

FISCAL NOTE
Requested by Legislative Council
01/14/2019

Amendment to: SB 2258

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2258 authorizes the governor, in consultation with the tax commissioner, to enter into state-tribal agreements with any tribe regarding the collection and administration of sales, use and gross receipts taxes.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2258 sets forth the parameters for an agreement between any tribe and the state to administer sales, use and gross receipts taxes. The bill also provides options for tax revenue allocation between the tribe and the state.

Any fiscal impact will depend on which tribes enter into an agreement and when it will become effective. The fiscal impact cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/05/2019

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Date Prepared: 02/05/2019

2017 SENATE FINANCE AND TAXATION

SB 2258

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2258
2/6/2019
Job #32265

- Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 57-39.9 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; and to provide for application.

Minutes:

Attachments: 5

Chairman Cook: Opened the hearing on SB 2258. I signed in up there in support of SB 2258. I do not think there is a need for me to go back up and say the same thing I did for SB 2257.

Ryan Rauschenberger, State Tax Commissioner: Testified in support of the bill. See attachment #1. My testimony is very similar to that of SB 2257. I just want to say we are in support of putting in a framework that would allow the states and the tribes to enter into a sales tax agreement that would allow the state to collect tax on behalf of the tribes. I also neglected to thank every as a member of the interim tribal taxation committee and everyone who participated in those meetings as well as the various work sessions we had. With that, I will stand for questions.

Myles Vosberg, Office of State Tax Commissioner: Testified in support of the bill. See attachment #2. If you compare this bill to 2257, it has a lot of the same provisions and language. I think Dee went through some of that in the previous hearing. I do have a detailed explanation line by line of what is in the bill on my testimony. This bill starts off with an enabling language that would allow the governor and consultation with the Tax Commissioner to enter in an agreement. The agreements in this case would be sales and use taxes, farm machinery gross receipts taxes, alcohol gross receipt taxes. There are some duplications between the two bills because the both include the retail, alcohol gross receipts taxes. The language is going to state the requirements of the bill and indicate that all transactions on the reservation are subject to tax, just like off the reservation and also that the state and the tribe would enter into an agreement that would provide for sharing of the

revenue. In this case, the sharing of the revenue is on a formula rather than trying to track every individual transaction that occurs on the various reservations. Right now, the bill provides a basic framework for how that revenue would be shared. It includes the revenue that is collected by the businesses that are located on the reservation. It would also include an estimated amount of tax or use tax that would be collected by businesses off the reservation but are selling to the enrolled members on the reservation. We have those two basic components of the framework. The formula is open at this point. It does restrict it to those two areas. Section 2 repeals chapter 5739.8 which is the current chapter we have for the Standing Rock agreement. This would replace that. Section 3 applies states that this bill would be in effect for agreements signed after July 31. The Tax Commissioners office would like to see an amendment to this bill that would be similar to the language in 2257 that would make this bill apply to all agreements that are entered into after the act is approved. We would also like to see an emergency clause added to this bill. That would allow tribes and us to move forward faster. The current language; January 1 of 2020 would be the first date we would be able to implement an agreement in administration because it requires 90 days after the agreement is signed. That restricts us to January 1 at the very earliest. I will stand for questions.

Chairman Cook: In your testimony, it sure sounds like the state is issuing the tax on the tribes. We are not.

Myles Vosberg: We are not. It would be strictly the tribe imposing their own taxes. The key point is that on and off the reservation, all transactions would be treated the same with a revenue sharing component.

Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation: Testified in support of the bill. See attachment #3. I want to acknowledge our fellow tribal leadership and our appreciation of their comments that were made. Sales and use tax is going to be for ourselves, an issue that might be a little more unfathomable for some of our membership. However, it is something we need to strongly consider and at least the opportunity for our nation and the state to have the governor enter an agreement with us so we can provide those revenues accordingly. I want to applaud the sponsors who have given us this opportunity. We want to be supportive of this process to create a sales and use tax opportunity. There are a few minor things that need to be considered for amendments. One of the big ones what under the Indian gaming regulatory act when he talked of exemptions. He is correct to a degree about what can and cannot be done. Those are governed by compacts as well. We have provisions that regulate how we jointly conduct gaming on our reservations. We could make that determination on how we split those revenues. I would offer that is we have an amendment, to use a language that is similar with IRS. They have a provision under law and regulation that gives them the opportunity to sit down with tribes. The key word is called "essential government services". When the IRS negotiates with tribes, we have the opportunity to say revenues from certain activities are used from the following services; education, social services, treatment, etc. Those are not taxed by the IRS. You have to sit down and identify those. There is an obligation on both sides to understand what is allowable. I would recommend that you put an opportunity for the state to identify what might be essential government services in the bill. Even though the Chairman stated that this bill is only taxing enrolled members, it is a sharing of tax. You are not doing that. You are trying to project and retain that taxation on non-tribal members. We are not trying to gran the

sales tax authority to the state in this agreement. I want to commend the indirect sales taxation that has gone on for decades on Fort Berthold in particular. I am talking about indirect and unlawful sales tax that occurs. We have an issue with identification. If I go to the Shopko and buy something, there is a sign there and there is an attendant there that asks me if I am tax exempt. If I say yes, they require an ID to be present. I show that and that results in an exemption that isn't collected and isn't sent to the state. Historically, we have had this issue of vendors and others collecting this tax when there is no ID to be presented. You take my 5-year-old son who wants to buy a bike by himself with his own money and they ask him for an idea. He does not know what they are talking about and he doesn't have one. We have elders in the same situation in which many of them choose to not speak English. They say they do not have that ID to present. Under the law, it is unlawful for the state to collect sales made on tribal members within the boundaries of the reservation. A lot of indirect collection of taxes has been happening that get sent to the state. That amounts to a lot of money. I am asking to create an opportunity, with the governor and yourselves, to put in some elbow room to get a reasonable method of shifting that burden properly. An enrolled member, in that situation, can simply identify them as tax exempt. If there is no basis for raising the secondary reconsideration by that clerk, then there might be some basis to ask for that. I only ask that we put some provisions in there that would help as address that. If we pass this, we don't have to worry about this according to our Tax Department; all taxes are going to be collected. We currently do that with motor fuel anyways. For our own membership, we currently have a reimbursement process. It is our goal that if this passes and we get into a sales and use agreement, we will have an opportunity for our own enrolled members to make claims for reimbursements of taxes paid. The last item is under 57. We are not fans of the arbitration. The direct message was that we have opportunity to pull out of the agreements anyways and seize the agreements and the arbitration if we can't reach agreements, is simply not going to happen. I would suggest, in place of arbitration, to do something similar to what we have under the oil and gas agreement such as having a 30 or 60-day negotiation period. With that, I will stand for questions.

Chairman Cook: What do you think the chances are of Standing Rock imposing sales tax? Is there any interest on it?

Mark Landis: You are asking to make an opinion on a nation that I have no authority over.

Chairman Cook: Haven't you been discussing it?

Mark Landis: Yes. I put a lot of faith in all our tribal nations. I truly believe that some of our tribes take the lead in taxation areas and we realize the revenues and benefits from that and know that other tribes with study that to see how they can benefit as well. We are very strong. We have a very strong lobbyist board that works together well. Our goal is to foster and support each other well. Keep in mind it is not forced on a tribal nation because they can elect if they want to have a sales and use agreement or not. My guess is that if you pass this, through time a tribe that is reluctant, is going to see the positive benefits that another tribe is being able to assume.

Chairman Cook: I would love to live in a state where the taxes are the same whether you are on one side of the boundary or the other of a tribe. To have a good discussion about what the language in this bill should be, we need to be talking to a tribe that truly wants to impose

the tax today. It is difficult for us to hypothetically deal with this issue. A few years ago we had a tax agreement with standing rock. I look forward to Ron coming up again, but it fell apart. We did something wrong and we need to figure out what and we have to do it right.

Mark Landis: I appreciate that. If we could have opportunities to negotiate that rate and standardize what that split is going to be and carry that across all 5 reservations, that would be more reasonable and workable.

Douglas Yankton, Vice Chairman of the Spirit Lake Tribe: Testified in support of the bill. See attachment #4. We at Spirit Lake, look forward to working on some of these agreements if it should pass. It provides the enabling legislation to make the necessary things that would be brought forth to our tribes. This would allow the legislation and the tax department and the tribes to come into an agreement. For us, I think as well as some of the comments in regard to Native people and the respective nations are that we don't pay taxes. That is not true. We just do not pay taxes within our boundaries. Since we became citizens of ND, any time we left those exterior boundaries, we pay taxes. I fill up my gas tank and I pay the taxes on that. I think this sets forth a good opportunity for us to go into agreements to collect similar types of taxes for whatever products we sell, regardless if you are native enrolled or not. We are on the same page when it comes to legality issues in the bill when it speaks of every try not being the same. We have to have the opportunity to negotiate.

Chairman Cook: Have there been any discussions among your tribe regarding the likeliness of imposing a sales tax?

Douglas Yankton: Our jobs as tribal leaders are to let our people know why we think this would work. We are paying taxes when we leave our boundaries. Some of us pay taxes depending on statuses of land.

Chairman Cook: I go into that Shopko store and I have to pay taxes. The tax revenue comes to the state of ND. If Standing Rock or the three affiliated tribes were to impose a sales tax, Mark Fox would get my money. I can't help but think that would be a good deal for tribes. 100% of the tax that is collected inside the boundaries of the tribe go to the tribe.

Douglas Yankton: We do have some small businesses within the boundaries. Not a lot of them are individual businesses, most of them are tribal businesses. Some of them wouldn't pertain to some of these taxes when it comes to sales and use tax. They do not sell to the general public. It may be a form of a government contract or something.

Representative Craig Headland, District 29, Montpelier: Testified in support of the bill. It was nice to hear the concerns during the interim and to come up with a fair proposition for the state and the different tribes here today.

