ~~census bureau~~ allocated eighty percent to the tribe and twenty percent to the state.
- 25 5. ~~Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership~~
26 ~~of the tribe must be certified to the state by September thirtieth of each year during the~~
27 ~~term of the agreement. The enrolled membership of the tribe must consist of the~~
28 ~~number of enrolled members of the tribe physically residing within the exterior~~
29 ~~boundaries of the portion of the tribe's reservation located in this state. The enrolled~~
30 ~~membership of the tribe must be based on the tribe's enrollment office records, the~~
31 ~~bureau of Indian affairs enrollment records, or other records maintained by the tribe.~~

1 ~~The previous year's certified enrollment number must be used if the tribe does not~~
2 ~~issue a certification by September thirtieth, unless the tribe demonstrates the certified~~
3 ~~enrollment number has increased or decreased. The manner in which the state and~~
4 ~~tribe resolve issues arising under this subsection must be specified in the agreement.~~

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

7 **57-39.10-05. Alcoholic beverages gross receipts tax agreement requirements.**

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

- 10 1. The taxes subject to an agreement under this chapter are the state's alcoholic
11 beverages gross receipts tax under chapter 57-39.6, as may be amended
12 subsequently by the legislative assembly, for taxable transactions and activities
13 occurring exclusively within the exterior boundaries of the Fort Berthold Reservation,
14 that portion of the Lake Traverse Reservation located in this state, the Spirit Lake
15 Reservation, that portion of the Standing Rock Reservation located in this state, or the
16 Turtle Mountain Reservation.
- 17 2. A tribe or tribes shall impose a tax equal to the state's alcoholic beverages gross
18 receipts tax on all sales at retail of alcoholic beverages within the exterior boundaries
19 of the ~~reservation in this state~~Fort Berthold Reservation, that portion of the Lake
20 Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of
21 the Standing Rock Reservation located in this state, or the Turtle Mountain
22 Reservation.
- 23 3. ~~Chapters~~A tribe or tribes shall adopt ordinances in conformity with chapters 57-39.2
24 and 57-39.6, and title 81 of the North Dakota Administrative Code ~~govern~~governing the
25 administration and collection of the taxes by the tax commissioner subject to an
26 agreement under this section.
- 27 4. The governor and the tribe or tribes must agree the tribe or tribes may not impose any
28 direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the
29 tax agreement. This subsection does not apply to tribal business and alcohol license
30 fees or tribal employment rights office fees.

- 1 5. ~~The amount of tax revenue allocated to the tribe collected from taxable transactions~~
2 ~~and activities within the exterior boundaries of the Fort Berthold Reservation, that~~
3 ~~portion of the Lake Traverse Reservation located in this state, the Spirit Lake~~
4 ~~Reservation, that portion of the Standing Rock Reservation located in this state, or the~~
5 ~~Turtle Mountain Reservation, pursuant to an agreement under this section must be~~
6 ~~equal to an amount determined by multiplying the enrolled membership of the tribe by~~
7 ~~the state alcoholic beverages gross receipts tax revenue per capita. The state~~
8 ~~alcoholic beverages gross receipts tax revenue per capita is the quarterly collections~~
9 ~~of the state's alcoholic beverages gross receipts tax designated for deposit in the state~~
10 ~~general fund divided by the state's total population as determined in the most recent~~
11 ~~actual or estimated census data published by the United States census~~
12 ~~bureau allocated eighty percent to the tribe and twenty percent to the state.~~
- 13 6. ~~Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership~~
14 ~~of the tribe must be certified to the state by September thirtieth of each year during the~~
15 ~~term of the agreement. The enrolled membership of the tribe must consist of the~~
16 ~~number of enrolled members of the tribe physically residing within the exterior~~
17 ~~boundaries of the portion of the tribe's reservation located in this state. The enrolled~~
18 ~~membership of the tribe must be based on the tribe's enrollment office records, the~~
19 ~~bureau of Indian affairs enrollment records, or other records maintained by the tribe.~~
20 ~~The previous year's certified enrollment number must be used if the tribe does not~~
21 ~~issue a certification by September thirtieth, unless the tribe demonstrates the certified~~
22 ~~enrollment number has increased or decreased. The manner in which the state and~~
23 ~~tribe resolve issues arising under this subsection must be specified in the agreement.~~
- 24 7. a. Notwithstanding any other provision of state law, the agreement must contain
25 provisions in which:
- 26 (1) Except as otherwise provided by law, the tax commissioner shall maintain
27 the confidentiality of tax information relating to and gathered under the
28 terms of an agreement as provided in section 57-39.2-23;
- 29 (2) The tribe or tribes may receive a list of retailers located within the exterior
30 boundaries of the reservation ~~Fort Berthold Reservation, that portion of the~~
31 Lake Traverse Reservation located in this state, the Spirit Lake Reservation,

1 that portion of the Standing Rock Reservation located in this state, or the
2 Turtle Mountain Reservation and the amount of tax collected from each
3 retailer during a reporting period; and

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

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

8 ~~8.7.~~ Alcoholic beverages gross receipts taxes imposed under chapters 11-09.1 and
9 40-05.1 are not subject to ~~allocation under~~ an agreement entered under this chapter.

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