

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; and to provide for application.

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

1 **57-39.9-02. Agreement requirements.**

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

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

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

15 3. Chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and title 81 of the North Dakota
16 Administrative Code govern the administration of the taxes subject to an agreement
17 under this chapter.

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

21 5. Any tax subject to an agreement may not be imposed on a tribally owned entity that
22 solely performs a governmental function or provides essential government services
23 that directly impact the health, welfare, or safety of the tribe and its members, if the
24 tribal entity is identified as such in the agreement. Any other tribally owned business
25 enterprise whose moneys are used, in whole or in part, to fund governmental functions
26 or services, is not subject to the exemption provided under this subsection.

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

30 7. The tax commissioner retains authority to collect, administer, and enforce the taxes as
31 provided in chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, including the authority to

- 1 audit, assess, refund, credit, or determine the exempt or nonexempt status of any
2 transaction, for taxes collected within the reservation under an agreement.
- 3 8. Any controversy or claim between the tribe or tribes and the state, arising out of or
4 relating to an agreement under this chapter, is subject to binding arbitration in
5 accordance with the processes and procedures provided in the agreement between
6 the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to
7 impose a tax are expressly excluded from the scope of the arbitration.
- 8 9. An agreement under this chapter may provide for the allocation of revenue to a tribe or
9 tribes using a formula that may include the following:
- 10 a. One hundred percent of the taxes collected from retailers within the exterior
11 boundaries of the reservation.
- 12 b. An amount agreed to by the tribe or tribes and the state of estimated use taxes
13 paid or collected from individual tribal members on taxable transactions or
14 purchases occurring within the exterior boundaries of the reservation.
- 15 10. An agreement under this chapter must give the tax commissioner, after consulting with
16 the governor, and a tribe or tribes the authority to terminate an agreement with or
17 without cause.
- 18 11. An agreement under this chapter must include:
- 19 a. A statement that the parties to the agreement are not forfeiting any legal rights to
20 apply their respective taxes by entering an agreement, except as specifically set
21 forth in the agreement;
- 22 b. A statement that a taxpayer may not be required to pay both the state tax and the
23 tribal tax but shall pay only one tax to one government in an amount established
24 by the agreement;
- 25 c. A statement that the state and the tribal government shall cooperate to collect
26 only one tax and share or refund the revenue as specified in the agreement;
- 27 d. A statement recognizing the sovereign rights of the state and the tribe or tribes;
28 and
- 29 e. A statement that:
- 30 (1) The rights of each party must be determined by the terms of the agreement
31 with respect to the taxes subject to the agreement;

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

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

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

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

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

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

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

18 13. The administration, collection, and enforcement of the taxes under an agreement may
19 begin no sooner than the first day of a calendar quarter which is at least ninety days
20 after the agreement is signed by the parties.

21 14. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under
22 an agreement entered under this chapter.

23 **57-39.9-03. Inapplicability of chapter 54-40.2.**

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

25 **57-39.9-04. Revenue allocation and distribution - Refunds - Continuing appropriation.**

26 The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal
27 allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or
28 tribes under subsection 9 of section 57-39.9-02. Tax revenues collected under this chapter are
29 not subject to section 57-39.2-26.1, and are provided as a standing and continuing
30 appropriation to the state treasurer for distribution on a monthly basis.

1 **57-39.9-05. Refunds - Continuing appropriation.**

- 2 1. Refunds of the tax imposed under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2,
3 which are subject to an agreement under this chapter, must be paid from the state
4 general fund, and are provided to the state treasurer as a standing and continuing
5 appropriation.
- 6 2. Refunds of taxes paid under this section must be reimbursed to the state general fund,
7 with interest at the rate prescribed in section 57-39.2-25, from the first available
8 moneys deposited in the tribal allocation fund.
- 9 3. The tax commissioner shall determine the reservation of the tribe or tribes to which the
10 refund is attributable. The refund, including interest, must be reimbursed from the first
11 available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes
12 to which the refund is attributable.

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

14 **SECTION 3. APPLICATION.** Section 1 of this Act applies to agreements entered after
15 July 31, 2019.