Ron His Horse Is Thunder, Chairman of Standing Rock Sioux ND Tribal Tax Commission: Testified in support of the bill. See attachment #5. Although we find some areas that need amendments, before we could enter into a negotiated agreement, we still support it. One of the reasons why is because you are allowing the governor and the Tax Commissioner to negotiate an agreement with the tribes. If in some point of time we come to a disagreement, we won't have to wait two years for the lawmakers to come together and

propose and new piece of legislation for us. That is where Standing Rock is currently at. We did have agreement like you said in which we came to a disagreement with the Tax Commissioner on a certain aspect and so it ended. In order for you Tax Commissioner to enter in a new agreement with us, we would've had to wait that two years. This piece of legislation would allow the governor, with the consultation of the Tax Commissioner, to negotiate some of those terms of agreement without waiting two years. That portion, we agree with. As currently written, there are certain areas that we would like to have amended. One is that this isn't a bill that allows the state to collect its taxes from federal members, it is actually a bill that allows you to collect our taxes for us. The language skirts around the idea that it is really a tribal tax that is being imposed. It says it is a state tax. If the language could be modified so it reflects the idea that this is too sovereignties agreeing to impose their own taxes on their own people but it simply happens to be the same rate. There could be language that says it is not the states imposing its tax on us. The second portion that we would like to take a look at is the idea of the reporting requirements of this. Right now, it says the ND Tax Commissioner may share all relevant information with us. We would like it to say that he must share all relevant information with us. We are talking about a split; how are we going to be reassured that the split goes according to the formula unless we have all relevant information on the amount of taxes collected, and who it was collected from? That allows us a reassurance that the tax is being split the way we agreed to. The reporting requirement is something we would like to not be just a permissible obligation, but rather a commandment that it will be shared with us. The other portion is the exemption for tribally owned businesses. It is a profit business, no doubt. We have others as well. We object to the idea that if it doesn't deliver a service in and of itself that effects the health, welfare, and education of tribal members, that it wouldn't be tax exempt. We are in a position that any business owned by the tribe; the state should be able to issue a tax exempt certificate to it in consultation with the state of North Dakota's Tax Commissioner, that we should be allowed to issue a tax exempt certificate to those businesses that are solely owned by the tribe, and those that provide health and welfare to the tribes. Not just its services, but the net income should be allowed to be tax exempt. The state has businesses that are not in the business of health, education, or welfare. Those business belong to the state and are tax exempt. Why shouldn't we also have full profit business that don't effect health, education, and welfare, but whose net proceeds are used for those services. We should be allowed to issue tax exempt certificates to those businesses. That is going to be a big sticking point for us. Our Tax Agreement with the state of SD does tax the casino. We enter that agreement voluntarily. We do not wish is to be a commandment that it must collect taxes, but rather a point of negotiation with the state. If you would allow the governor and the Tax Commissioner to negotiate that with the tribes, then we would support the whole bill. Many of the same issues we have with this bill are with the previous bill as well. Thank you.

Chairman Cook: If I remember, the previous agreement was tribal issued tax exemptions that really broke it down correct?

Ron His Horse Is Thunder: The tribe did issue a tax exemption certificate to the casino. The ND Tax Commissioner took an exception to it and said, "No, you can't do that. The casino cannot be tax exempt." That is where we fell apart.

Chairman Cook: If a casino is going to buy TVs, they are not going to buy them on Standing Rock, they are going to buy them out of town, correct?

Ron His Horse Is Thunder: Most likely.

Chairman Cook: Do they pay sales tax on them?

Ron His Horse Is Thunder: If they are shipped in to us, no. If we had to go off the reservation and physically pick them up, yes.

Chairman Cook: Dee, have you looked at the agreement with SD?

Dee Wald: I did quite a while ago and we have a copy of it.

Chairman Cook: Further testimony in support? Any testimony opposed? Any neutral testimony? Hearing none, we will close the hearing on SB 2258.

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2258
2/13/2019
Job #32649

- Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 57-39.9 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; and to provide for application.

Minutes:

Attachments: 1

Chairman Cook: Called the committee to order on SB 2258.

Chairman Cook: Distributed proposed amendments. See attachment #1. This is mainly cleanup. We are adding an emergency clause and making it clear that tribes taxes and the state taxes are the same. We also are renumbering.

Senator Patten: Moved to Adopt the Amendments.

Senator Kannianen: Seconded.

Chairman Cook: Any Discussion?

A Voice Vote Was Taken.

Motion Carried.

Senator Dotzenrod: During the hearing, we heard that the tribes wanted to be able to have sales that were made in the tribal facilities not have sales tax imposed.

Chairman Cook: They would actually like to not impose a sales tax on the tribally owned business but have those businesses collect sales tax. The casino would not pay taxes on the stuff they buy, but they would collect taxes on the stuff they sold. We entered into an agreement a few years ago with standing rock. That is what caused the agreement to be

broken because they issued tribal tax exemptions. If I was doing business with the casino and they issue a tribal exemption, the casino would say they are exempt but it is a tribal exemption not a ND exemption. The auditors come in and audit me and I will have to pay the tax.

Senator Dotzenrod: So this bill doesn't really solve that problem?

Chairman Cook: No it doesn't.

Senator Dotzenrod: I am looking at the amendment and it says a tribe shall impose taxes equal to the states taxes. In ND, that would be 5%. It also says it must be applied only to those taxable transaction activities occurring within the exterior boundaries which are exempt from state taxes because the transactions occur within the tribe's jurisdiction. Is that sentence written right?

Chairman Cook: That would be exempt on tribal members.

Senator Dotzenrod: Because of the person, it is not the physical location of the retail.

Chairman Cook: We can only impose taxes on non-tribal members. If there is a non-tribal member living on the reservation, there is a ND tax imposed on them.

Senator Dotzenrod: So the word exempt is referring to the individual.

Senator Kannianen: With that thought of the gentlemen who spoke about SD, you said he was the one talking about tribally owned businesses being exempt. It was also said that they have an agreement with SD. Did he mean that they actually pay the sales tax themselves or did he just mean that they collect on what they sold?

Chairman Cook: The casino in SD is treated the same way as the ones in ND. The point he made is that they did that by negotiating with the Governor. This is a perception thing. Ultimately, if we pass this bill, they have to sit down with the Governor and sign an agreement that conforms to this bill. I would love to see sales taxes in this state to be the same no matter where you are. It is a good source of revenue. The tribes could use a good source of revenue whether they make the decision to impose that on their people is their business. This is just so that if they choose to do it, the state could collect it for them. They don't have to set up their own tax department. That is the sole purpose of this bill. I do not see too many tribes jumping on it. I talked to someone from Standing Rock who wants to enter in an agreement with the state for the purpose of getting the internet sales tax. They are not able to get that today. They impose and administer their own sales tax. They are not able to reach out on the internet.

Senator Dotzenrod: Under the situation you just described, most of these internet sales tax impositions that are occurring now are based on your zip code and whatever local taxes are in effect in that area. Would that also apply on the reservation? That is if they have a local tax there and they buy something on the internet then based on that 9-digit zip code the locals will get that.

Chairman Cook: The 9-digit zip code could be both tribal and non-tribal members that have that 9-digit zip code. You will see some amendments going on the 2312 bill that continues the tribal tax committee that we formed last session for another two years. I can see this issue as being a major issue that is discussed to at least solve it. Like I said, we have one tribe that wants to enter in an agreement on sales tax and that is Standing Rock. Right now there are some things that keep that from happening. It would be nice if we could correct that.

Senator Meyer: Moved a Do Pass on SB 2258 As Amended.

Senator Patten: Seconded.

Chairman Cook: Any Discussion?

Senator Dotzenrod: When we repeal on page 5, we repeal 57-39.8. Is that a sales tax section?

Dee Wald: It is the Standing Rock (inaudible)

A Roll Call Vote Was Taken. 5 yeas, 0 nays, 1 absent.

Motion Carried.

Senator Cook will carry the bill.

February 12, 2019

SK
(10)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2258

Page 1, line 7, remove "and"

Page 1, line 7, after "application" insert "; and to declare an emergency"

Page 2, line 15, after "3." insert "A tribe or tribes shall impose taxes equal to the state's taxes which conform in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, but must be applied only to those taxable transactions and activities occurring within the exterior boundaries of a reservation which are exempt from state taxes because the transactions or activities occur within the tribe's or tribes' jurisdiction.

4."

Page 2, line 18, replace "4." with "5."

Page 2, line 18, replace "5" with "6"

Page 2, line 21, replace "5." with "6."

Page 2, line 27, replace "6." with "7."

Page 2, line 30, replace "7." with "8."

Page 3, line 3, replace "8." with "9."

Page 3, line 8, replace "9." with "10."

Page 3, line 15, replace "10." with "11."

Page 3, line 18, replace "11." with "12."

Page 4, line 6, replace "12." with "13."

Page 4, line 18, replace "13." with "14."

Page 4, line 21, replace "14." with "15."

Page 4, line 28, replace "9" with "10"

Page 5, line 15, replace "July 31, 2019" with "the effective date of this Act"

Page 5, after line 15, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

Date: 2-13-19
 Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2258**

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Meyer Seconded By Patten

Senators	Yes	No	Senators	Yes	No
Chairman Cook	✓		Senator Dotzenrod	✓	
Vice Chairman Kannianen	✓				
Senator Meyer	✓				
Senator Patten	✓				
Senator Unruh					

Total (Yes) 5 No 0

Absent 1

Floor Assignment COOK

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2258: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2258 was placed on the Sixth order on the calendar.

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Page 3, line 3, replace "8." with "9."

Page 3, line 8, replace "9." with "10."

Page 3, line 15, replace "10." with "11."

Page 3, line 18, replace "11." with "12."

Page 4, line 6, replace "12." with "13."

Page 4, line 18, replace "13." with "14."

Page 4, line 21, replace "14." with "15."

Page 4, line 28, replace "9" with "10"

Page 5, line 15, replace "July 31, 2019" with "the effective date of this Act"

Page 5, after line 15, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2019 HOUSE FINANCE AND TAXATION

SB 2258

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2258
3/5/2019
33201

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; relating to a state-tribal agreement with the Standing Rock Sioux Tribe.

Minutes:

Attachments 1-3

Chairman Headland: Opened hearing on SB 2258.

Senator Cook: Introduced bill. This bill relates to sales tax. It enables the governor to enter into agreements with any tribe that chooses to impose sales tax on citizens of their reservation. On page 3 of the bill the number one issue that would try to make the tribe impose a sales tax is the ability to collect sales tax from internet sales that they are not getting and can't get if they were to impose their own sales tax. That's the benefit of them entering into an agreement with the state. It's not easy to do. The tax department may want to look at section nine of the bill that deals with how we get that revenue out to them. It can be done but it's a bit challenging. I ask that you give some consideration to that.

Chairman Headland: That's been brought to my attention so we will review that issue. We'll have the Tax Commissioner review the bill.

Ryan Rauschenberger, Tax Commissioner for the State of North Dakota: Distributed written testimony, see attachment 1. I want to express my support for creating the framework for establishing the ability to enter into agreements with the tribes for sales tax. The main purpose is to avoid dual taxation which this bill would do. We have some work to do with the formula.

