Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

SENATE BILL NO. 2257
(Senators Cook, Heckaman, Wardner)
(Representatives Boschee, Headland, Pollert)

AN ACT to create and enact chapter 57-39.10 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of the alcoholic beverage wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax within the exterior 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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-39.10 of the North Dakota Century Code is created and enacted as follows:

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

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

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

3. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each

agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state alcoholic beverages gross receipts tax under chapter 57-39.6, imposed and collected within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.

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

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

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

1. The agreement must include:

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

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

   c. A statement that:

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

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

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

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

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

2. Any tribally owned entity or other entity owned in whole or part by a tribal member, whether chartered under state law or tribal law, and operating within the exterior boundaries of a reservation, is subject to the state's tax or taxes and regulatory requirements of the tax subject to an agreement.

3. The tax commissioner retains authority to collect, administer, and enforce the taxes subject to an agreement under this chapter, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the exterior boundaries of a reservation in this state in the manner provided by the applicable state laws.

4. Any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.

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

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

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

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

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

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

3. Chapters 5-01, 5-02, and 5-03, and title 81 of the North Dakota Administrative Code govern the collection and administration of the taxes subject to an agreement under this section.

4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcohol revenue per capita. The state alcohol revenue per capita is the quarterly collections of the state's alcoholic beverages wholesale taxes 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.

5. Except as provided in subsection 6 of section 57-39.10-02, 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. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

57-39.10-04. Tobacco products wholesale tax agreement requirements.

The governor may enter a tobacco products wholesale tax agreement with a tribe or tribes if the agreement complies with section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this section are the state's tobacco products wholesale taxes under chapter 57-36, as may be amended subsequently by the legislative assembly, for tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to consumers within the exterior boundaries of the Fort

Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.

2. A tribe or tribes shall impose taxes equal to the state's tobacco products wholesale taxes on all tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to customers within the exterior boundaries of the reservation in this state.

3. Chapters 57-36 and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this section.

4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state tobacco revenue per capita. The state tobacco revenue per capita is the quarterly collections of the state's tobacco products wholesale taxes 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.

5. Except as provided in subsection 6 of section 57-39.10-02, 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. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

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

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

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

2. A tribe or tribes shall impose a tax equal to the state's alcoholic beverages gross receipts tax on all sales at retail of alcoholic beverages within the exterior boundaries of the reservation in this state.

3. Chapters 57-39.2 and 57-39.6, and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this section.

4. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal employment rights office fees.

5. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcoholic beverages gross receipts tax revenue per capita. The state alcoholic beverages gross receipts tax revenue per capita is the quarterly 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.

6. Except as provided in subsection 6 of section 57-39.10-02, 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. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

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

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

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

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

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

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

57-39.10-06. Inapplicability of chapter 54-40.2.

Chapter 54-40.2 does not apply to an agreement entered under this chapter.

57-39.10-07. Alcoholic beverages wholesale tax revenue allocation and distribution - Refunds - Continuing appropriation.

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 4 of section 57-39.10-03. Tax revenues collected under section 57-39.10-03 are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.

2. Refunds of the tax imposed under chapters 5-01, 5-02 and 5-03 which are subject to an agreement under section 57-39.10-03 must be paid from the state general fund and are provided to the state treasurer as a standing and continuing appropriation.

3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund paid under subsection 2 is attributable. The refund, including interest at the rate prescribed in section 5-03-06, must be reimbursed to the state general fund from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

57-39.10-08. Tobacco products wholesale tax revenue allocation and distribution - Refunds - Continuing appropriation.

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 4 of section 57-39.10-04. Tax revenues collected under section 57-39.10-04 are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.

2. Refunds of the tax imposed under chapter 57-36 which are subject to an agreement under section 57-39.10-04 must be paid from the general fund and are provided to the state treasurer as a standing and continuing appropriation.

3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund paid under subsection 2 is attributable. The refund must be reimbursed to the state general fund from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

57-39.10-09. Alcoholic beverages gross receipts tax revenue allocation and distribution - Refunds - Continuing appropriation.

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 5 of section 57-39.10-05. Tax revenues collected under section 57-39.10-05 are not subject to section 57-39.2-26.1, and are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.

2. Refunds of the tax imposed under chapter 57-39.6, which are subject to an agreement under section 57-39.10-05, must be paid from the state general fund, and are provided to the state treasurer as a standing and continuing appropriation.

3. Refunds of taxes paid under this section must be reimbursed to the state general fund, with interest at the rate prescribed in section 57-39.2-25, from the first available moneys deposited in the tribal allocation fund.

4. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund is attributable. The refund, including interest, must be reimbursed from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund paid under this section is attributable.

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2257 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 85 Nays 7 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at 11:47 AM. on March 25, 2019.

Approved at 1:49 PM. on March 28, 2019.

Governor

Filed in this office this 29th day of March, 2019,

at 2:28 o'clock P. M.

Secretary of State