Chairman Headland: Further testimony in support of SB 2258?

Scott Davis, Executive Director of the North Dakota Indian Affairs Commission: This is a process but I am very thankful to where it has come to at this point. As stated earlier section nine should be looked at a little more. I am fully supportive of this bill.

Representative Ertelt: Could you give a brief explanation of how your tribal members might weigh in on these agreements?

Scott Davis: If and when they want to oppose new legislation they open up for public comment. This has always been an exercise in sovereignty with the tribe choosing to enter into agreements with the state. I feel confident that our tribal members back home believe this is a good thing for our tribal nations.

Chairman Headland: Further testimony in support?

Mark Fox, Chairman of the MHA Nation: Distributed written testimony, see attachment 2. Unlike the alcohol taxation we already have in place our tribal nation has not yet committed towards having a sales tax. I welcome and hope you will approve the bill because it opens up an opportunity for us to have a joint sales tax system on Fort Berthold. Internet sales that may elude our system is another area the committee is aware of which I bring up consistently. The indirect sales tax collection from the state has amounted to millions of millions of dollars. We don't have a current agreement in place so there has been what we feel is an unfair burden on the tribal members in which there are requirements to produce tribal IDs in order to claim exemptions from tax. Sometimes that's a little difficult as elders don't sometimes understand or carry that around, same goes for the minors. The vendor then collects the tax from that tribal member and they send it to the state. We don't get any portion of that whatsoever. Over decades and decades that equates to millions of dollars. It is a concern which is unlawful and an indirect collection of sales tax on Fort Berthold. We want to be able to rectify that so it doesn't occur anymore. We are looking forward to working cooperatively with the state tax department and yourselves to fix this if we don't get into an agreement. I think this goes a long way to resolving that. If we have an agreement in place and we figure out how to split that then that's what we'll do. Every sale would be taxed, collected, and distributed out. That would help us eradicate some of these indirect taxation that eludes us today. The other areas where there are significant sales being made within our boundaries, such as oil and gas related, the tribe doesn't receive the benefits from that either. We're looking forward to seeing how we're going to get this done but it all starts with the successful passage of this bill.

Chairman Headland: Further testimony in support?

Myles Vosberg, Director of the Tax Administration Division with the North Dakota Office of State Tax Commissioner: Distributed written testimony, see attachment 3. Ended testimony at 17:25.

Representative Kading: Under this bill who has the authority to audit and ensure compliance from the businesses?

Myles Vosberg: The language in the bill says the Tax Commissioner's Office has the responsibility and the right to do all of the administration. That would include auditing, processing returns, receiving the tax collection, and so on.

Chairman Headland: Further testimony in support? Is there opposition? Seeing none we will close the hearing on SB 2258.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2258
3/18/2019
33883

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; relating to a state-tribal agreement with the Standing Rock Sioux Tribe.

Minutes:

Attachments 1-2

Chairman Headland: There has been an amendment prepared by the tax department. Dee, would you come up and go over the proposed change?

Dee Wald, General Counsel for the Office of the State Tax Commissioner: Distributed proposed amendments and a Christmas tree version, see attachments 1-2. Explained the amendments. We were asked to draft amendments to put a hard and tight sales and use tax sharing formula in the bill before you acted on it. There were also a few tweaks to the bill. On page two there was a question if you enter into an agreement under this bill would you have to enter into all the tax types; sales, use, farm machinery, and alcohol gross receipts and the answer is yes. We have two calculations for revenue sharing; one is for the sales/use farm machinery tax and the other would be for the alcohol gross receipts tax. For the former, the revenue sharing is based on two calculations; on page 3 line 22 is the first calculation. We would take 50% of the taxes collected from all retailers within the reservation would be shared with the state. That would reflect the sales, use, and farm machinery gross receipts tax sold. On line 25 is a calculation to determine how much use tax a tribal member pays. We as a team came up with this calculation and is similar to what Minnesota has except we didn't do the extensive research on different things that Minnesota has the ability to do. The back page of the Christmas tree version of the bill shows the formula for use tax paid by enrolled tribal members living on a reservation. We're proposing that we take a national study of the proposed sales and use tax burden of a North Dakotan with a family of three earning \$50,000 a year. This report is something that's done every year by the District of Columbia called tax rates and tax burdens. For North Dakota on the sales and use tax they always list the largest city in the state so that's Fargo right now. We divide that by three then multiply that by the state tax rate factor. Fargo has a 7% tax so we have to pull out the local tax portion of it, 2%, and recalculate it so we're really calculating what the state sales tax burden is in Fargo, not the state and local tax burden. Then we multiply that by 10% which

equals your estimated annual per capita use tax. You take that number times the enrolled members of a reservation and that would be the annual amount paid. This is divided by 12 for a monthly distribution to the tribes. There are two components. The other thing we did on these amendments begins on page four line 22 we took the language from SB 2257 using actual North Dakota alcohol consumption numbers, actual taxes paid and taking that formula and putting it into this bill.

Chairman Headland: It's possible that if a tribe entered into the sales tax agreement they would not have to enter into the other agreement for the wholesale tax?

Dee Wald: If they did they would have the same formula and have the same amount of dollars. They are only going to get one alcohol gross receipts tax.

Representative Steiner: During the hearing the formula wasn't determined yet so and was going to be determined later so when was the later?

Dee Wald: We wanted the later to be now. This is it.

Representative Steiner: The 10% is the estimate of what off the reservation is currently paying so everybody is paying the same or is it based off of other states? How did you come to the 10 percent?

Dee Wald: That 10% is a place holder for you as a committee to decide. We came up with a number starting small and letting the committee decide.

Chairman Headland: You mentioned something about Minnesota. Is that something that's modeled after what you think they get in Minnesota as a place to start?

Dee Wald: This is very similar to the agreement Minnesota has with the difference in research. They have a whole bunch of data that we don't have. It is a per capita revenue sharing.

Representative Ertelt: How does that 10% compare to non-tribal members in the state?

Dee Wald: We don't know. We are unable to determine how much use tax each person pays depending on family size and income.

Chairman Headland: Does anyone have any questions on the amendment?

Representative Steiner: Will the tribe agree with the numbers that are place holders?

Dee Wald: At this point I don't know if the tribe has seen any of this but if they don't like the 10% number or the 50% share and if this is passed then no agreements because we cannot negotiate those hard and fast numbers.

Chairman Headland: I shared this amendment with Scott Davis this morning. I'm sure the tribes have seen it. If they don't like it this will likely see a conference if it's passed so they will have their opportunities to say if they don't like it.

Representative Toman: The use tax piece, with streamline and Quill decision and collecting that sales tax, that doesn't apply to out of state purchases if they're collecting sales tax, that's only if it's use tax due correct?

Dee Wald: They would have to pay tax on everything they purchase. There is no longer that exemption currently. They should be exempt on online purchases delivered to the reservation. Under this bill the tribe has to enact similar sales and use tax and impose it on their tribal members.

Chairman Headland: We're looking for direction.

Representative Blum: MADE A MOTION TO ADOPT THE AMENDMENT

Representative Eidson: SECONDED

Chairman Headland: Discussion?

VOICE VOTE: MOTION CARRIED

Chairman Headland: We have the amended version of SB 2258 before us.

Representative Blum: MADE A MOTION FOR A DO PASS AS AMENDED

Representative Dockter: SECONDED

Chairman Headland: Discussion?

ROLL CALL VOTE: 13 YES 1 NO 0 ABSENT

MOTION CARRIED

Vice Chairman Grueneich will carry this bill.

March 18, 2019

DP 3/18/19
1052

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2258

Page 1, line 22, after the underscored period insert "An agreement under this chapter must include the sales tax, use tax, farm machinery gross receipts tax, and the alcoholic beverages gross receipts tax."

Page 3, line 15, remove "An agreement under this chapter may provide for the allocation of revenue to a tribe or"

Page 3, replace line 16 with "The amount of state sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or tribes under an agreement must be calculated as follows:"

Page 3, line 17, replace "One hundred" with "Fifty"

Page 3, line 18, after the underscored period insert "The state shall receive the remainder."

Page 3, line 19, remove "agreed to by the tribe or tribes and the state"

Page 3, line 20, remove "individual tribal members on taxable transactions or"

Page 3, line 21, replace "purchases occurring" with "enrolled tribal members residing"

Page 3, line 21, replace the underscored period with "determined by multiplying the enrolled membership of the tribe by the estimated per capita use tax. The estimated per capita use tax is ten percent of the per capita sales tax burden. The per capita sales tax burden is determined by multiplying the state tax rate factor by one third of the sales tax burden reported by the most recent "Tax Rates and Tax Burdens in the District of Columbia - A Nationwide Comparison", published by the government of the District of Columbia office of revenue analysis, for a family of three living in the largest city in North Dakota, and earning fifty thousand dollars per year. The state tax rate factor is a fraction representing the state general sales tax rate as a share of the combined state and local sales tax rate for the North Dakota city referenced in this subdivision."

- c. Except as provided in subdivision d, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
- d. The tribe or tribes shall provide the initial population required by subdivision c no less than sixty days before the effective date of the agreement.
- e. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

PA 3/18/14
2 of 2

11. The amount of alcoholic beverages gross receipts tax allocated to the tribe under an agreement must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcohol revenue per capita.
- a. The state alcohol revenue per capita is the monthly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
 - b. The enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
 - c. The tribe or tribes shall provide the initial population required by this subsection no less than sixty days before the effective date of the agreement.
 - d. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement."

Page 3, line 22, replace "11." with "12."

Page 3, line 25, replace "12." with "13."

Page 4, line 13, replace "13." with "14."

Page 4, line 25, replace "14." with "15."

Page 4, line 28, replace "15." with "16."

Renumber accordingly

Date: 3-18-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2258

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: see attachment #1 - 19.0314.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Blum Seconded By Rep. Eidson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Eidson		
Vice Chairman Grueneich			Representative Mitskog		
Representative Blum					
Representative Dockter					
Representative Ertelt					
Representative Fisher					
Representative Hatlestad					
Representative Kading					
Representative Koppelman					
Representative Steiner					
Representative Toman					
Representative Trottier					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote = Motion Carried

Date: 3-18-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 0258**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 19.0314.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Motion Made By Rep. Blum Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	X		Representative Eidson	X	
Vice Chairman Grueneich	X		Representative Mitskog	X	
Representative Blum	X				
Representative Dockter	X				
Representative Ertelt	X				
Representative Fisher	X				
Representative Hatlestad	X				
Representative Kading	X				
Representative Koppelman	X				
Representative Steiner		X			
Representative Toman	X				
Representative Trottier	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Grueneich

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2258, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2258 was placed on the Sixth order on the calendar.

Page 1, line 22, after the underscored period insert "An agreement under this chapter must include the sales tax, use tax, farm machinery gross receipts tax, and the alcoholic beverages gross receipts tax."

Page 3, line 15, remove "An agreement under this chapter may provide for the allocation of revenue to a tribe or"

Page 3, replace line 16 with "The amount of state sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or tribes under an agreement must be calculated as follows:"

Page 3, line 17, replace "One hundred" with "Fifty"

Page 3, line 18, after the underscored period insert "The state shall receive the remainder."

Page 3, line 19, remove "agreed to by the tribe or tribes and the state"

Page 3, line 20, remove "individual tribal members on taxable transactions or"

Page 3, line 21, replace "purchases occurring" with "enrolled tribal members residing"

Page 3, line 21, replace the underscored period with "determined by multiplying the enrolled membership of the tribe by the estimated per capita use tax. The estimated per capita use tax is ten percent of the per capita sales tax burden. The per capita sales tax burden is determined by multiplying the state tax rate factor by one third of the sales tax burden reported by the most recent "Tax Rates and Tax Burdens in the District of Columbia - A Nationwide Comparison", published by the government of the District of Columbia office of revenue analysis, for a family of three living in the largest city in North Dakota, and earning fifty thousand dollars per year. The state tax rate factor is a fraction representing the state general sales tax rate as a share of the combined state and local sales tax rate for the North Dakota city referenced in this subdivision.

- c. Except as provided in subdivision d, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
- d. The tribe or tribes shall provide the initial population required by subdivision c no less than sixty days before the effective date of the agreement.
- e. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

- 11. The amount of alcoholic beverages gross receipts tax allocated to the tribe under an agreement must be equal to an amount determined by

multiplying the enrolled membership of the tribe by the state alcohol revenue per capita.

- a. The state alcohol revenue per capita is the monthly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
- b. The enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
- c. The tribe or tribes shall provide the initial population required by this subsection no less than sixty days before the effective date of the agreement.
- d. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement."

Page 3, line 22, replace "11." with "12."

Page 3, line 25, replace "12." with "13."

Page 4, line 13, replace "13." with "14."

Page 4, line 25, replace "14." with "15."

Page 4, line 28, replace "15." with "16."

Renumber accordingly

2019 CONFERENCE COMMITTEE

SB 2258

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2258
4/8/2019
Job #34595

Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 57-39.9 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; to provide for application; and to declare an emergency.

Minutes:

Attachments: 1

Chairman Cook: Called the conference committee to order on SB 2258.

Dee Wald, General Council, Office of State Tax Commissioner

Distributed **Attachment 1**.

In the House, we added a sales and use tax formula for distribution to the tribe on a monthly basis. The first part of the calculation would reflect the retail sales tax. We would take 50% of monthly state sales tax collected from on reservation retailers – all of them – plus the monthly estimated use tax paid and that would be the amount to the state.

Sales tax – 50% is collected from all retailers within the boundary. We keep the remainder. The complicated calculation is the estimation of use taxes paid by enrolled tribal members living on the reservation. Our starting point for this was a sales tax burden for a ND family of 3 that is annually published by the District of Columbia. It is called tax rates and tax burdens. They do an extensive study every year. This is what we use when we are reporting in the Red Book. The report divides the different sized families up based on income. This report only reports the largest city in the state.

We took a family living in Fargo that is earning \$50,000 a year and a family of 3. That amount is \$995 for this current year.

Chairman Cook: That is the amount of use tax they pay?

Dee Wald: Sales and Use tax.

Dee Wald: To get it to a per capita number, you divide that by three.

Chairman Cook: Why?

Dee Wald: So you can do a per capita per person.

Then you have to multiply that by a state tax rate factor. The reason we do that is because Fargo has a 7.5% sales tax rate. We take 5 and divide it by 7.5%. That would reduce the amount paid to that portion of state sales tax. We are pulling out the Fargo city sales tax and other local taxes. Right now, that would be about 5/7ths of what the family of three in Fargo pays in sales and use tax.

Then we estimated that out of that amount. Ten percent of that dollar represents the use tax paid. Right now, we have a per capita sales and use tax calculation. Out of that, 10% of what they pay is use tax. That was a placeholder. Then you take that estimated annual per capita use tax and multiply it by the number of enrolled members living on the reservation which would be certified annually. That would be the estimated annual use tax paid or collected from tribal members living on the reservation. That would be a monthly calculation.

Chairman Cook: What is that dollar amount that you are taking times the membership of the tribe actually at?

Dee Wald: It depends on the tribe. \$22.11

Chairman Cook: That is low.

Dee Wald: I think that is a factor of the 10%.

Chairman Cook: I always thought internet sales amounted to \$50 per person.

Dee Wald: When we drafted the amendment, we just put 10% in. It was a placeholder but the House adopted it.

Chairman Cook: Why did that go from 100% to 50%?

Dee Wald: We are taking all the retailers – non-member and tribal. Fifty percent was a guess of how many non-members were purchasing on the reservation and members purchasing on the reservation. We just split that 50%.

Chairman Cook: Was it the Senate Bill tax collected from all retailers within the exterior of the reservation?

Dee Wald: That went back to the tribe, yes.

Chairman Cook: So why do we go from 100% to 50%?

Dee Wald: It was 100% from all retailers within the reservation. It was just one of the factors to be considered in the formula of the original bill when it came over. These amendments consider the revenue from all retailers on the reservation.

Chairman Cook: I do not really think the original bill would have encouraged a tribe to start collecting sales tax. I do not think the House bill will either. I think we have bigger issues out there than this. Before we do get a tribe collecting sales tax, we have to solve the other issues and then still do work on this. I think it is irrelevant myself.

Senator Patten: Moved the Senate to Accede to the House Amendments.

Representative Headland: Seconded.

Chairman Cook: Any Discussion?

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent

Motion Carried

Senator Cook will carry the bill for the Senate.

Representative Grueneich will carry the bill for the House.

**2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2258 as (re) engrossed

Senate Finance and Taxation Committee

- Action Taken **SENATE accede to House Amendments**
 SENATE accede to House Amendments and further amend
 HOUSE recede from House amendments
 HOUSE recede from House amendments and amend as follows
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Patten Seconded by: Headland

Senators	<u>4/8</u>		Yes	No	Representatives	<u>4/8</u>		Yes	No
Senator Cook	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		Representative Headland	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Senator Patten	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		Representative Grueneich	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Senator Dotzenrod	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		Representative Mitskog	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Total Senate Vote					Total Rep. Vote				

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier COOK House Carrier Grueneich

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2258, as engrossed: Your conference committee (Sens. Cook, Patten, Dotzenrod and Reps. Headland, Grueneich, Mitskog) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1026-1027 and place SB 2258 on the Seventh order.

Engrossed SB 2258 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

SB 2258



2/6 SB 2258 #1 pg.1

STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
RYAN RAUSCHENBERGER, COMMISSIONER

SB 2258 TESTIMONY
SENATE FINANCE & TAXATION COMMITTEE
FEBRUARY 6, 2019

Chairman Cook and Members of the Senate Finance and Taxation Committee:

My name is Ryan Rauschenberger, Tax Commissioner for the State of North Dakota. I am here today to testify in support of SB 2258, which would create a framework for the state to enter into sales tax collection agreements with the tribal governments in North Dakota.

The Office of State Tax Commissioner currently administers tax agreements with the tribes in the areas of motor fuels taxes, cigarette and tobacco taxes, and oil and gas taxes. As a member of the interim tribal taxation committee, we have had many productive meetings with the tribes to discuss the benefits of having a framework in law to allow the state to enter into tax agreements for various tax types, including the sales tax.

SB 2258 was modeled after other states' tribal sales tax agreements, utilizing what we believed to be best administrative practices. This bill would allow the Tax Department to collect a sales tax on behalf of the tribal governments. If a tribe would want to enter into an agreement, the tribe's sales tax laws would be required to mirror the state's, and tribal members would be required to collect sales tax on all sales, regardless of whether the sale is to a tribal member or not. We would then distribute the sales tax revenues back to the tribes on the basis of an agreed to formula. Having these agreements in place would help create a statewide tax system that would be uniform regardless of whether transactions are taking place on or off the tribes' reservations.

On behalf of the Office of State Tax Commissioner, I ask that you give this bill favorable consideration. Thank you.



2/6 SB 2258 # 2 pg. 1

**Testimony—
Senate Finance and Taxation Committee
Senate Bill 2258**

February 6, 2019

Prepared by Myles Vosberg
Director, Tax Administration Division
North Dakota Office of State Tax Commissioner
Phone: 328-3471; e-mail:msvosberg@nd.gov

Chairman Cook and members of the Committee:

My name is Myles Vosberg, and I am here on behalf of the Office of State Tax Commissioner. I was asked to provide an explanation of the provisions of Senate Bill 2258 to the Committee.

This bill, creating a new chapter to Title 57 of the North Dakota Century Code, is enabling legislation allowing the Governor and the Tax Commissioner to enter into administration and revenue sharing agreements with the five Tribal Nations located in North Dakota. The agreements authorized are for Sales, Use, Farm Machinery Gross Receipts, and Alcoholic Beverages Gross Receipts Taxes.

The following is a brief explanation of the bill:

Section 1 of bill

- Page 1, lines 11 - 22 Enable the Governor, after consulting with the tax commissioner to ensure that the agreement provisions can be enforced, to enter into an administration and revenue sharing agreement for Sales and Use Taxes, Farm Machinery Gross Receipts Tax, and Alcoholic Beverages Gross Receipts Tax for sales of taxable products within the exterior boundaries of the reservation.
- Page 2, lines 1 - 3 Require that an agreement with a tribe be in compliance with the fourteen subsections identified below. Other provisions can be included in the agreement but only to the extent that it is consistent with this chapter.



- Page 2, lines 4-10 Identify that the taxes subject to agreement are the state's 5 percent Sales and Use Taxes under Century Code Chapters 57-39.2 and 57-40.2, the 3 percent Farm Machinery Gross Receipts Tax under Chapter 57-39.5, and the 7 percent Alcohol Gross Receipts Tax under Chapter 57-39.6.
- Page 2, lines 11 – 14 Require that taxes included in the agreement apply to all transactions and activities by all persons and entities within the exterior boundaries of the reservation.
- Page 2, lines 15 – 17 State that North Dakota Sales, Use, and Gross Receipts Tax laws and Administrative Code govern the administration of the taxes subject to agreement.
- Page 2, lines 18 – 20 Provide that tribally owned or tribal member owned businesses operating within the reservation are subject to the state's taxes and regulatory requirements.
- Page 2, lines 21 – 26 Clarify that tribally owned entities that perform a governmental function or provide essential government services are exempt from taxes included under the agreement; however, all other tribally owned businesses or entities are subject to taxes under the agreement.
- Page 2, lines 27 – 29 Prohibit tribes from imposing another tax or fee on retailers or transactions subject to the agreement. This provision does not apply to tribal employment rights office fees.
- Page 2, line 30 – Page 3, line 2: Provide that the Commissioner administers and enforces the law for all businesses located within the boundary of the reservation, including the right to audit, assess, and refund taxes, as well as determining whether an entity or transaction is exempt or not exempt from the taxes.
- Page 3, line 3 – 7 If there is a disagreement between the state and the tribe over the agreement's terms, the issue will be resolved using binding arbitration. The Governor can negotiate with the tribe the processes and procedures that must be included in the agreement.
- Page 3, lines 8 – 14 The agreement will determine revenue sharing by a formula that considers: 1) the taxes collected by all retailers located within the exterior boundaries of the reservation, and 2) an estimated amount of use tax collected by retailers

located off the reservation from enrolled members purchasing taxable goods and services within the exterior boundaries of the reservation.

Page 3, lines 15 – 17 Both the tribe and the tax commissioner have authority to terminate an agreement, with or without cause. The tax commissioner is required to consult with the governor before terminating the agreement. The exact processes and procedures for termination are negotiated and must be in the agreement.

Page 3, line 18 – Page 4, line 5 Require that an agreement provide a statement that:

- a) The state and tribe are not relinquishing the right to impose other taxes that are not in conflict with this chapter.
- b) Prevents a taxpayer from paying both a state and a tribal tax but instead requires the taxpayer to pay one tax that will be shared according to the terms of the agreement.
- c) Requires cooperation between the state and the tribe to collect a single tax and to share the revenue according to the terms of the agreement.
- d) Recognizes each other's sovereignty.
- e) The agreement controls the rights of the parties for the taxes subject to the agreement.
- f) Prohibits the state and the tribe from raising issues of sovereignty or pre-emption. As an example, if the Supreme Court issues an opinion that would give either the state or the tribe additional taxation authority, the agreement's provisions would not change.
- g) If a third party challenges the right of the tribe or state to enter into the agreement, both the state and the tribe will defend the agreement provisions.

Page 4, lines 6 – 17 Relate to the confidentiality and sharing of tax information. The tax commissioner may disclose names of retailers located on the reservation to the tribe and the amount of tax collected by each, however, the tribe must agree to maintain the confidentiality of these records. The agreement must specify processes to safeguard confidential information shared.

Page 4, lines 18 – 20 Specify the effective date of a revenue-sharing agreement. The agreement must begin on the 1st day of a calendar quarter, at least 90 days after the agreement is signed.

Page 4, lines 21 – 22 Provide that the city and county gross receipts taxes are not subject to allocation.

Page 4, lines 23 – 24 State that Chapter 54-40.2, Agreements Between Public Agencies and Indian Tribes, does not apply to agreements entered into under this chapter.

Page 4, line 25 – Page 5, line 12 These two sections create a special fund to be known as the tribal allocation fund. The revenues calculated under the formula are deposited in the special funds for disbursement to the tribes on a monthly basis. None of these funds are transferred to the state aid distribution fund. These sections also identify the procedures for refund claims. The refunds are initially paid out of the state general fund. The tribe's next distribution will be reduced by the refund claim. This is similar to the process currently in place for local tax refund claims.

Section 2 of bill

Repeals the current State-Tribal Sales, Use, and Gross Receipts Tax Agreements chapter.

Section 3 of bill

Provides that this Act applies to agreements entered into after July 31, 2019. The Tax Commissioner's Office recommends the application be amended to apply all agreements entered into after the effective date of this Act. In addition, we recommend an Emergency Clause be added to be consistent with Senate Bill 2257. Amending the application section and adding an Emergency Clause will provide for an earlier implementation of agreements should any tribe desire to move forward. Under the current language, the earliest possible effective date for an agreement is January 1, 2020.

Senate Bill 2258
Senate Finance and Taxation Committee
February 6, 2019
Testimony of Mark Fox, Chairman, MHA Nation

Mr. Chairman and members of the Committee, my name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation. Our tribal government generally supports Senate Bill 2258 although we believe it can be improved with potential amendments. Other tribal governments may provide more specific points or amendments for your consideration as well.

Senate Bill 2258 authorizes the governor, in consultation with the tax commissioner, to enter into sales, use, and gross receipts revenue sharing agreements on behalf of the state.

Similar to the concerns that our nation has raised in Senate Bill 2257, our nation asserts the importance of the governor's authority to negotiate and sign revenue sharing agreements that can be realized without delay of the legislative sessions. Restoration of the governor's authority is a positive step in enhancing the relationship between our nation and the State of North Dakota regarding effective tax agreements.

Subject to amendments proposed by our nation and other tribal nations, passage of Senate Bill 2258 has the potential to positively impact our Fort Berthold Reservation with further economic development and infrastructure. For these reasons, we do not object to the passage of Senate Bill 2258.

**SPIRIT LAKE TRIBE
S.B. 2257 & S.B. 2258
FORMAL TESTIMONY**

**Wednesday February 6, 2019
Bismarck, ND**

My name is Douglas Yankton, and I serve as Vice-Chairman of the Spirit Lake Tribe. I would like to thank you for the opportunity to testify regarding the importance of and need for Senate Bill 2258.

As we build and invest in our tribal nation, tax reform remains at the forefront of our discussions as tribal leaders. Administrative capacity, impact on economic development and potential state and tribal conflicts are among the factors impacting tax reform. In recent years, the Spirit Lake Tribe has engaged in discussions with the Tax Committee, the Office of the State Tax Commissioner and the Governor's Office regarding the need for enabling legislation that will support the negotiation and approval of tax agreements relevant to on reservation sales, use and gross receipts.

Senate Bill 2258 provides the enabling legislation necessary to foster fair, effective and efficient tax agreements by and between the tribe, the tax commissioner and the governor. The enabling legislation would allow such agreements to be negotiated and approved without undue delay and in the best interests of the state and the tribe.

Since 2006 the Spirit Lake Tribe has had only one tax agreement with the State of North Dakota relevant to motor fuels and special fuels. Through this agreement the tribe has been able to work with state to consistently apply motor fuels and special fuels taxes to on reservation sales, develop an equitable revenue sharing plan and avoid duplication of administrative efforts. Senate Bill 2258 would authorize a similar revenue sharing opportunity but in a more efficient and equitable manner. The enabling legislation would dramatically simplify the process for negotiating and approving tax agreements between the state while ensuring that necessary protections are in place to safeguard the sovereign status of the tribe and the state.

Although we have not yet collected sufficient data to demonstrate the overall impact or amount of revenue that might come from the application of a sales, use and gross receipts tax on the Spirit Lake Reservation, having the opportunity to work with the tax commissioner and governor to gather such data and develop a mutually beneficial tax agreement is encouraging. We anticipate that the negotiation and execution of tax agreements contemplated by the bill will not come to immediate fruition but rather will be developed over time. It is our hope that

$\frac{2}{6}$ SB 2258 #4 pg. 2

the tax agreement contemplated by S.B 2258 will provide an opportunity for the Spirit Lake Tribe and the state to develop and expand upon our tax base. It is for this reason that we are encouraged by the enabling legislation and we encourage you to pass Senate Bill 2258 so that we may continue to work collaboratively with the State of North Dakota on taxation issues impacting our community. Thank you for your time.

TRIBAL TAXATION ISSUES COMMITTEE

February 6, 2019

Testimony for the Standing Rock Sioux Tribe Tribal Tax Commission Regarding
Legislative Draft Bill of the 66th Legislative Assembly Introduced by Senators Cook, Heckaman,
and Wardner

Good Morning, My name is Ron His Horse is Thunder. I am the Chairman of the Standing Rock
Sioux North Dakota Tribal Tax Commission.

The Standing Rock Sioux Tribe Generally Supports Senate Bill 2258 with amendments. We are encouraged by the introduction of this bill. Overall, any legislation that works to promote collaborative agreements between our Tribe and the State, and recognizes both governments as sovereigns is a positive step. Recognizing the ability of each government to tax and regulate is paramount to establishing a solid foundation to any tribal-state agreement. While the overall concept of the SB 2258 is encouraging, there are certain provisions that need revisions in order to render the bill workable from the perspective of the Standing Rock Sioux Tribe. The first issue to address is an overarching issue involving the administration of state taxes AND the recognition of the joint tribal administration of taxes.

1. State Administration of Taxes

The Standing Rock Sioux Tribe has developed, enacted, and administered a robust tax code and collection procedures within its jurisdiction and the Standing Rock Sioux Tribal Tax Commission has implemented and carried out the administration of our tribal tax laws. As you are aware our Reservation covers both North Dakota and South Dakota. We have a Tax Commission in both North Dakota and South Dakota. Our South Dakota Tax Commission has entered into a Tribal State Agreement for a number of years. Under the proposed draft legislation there is little acknowledgment of any tribe's authority to tax or acknowledgment that as a sovereign government we too have the power to tax. The administrative functions, under any proposed tribal-state tax agreement entered into as part of this legislation, are intended to fall solely with the State. This approach where the state is exercising exclusive control regarding administration is not productive to achieving healthy administrative protocols between tribal tax entities and state administrative entities. There is considerable room here to create suitable revisions that leads to a collaborative approach where each jurisdiction's tax commission is consulted, a tribal tax identical to the state tax is utilized, or where the administration of taxes subject to any tribal-state taxing agreement is a joint effort between the two parties' respective administrative commissions. We are in favor of providing amendments that allow for common or joint collection, remittance, administration and audit of sales, use, and gross receipts of either a tribal or state tax. The end result will be the same- elimination of dual taxation.

2. Exemption for Tribal Government Owned Entities

Any exemption for a tribal government owned entity should be determined by the Standing Rock Sioux Tribe and not by the North Dakota State Tax Commissioner. This is a matter that can be left to the parties to negotiate a protocol or process in the compact itself. After all, we are talking about a tribal government owned and operated entity and the Tribe is therefore in the best position to determine and to certify those tribal entities which are exempt and perform governmental functions or provide necessary revenue to the tribal government. We are able to administer tribal certificates of exemption and work collaboratively with the North Dakota State Tax Commissioner to issue certificates of exemptions or simply identify all Standing Rock Sioux tribal entities that are exempt. These entities function to provide public safety, conservation, environmental services, tribal government administrative functions, public welfare and social service functions, education, health services, housing, casino gaming, tourism, and other similar activities customarily performed by state or local governments. The Standing Rock Sioux Tribe has the same issues as state and local governments and arguably many more issues to address as compared to local and municipal governments. These entities formed by the Standing Rock Sioux Tribe are subordinate economic entities and are chartered with the purpose to assist in alleviating those issues that our tribal government is responsible for.

These tribal government owned entities may be for profit businesses such as the Prairie Knights Casino, where the net revenue generated is utilized for government services and programs. As everyone is aware, gaming by Indian tribes is governed by the Indian Gaming Regulatory Act. The interest of the Standing Rock Sioux Tribe both as a regulatory authority and as a revenue agent, as well as the provision of services the Tribe provides to the casino creates an obvious presumption that entities such as the Prairie Knights Casino are clearly a tribal government exempt entity. Moreover, the Tribe may have other for-profit entities where the revenue generated is distributed back to the Tribe's general fund and budgeted for use in tribal government programs for fostering additional economic development for the benefit of our tribal members. This type of exemption for a tribal gaming facility or other for-profit entity should clearly be identified in any agreement and certainly such a determination should be made by the Standing Rock Sioux Tribe.

3. Reporting Requirements

In order for each party to continue to evaluate the terms and payment calculations received under any tribal-state tax agreement, proper information must be shared across the aisle. The current legislation creates only a permissive obligation on the part of the North Dakota State Tax Commissioner to provide tribes with information on retailers and amounts collected. Information on retailers, collection, and the ability for either party to analyze and audit collection amounts is paramount. The ability for tribes as an equal party to the agreement to request and for the State to provide ALL of the necessary information in order to evaluate any allocation formula, and the administration and calculations due under the agreement, is a crucial obligation that must be included as part of any successful tribal-state taxing agreement. We will be submitting

amendments that will address this issue and put the tribes on an appropriately equal footing in their ability to enforce any agreement.

4. Allocation Method Provides For No Flexibility

Allocation of revenues subject to a tax compact is often the most significant concern of the parties. The amount generated for a party is the heart and soul of the agreement. This is also the topic on which the parties have the most interest in bargaining a compromise. SB2258 completely removes this important aspect of this process. The current language limits most considerations on allocation to transactions involving non-members. We have drafted amended language that will take into consideration factors specific to each tribe's or tribes' reservation, lands, populations, and socio-economic factors and we will provide these to the committee. The parties must be able to freely negotiate the allocation amount on a wide number of issues.

February 12, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2258

Page 1, line 7, remove "and"

Page 1, line 7, after "application" insert "; and to declare an emergency"

Page 2, line 15, after "3." insert "A tribe or tribes shall impose taxes equal to the state's taxes which conform in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, but must be applied only to those taxable transactions and activities occurring within the exterior boundaries of a reservation which are exempt from state taxes because the transactions or activities occur within the tribe's or tribes' jurisdiction.

4."

Page 2, line 18, replace "4." with "5."

Page 2, line 18, replace "5" with "6"

Page 2, line 21, replace "5." with "6."

Page 2, line 27, replace "6." with "7."

Page 2, line 30, replace "7." with "8."

Page 3, line 3, replace "8." with "9."

Page 3, line 8, replace "9." with "10."

Page 3, line 15, replace "10." with "11."

Page 3, line 18, replace "11." with "12."

Page 4, line 6, replace "12." with "13."

Page 4, line 18, replace "13." with "14."

Page 4, line 21, replace "14." with "15."

Page 4, line 28, replace "9" with "10"

Page 5, line 15, replace "July 31, 2019" with "after the effective date of this Act"

Page 5, after line 15, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
RYAN RAUSCHENBERGER, COMMISSIONER

SB 2258 TESTIMONY
HOUSE FINANCE & TAXATION COMMITTEE
MARCH 5, 2019

Chairman Headland and Members of the House Finance and Taxation Committee:

My name is Ryan Rauschenberger, Tax Commissioner for the State of North Dakota. I am here today to testify in support of SB 2258, which would create a framework for the state to enter into sales tax collection agreements with the tribal governments in North Dakota.

The Office of State Tax Commissioner currently administers tax agreements with the tribes in the areas of motor fuels taxes, cigarette and tobacco taxes, and oil and gas taxes. As a member of the Interim Tribal Taxation Committee, we have had many productive meetings with the tribes to discuss the benefits of having a framework in law to allow the state to enter into tax agreements for various tax types, including the sales tax.

SB 2258 was modeled after other states' tribal sales tax agreements, utilizing what we believed to be best administrative practices. This bill would allow the Tax Department to collect a sales tax on behalf of the tribal governments. If a tribe would want to enter into an agreement, the tribe's sales tax laws would be required to mirror the state's sales tax law, and tribal members would be required to collect sales tax on all sales, regardless of whether the sale is to a tribal member or not. We would then distribute the sales tax revenues back to the tribes on the basis of an agreed to formula. Having these agreements in place would help create a statewide tax system that would be uniform, regardless of whether transactions are taking place on or off the tribes' reservations.

On behalf of the Office of State Tax Commissioner, I ask that you give this bill favorable consideration. Thank you.

#2
SB 2258
3-5-19

Senate Bill 2258
House Finance and Taxation Committee
March 5, 2019
Testimony of Mark Fox, Chairman, MHA Nation

Mr. Chairman and members of the Committee, my name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation. Our tribal government generally supports Senate Bill 2258 although we believe it can be improved with potential amendments. Other tribal governments may provide more specific points or amendments for your consideration as well.

Senate Bill 2258 authorizes the governor, in consultation with the tax commissioner, to enter into sales, use, and gross receipts revenue sharing agreements on behalf of the state.

Similar to the concerns that our nation has raised in Senate Bill 2257, our nation asserts the importance of the governor's authority to negotiate and sign revenue sharing agreements that can be realized without delay of the legislative sessions. Restoration of the governor's authority is a positive step in enhancing the relationship between our nation and the State of North Dakota regarding effective tax agreements.

Subject to amendments proposed by our nation and other tribal nations, passage of Senate Bill 2258 has the potential to positively impact our Fort Berthold Reservation with further economic development and infrastructure. For these reasons, we do not object to the passage of Senate Bill 2258.



#3
SB 2258
3-5-19
p. 1

Testimony—
House Finance and Taxation Committee
Senate Bill 2258

March 5, 2019

Prepared by Myles Vosberg
Director, Tax Administration Division
North Dakota Office of State Tax Commissioner
Phone: 328-3471; e-mail:msvosberg@nd.gov

Chairman Headland and members of the Committee:

My name is Myles Vosberg, and I am here on behalf of the Office of State Tax Commissioner to provide an explanation of the provisions of Senate Bill 2258 to the Committee.

This bill, creating a new chapter to Title 57 of the North Dakota Century Code, is enabling legislation allowing the Governor and the Tax Commissioner to enter into administration and revenue sharing agreements with the five Tribal Nations located in North Dakota. The agreements authorized are for Sales, Use, Farm Machinery Gross Receipts, and Alcoholic Beverages Gross Receipts Taxes.

The following is a brief explanation of the bill:

Section 1 of bill

Page 1, lines 11 - 22 Enable the Governor, after consulting with the tax commissioner to ensure that the agreement provisions can be enforced, to enter into an administration and revenue sharing agreement for Sales and Use Taxes, Farm Machinery Gross Receipts Tax, and Alcoholic Beverages Gross Receipts Tax for sales of taxable products within the exterior boundaries of the reservation.

Page 2, lines 1 - 3 Require that an agreement with a tribe be in compliance with the fifteen subsections identified below. Other provisions can be included in the agreement but only to the extent that it is consistent with this chapter.

#3
SB 2258
3-5-19
p.2

- Page 2, lines 4-10 Identify that the taxes subject to agreement are the state's 5 percent Sales and Use Taxes under Century Code Chapters 57-39.2 and 57-40.2, the 3 percent Farm Machinery Gross Receipts Tax under Chapter 57-39.5, and the 7 percent Alcohol Gross Receipts Tax under Chapter 57-39.6.
- Page 2, lines 11 – 14 Require that taxes included in the agreement apply to all transactions and activities by all persons and entities within the exterior boundaries of the reservation.
- Page 2, lines 15 – 20 Requires a tribe to impose a tax equal to the state's tax prior to entering into an agreement. The tribe's tax must conform to the state's tax regarding the taxability of all transactions and activity, but the tax applies only to transactions occurring within the exterior boundaries of the reservation and that would otherwise be exempt from state taxation.
- Page 2, lines 21 – 23 State that North Dakota Sales, Use, and Gross Receipts Tax laws and Administrative Code govern the administration of the taxes subject to agreement.
- Page 2, lines 24 – 26 Provide that tribally owned or tribal member owned businesses operating within the reservation are subject to the state's taxes and regulatory requirements.
- Page 2, line 27 – Page 3, line 2: Clarify that tribally owned entities that perform a governmental function or provide essential government services are exempt from taxes included under the agreement; however, all other tribally owned businesses or entities are subject to taxes under the agreement.
- Page 3, lines 3 – 5 Prohibit tribes from imposing another tax or fee on retailers or transactions subject to the agreement. This provision does not apply to tribal employment rights office fees.
- Page 3, lines 6 – 9 Provide that the Commissioner administers and enforces the law for all businesses located within the boundary of the reservation, including the right to audit, assess, and refund taxes, as well as determining whether an entity or transaction is exempt or not exempt from the taxes.
- Page 3, lines 10 – 14 If there is a disagreement between the state and the tribe over the agreement's terms, the issue will be resolved using binding arbitration. The Governor can negotiate with the tribe the processes and procedures that must be included in the agreement.

#3
SB 2258
3-5-19
P.3

Page 3, lines 15 – 21 The agreement will determine revenue sharing by a formula that considers: 1) the taxes collected by all retailers located within the exterior boundaries of the reservation, and 2) an estimated amount of use tax collected by retailers located off the reservation from enrolled members purchasing taxable goods and services within the exterior boundaries of the reservation.

Page 3, lines 22 – 24 Both the tribe and the tax commissioner have authority to terminate an agreement, with or without cause. The tax commissioner is required to consult with the governor before terminating the agreement. The exact processes and procedures for termination are negotiated and must be in the agreement.

Page 3, line 25 – Page 4, line 12: Require that an agreement provide a statement that:

- a) The state and tribe are not relinquishing the right to impose other taxes that are not in conflict with this chapter.
- b) Prevents a taxpayer from paying both a state and a tribal tax but instead requires the taxpayer to pay one tax that will be shared according to the terms of the agreement.
- c) Requires cooperation between the state and the tribe to collect a single tax and to share the revenue according to the terms of the agreement.
- d) Recognizes each other's sovereignty.
- e) The agreement controls the rights of the parties for the taxes subject to the agreement.
- f) Prohibits the state and the tribe from raising issues of sovereignty or pre-emption. As an example, if the Supreme Court issues an opinion that would give either the state or the tribe additional taxation authority, the agreement's provisions would not change.
- g) If a third party challenges the right of the tribe or state to enter into the agreement, both the state and the tribe will defend the agreement provisions.

Page 4, lines 13 – 24 Relate to the confidentiality and sharing of tax information. The tax commissioner may disclose names of retailers located on the reservation to the tribe and the amount of tax collected by each, however, the tribe must agree to maintain the confidentiality of these records. The agreement must specify processes to safeguard confidential information shared.

#3
SB 2258
3-5-19
P.4

Page 4, lines 25 – 27 Specify the effective date of a revenue-sharing agreement. The agreement must begin on the 1st day of a calendar quarter, at least 90 days after the agreement is signed.

Page 4, lines 28 – 29 Provide that the city and county gross receipts taxes are not subject to allocation.

Page 4, lines 30 – 31 State that Chapter 54-40.2, Agreements Between Public Agencies and Indian Tribes, does not apply to agreements entered into under this chapter.

Page 5, lines 1 – 18 These two sections create a special fund to be known as the tribal allocation fund. The revenues calculated under the formula are deposited in the special funds for disbursement to the tribes on a monthly basis. None of these funds are transferred to the state aid distribution fund. These sections also identify the procedures for refund claims. The refunds are initially paid out of the state general fund. The tribe's next distribution will be reduced by the refund claim. This is similar to the process currently in place for local tax refund claims.

Section 2 of bill

Repeals the current State-Tribal Sales, Use, and Gross Receipts Tax Agreements chapter, which applies to the Standing Rock Sioux Tribe.

Section 3 of bill

Provides that this Act applies to agreements entered into after the effective date of Senate Bill 2258.

Section 4 of bill

Declares the bill to be an emergency measure.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2258

Page 1, after line 22, insert "An agreement under this chapter must include the sales, use, farm machinery gross receipts tax, and the alcoholic beverages gross receipts tax."

Page 3, line 15, replace "An agreement under this chapter may provide for the allocation of revenue to a tribe or" with "The amount of state sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or tribes under an agreement must be calculated as follows"

Page 3, line 16, remove "tribes using a formula that may include the following"

Page 3, line 17, replace "One hundred" with "Fifty"

Page 3, line 18, after the period insert "The state must receive the remainder."

Page 3, line 19, remove "agreed to by the tribe or tribes and the state"

Page 3, line 20, replace "individual" with "enrolled"

Page 3, line 20, replace "on taxable transactions or" with "residing"

Page 3, line 21, remove "purchases occurring"

Page 3, line 21, after "reservation" insert "determined by multiplying the enrolled membership of the tribe by the estimated per capita use tax. The estimated per capita use tax is ten percent of the per capita sales tax burden. The per capita sales tax burden is determined by multiplying the state tax rate factor by one third of the sales tax burden reported by the most recent Tax Rates and Tax Burdens in the District of Columbia - A Nationwide Comparison, published by the Government of the District of Columbia Office of Revenue Analysis, for a family of three living in the largest city in North Dakota, and earning fifty-thousand dollars per year. The state tax rate factor is a fraction representing the state general sales tax rate as a share of the combined state and local sales tax rate for the North Dakota city referenced in this subdivision."

- c. Except as provided in subdivision d, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.

- d. The tribe or tribes must provide the initial population required by subdivision c no fewer than sixty days before the effective date of the agreement.
- e. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement”

Page 3, after line 21, insert:

- “11. The amount of alcoholic beverages gross receipts tax revenue allocated to the tribe under an agreement must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcohol revenue per capita.
 - a. The state alcohol revenue per capita is the monthly collections of the state’s alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state’s total population as determined in the most recent actual or estimated census data published by the United States census bureau.
 - b. The enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe’s reservation located in this state. The enrolled membership of the tribe must be based on the tribe’s enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year’s certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
 - c. The tribe or tribes must provide the initial population required by this subsection no fewer than sixty days before the effective date of the agreement.
 - d. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.”

Page 3, line 22, replace “11” with “12”

Page 3, line 25, replace “12” with “13”

Page 4, line 13, replace “13” with “14”

Page 4, line 25, replace “14” with “15”

Page 4, line 28, replace “15” with “16”

Renumber accordingly

#2
SB 2258
3-18-19
p.1

Sixty-sixth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2258

Introduced by

Senators Cook, Heckaman, Wardner

Representatives Boschee, Headland, Pollert

1 A BILL for an Act to create and enact chapter 57-39.9 of the North Dakota Century Code,
2 relating to state-tribal agreements for the administration and collection of sales, use, and gross
3 receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse
4 Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain
5 Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a
6 state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing
7 appropriation; to provide for application; and to declare an emergency.

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

9 **SECTION 1.** Chapter 57-39.9 of the North Dakota Century Code is created and enacted
10 as follows:

11 **57-39.9-01. Authority to enter state - tribal sales, use, and gross receipts tax**
12 **agreements.**

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

#2
SB 2258
3-18-19
p. 2

Sixty-sixth
Legislative Assembly

1 enforced. An agreement under this chapter must include the sales, use, farm machinery gross
2 receipts tax, and the alcoholic beverages gross receipts tax.

3 **57-39.9-02. Agreement requirements.**

4 The governor may enter an agreement with a tribe or tribes if the agreement complies
5 with this section.

6 1. The taxes subject to an agreement under this chapter are the state's sales, use,
7 and gross receipts taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2,
8 as may be amended subsequently by the legislative assembly, for taxable
9 transactions and activities occurring exclusively within the exterior boundaries of
10 the Fort Berthold Reservation, that portion of the Lake Traverse Reservation
11 located in this state, the Spirit Lake Reservation, that portion of the Standing
12 Rock Reservation located in this state, or the Turtle Mountain Reservation.

13 2. Except as otherwise provided in this chapter, the state's sales, gross receipts,
14 and use taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, must
15 apply to all transactions and activities by all persons and entities occurring within
16 the boundaries of the reservation.

17 3. A tribe or tribes shall impose taxes equal to the state's taxes which conform in all
18 respects with regard to the taxable or exempt status of transactions and activities
19 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, but must be applied only
20 to those taxable transactions and activities occurring within the exterior
21 boundaries of a reservation which are exempt from state taxes because the
22 transactions or activities occur within the tribe's or tribes' jurisdiction.

23 4. Chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and title 81 of the North Dakota
24 Administrative Code govern the administration of the taxes subject to an
25 agreement under this chapter.

26 5. Except as provided in subsection 6, tribally owned and tribal member-owned
27 business entities operating within the boundaries of a reservation are subject to
28 the state's tax or taxes contained in the agreement.

29 6. Any tax subject to an agreement may not be imposed on a tribally owned entity
30 that solely performs a governmental function or provides essential government
31 services that directly impact the health, welfare, or safety of the tribe and its
32 members, if the tribal entity is identified as such in the agreement. Any other
33 tribally owned business enterprise whose moneys are used, in whole or in part,

- 1 to fund governmental functions or services, is not subject to the exemption
2 provided under this subsection.
- 3 7. The governor and the tribe or tribes must agree the tribe or tribes may not
4 impose any direct or indirect tribal tax or fee on retailers, transactions, or
5 activities subject to the tax agreement. This subsection does not apply to tribal
6 employment rights office fees.
- 7 8. The tax commissioner retains authority to collect, administer, and enforce the
8 taxes as provided in chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, including
9 the authority to audit, assess, refund, credit, or determine the exempt or
10 nonexempt status of any transaction, for taxes collected within the reservation
11 under an agreement.
- 12 9. Any controversy or claim between the tribe or tribes and the state, arising out of
13 or relating to an agreement under this chapter, is subject to binding arbitration in
14 accordance with the processes and procedures provided in the agreement
15 between the tribe or tribes and the state. Any issues concerning the jurisdiction of
16 the state to impose a tax are expressly excluded from the scope of the
17 arbitration.
- 18 10. ~~An agreement under this chapter may provide for the allocation of revenue to a~~
19 ~~tribe or tribes using a formula that may include the following~~ The amount of state
20 sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or
21 tribes under an agreement must be calculated as follows:
- 22 a. ~~One hundred~~ Fifty percent of the taxes collected from retailers within the
23 exterior boundaries of the reservation. The state must receive the
24 remainder.
- 25 b. An amount ~~agreed to by the tribe or tribes and the state~~ of estimated use
26 taxes paid or collected from ~~individual enrolled~~ tribal members ~~on taxable~~
27 ~~transactions or purchases occurring~~ residing within the exterior
28 boundaries of the reservation determined by multiplying the enrolled
29 membership of the tribe by the estimated per capita use tax. The
30 estimated per capita use tax is ten percent of the per capita sales tax
31 burden. The per capita sales tax burden is determined by multiplying the
32 state tax rate factor by one third of the sales tax burden reported by the
33 most recent Tax Rates and Tax Burdens in the District of Columbia - A
34 Nationwide Comparison, published by the Government of the District of

#2
SB 2258
3-18-19
P. 4

Sixty-sixth
Legislative Assembly

- 1 Columbia Office of Revenue Analysis, for a family of three living in the
- 2 largest city in North Dakota, and earning fifty-thousand dollars per year.
- 3 The state tax rate factor is a fraction representing the state general sales
- 4 tax rate as a share of the combined state and local sales tax rate for the
- 5 North Dakota city referenced in this subdivision.
- 6 c. Except as provided in subdivision d, the enrolled membership of the tribe
- 7 must be certified to the state by September thirtieth of each year during
- 8 the term of the agreement. The enrolled membership of the tribe must
- 9 consist of the number of enrolled members of the tribe physically residing
- 10 within the exterior boundaries of the portion of the tribe's reservation
- 11 located in this state. The enrolled membership of the tribe must be based
- 12 on the tribe's enrollment office records, the bureau of Indian affairs
- 13 enrollment records, or other records maintained by the tribe. The previous
- 14 year's certified enrollment number must be used if the tribe does not issue
- 15 a certification by September thirtieth, unless the tribe demonstrates the
- 16 certified enrollment number has increased or decreased.
- 17 d. The tribe or tribes must provide the initial population required by
- 18 subdivision c no fewer than sixty days before the effective date of the
- 19 agreement.
- 20 e. The manner in which the state and tribe resolve issues arising under this
- 21 subsection must be specified in the agreement.
- 22 11. The amount of alcoholic beverages gross receipts tax allocated to the tribe under
- 23 an agreement must be equal to an amount determined by multiplying the enrolled
- 24 membership of the tribe by the state alcohol revenue per capita.
- 25 a. The state alcohol revenue per capita is the monthly collections of the
- 26 state's alcoholic beverages gross receipts tax designated for deposit in
- 27 the state general fund divided by the state's total population as
- 28 determined in the most recent actual or estimated census data published
- 29 by the United States census bureau.
- 30 b. The enrolled membership of the tribe must be certified to the state by
- 31 September thirtieth of each year during the term of the agreement. The
- 32 enrolled membership of the tribe must consist of the number of enrolled
- 33 members of the tribe physically residing within the exterior boundaries of
- 34 the portion of the tribe's reservation located in this state. The enrolled

- 1 membership of the tribe must be based on the tribe's enrollment office
2 records, the bureau of Indian affairs enrollment records, or other records
3 maintained by the tribe. The previous year's certified enrollment number
4 must be used if the tribe does not issue a certification by September
5 thirtieth, unless the tribe demonstrates the certified enrollment number
6 has increased or decreased.
- 7 c. The tribe or tribes must provide the initial population required by this
8 subsection no fewer than sixty days before the effective date of the
9 agreement.
- 10 d. The manner in which the state and tribe resolve issues arising under this
11 subsection must be specified in the agreement.
- 12 ~~11~~12. An agreement under this chapter must give the tax commissioner, after
13 consulting with the governor, and a tribe or tribes the authority to terminate an
14 agreement with or without cause.
- 15 ~~12~~13. An agreement under this chapter must include:
- 16 a. A statement that the parties to the agreement are not forfeiting any legal
17 rights to apply their respective taxes by entering an agreement, except as
18 specifically set forth in the agreement;
- 19 b. A statement that a taxpayer may not be required to pay both the state tax
20 and the tribal tax but shall pay only one tax to one government in an
21 amount established by the agreement;
- 22 c. A statement that the state and the tribal government shall cooperate to
23 collect only one tax and share or refund the revenue as specified in the
24 agreement;
- 25 d. A statement recognizing the sovereign rights of the state and the tribe or
26 tribes; and
- 27 e. A statement that:
- 28 (1) The rights of each party must be determined by the terms of the
29 agreement with respect to the taxes subject to the agreement;
- 30 (2) Neither party may seek additional entitlement or seek to deny
31 entitlement on any federal ground, including federal pre - emption,
32 whether statutorily provided for or otherwise with respect to the
33 taxes that are the subject of an agreement; and

#2
SB 2258
3-18-19
p. 6

- 1 (3) Both parties shall defend the agreement from attack by third
2 parties.
- 3 ~~1314.~~ a. Notwithstanding any other provision of state law, the agreement must
4 contain provisions in which:
- 5 (1) Except as otherwise provided by law, the tax commissioner shall
6 maintain the confidentiality of tax information relating to and
7 gathered under the terms of an agreement as provided in section
8 57-39.2-23;
- 9 (2) The tribe or tribes may receive a list of retailers located within the
10 boundaries of the reservation and the amount of tax collected from
11 each retailer during a reporting period; and
- 12 (3) The tribe or tribes agree to protect the confidentiality of tax
13 information received from the tax commissioner.
- 14 b. The agreement must specify the processes or procedures necessary to
15 safeguard the confidential nature of the tax information.
- 16 ~~1415.~~ The administration, collection, and enforcement of the taxes under an agreement
17 may begin no sooner than the first day of a calendar quarter which is at least
18 ninety days after the agreement is signed by the parties.
- 19 ~~1516.~~ Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation
20 under an agreement entered under this chapter.
- 21 **57-39.9-03. Inapplicability of chapter 54-40.2.**
- 22 Chapter 54-40.2 does not apply to an agreement entered under this chapter.
- 23 **57-39.9-04. Revenue allocation and distribution-Refunds-Continuing**
24 **appropriation.**
- 25 The tax commissioner shall certify and transfer to the state treasurer for deposit in the
26 tribal allocation fund, a special fund created in the state treasury, tax revenues allocated
27 to a tribe or tribes under subsection 10 of section 57-39.9-02. Tax revenues collected
28 under this chapter are not subject to section 57-39.2-26.1, and are provided as a
29 standing and continuing appropriation to the state treasurer for distribution on a monthly
30 basis.
- 31 **57-39.9-05. Refunds-Continuing appropriation.**
- 32 1. Refunds of the tax imposed under chapters 57-39.2, 57-39.5, 57-39.6, and 57-
33 40.2, which are subject to an agreement under this chapter, must be paid from

#2
SB 2258
3-18-19
P.7

Sixty-sixth
Legislative Assembly

- 1 the state general fund, and are provided to the state treasurer as a standing and
- 2 continuing appropriation.
- 3 2. Refunds of taxes paid under this section must be reimbursed to the state general
- 4 fund, with interest at the rate prescribed in section 57-39.2-25, from the first
- 5 available moneys deposited in the tribal allocation fund.
- 6 3. The tax commissioner shall determine the reservation of the tribe or tribes to
- 7 which the refund is attributable. The refund, including interest, must be
- 8 reimbursed from the first available moneys deposited in the tribal allocation fund
- 9 on behalf of the tribe or tribes to which the refund is attributable.

10 **SECTION 2. REPEAL.** Chapter 57-39.8 of the North Dakota Century Code is repealed.

11 **SECTION 3. APPLICATION.** Section 1 of this Act applies to agreements entered after
12 the effective date of this Act.

13 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

CALCULATION OF SALES TAX REVENUE ALLOCATED TO TRIBE

50 Percent of
Monthly State Sales
Taxes Collected from
On-Reservation
Retailers (10a)



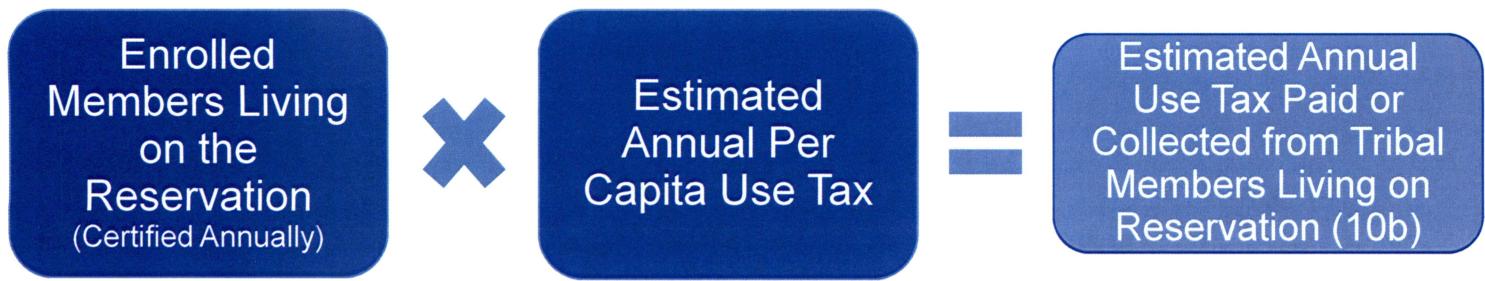
Monthly Estimated
Use Tax Paid or
Collected from Tribal
Members Living on
Reservation (10b)



Monthly Amount of
Tax Revenue
Allocated to Tribe

#2
SB 2258
3-18-19
p.8

ESTIMATION OF USE TAX PAID BY ENROLLED TRIBAL MEMBERS LIVING ON RESERVATION



To calculate a monthly estimation, divide by 12.

#2
SB 2258
3-18-19
P.9

CALCULATION OF SALES TAX REVENUE ALLOCATED TO TRIBE

50 Percent of
Monthly State Sales
Taxes Collected from
On-Reservation
Retailers (10a)

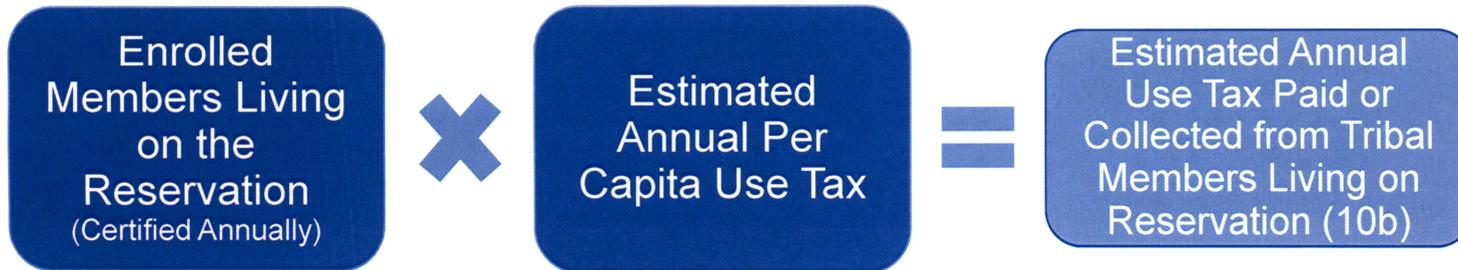


Monthly Estimated
Use Tax Paid or
Collected from Tribal
Members Living on
Reservation (10b)



Monthly Amount of
Tax Revenue
Allocated to Tribe

ESTIMATION OF USE TAX PAID BY ENROLLED TRIBAL MEMBERS LIVING ON RESERVATION



To calculate a monthly estimation, divide by 12.

CALCULATION OF ALCOHOL BEVERAGES GROSS RECEIPTS TAX REVENUE ALLOCATED TO TRIBE

