

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2129

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota
2 Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic
3 beverage gross receipts taxes; to amend and reenact subdivision ee of subsection 2 of section
4 12-60-24, sections 57-01-13 and 57-37.1-06, subsection 2 of section 57-39.2-11, and sections
5 57-39.2-27, 57-40.2-17, and 57-40.3-09 of the North Dakota Century Code, relating to criminal
6 history record checks, alcoholic beverage gross receipts taxes, estate tax return filing
7 requirements, sales and use taxes, and motor vehicle excise tax credits; to repeal section
8 57-39.2-24 of the North Dakota Century Code, relating to refunds for sales, use, farm
9 machinery gross receipts, and alcoholic beverage gross receipts taxes; and to provide an
10 effective date.

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

12 **SECTION 1. AMENDMENT.** Subdivision ee of subsection 2 of section 12-60-24 of the North
13 Dakota Century Code is amended and reenacted as follows:

14 ee. The office of tax commissioner for ~~a~~ all employees, final applicant~~applicants~~ for a
15 ~~specified occupation~~employment with the tax commissioner as ~~designated by the~~
16 ~~tax commissioner, and contractors with access to federal tax information.~~

17 **SECTION 2. AMENDMENT.** Section 57-01-13 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-01-13. (Contingent expiration date - See note) Collection of delinquent sales, use,**
20 **motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,**
21 **telecommunications carriers, income, and ~~business and corporation privilege~~alcoholic**
22 **beverage gross receipts taxes.**

23 1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38,
24 57-39.2, and 57-40.2, the tax commissioner may, for the purpose of collecting

1 delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for
2 use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or
3 ~~business and corporation privilege~~alcoholic beverage gross receipts taxes due from a
4 taxpayer not residing or domiciled in this state, contract with any collection or credit
5 agency, within or without the state, for the collection of the delinquent sales, use,
6 motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,
7 telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic
8 beverage gross receipts taxes, including penalties and interest thereon. For purposes
9 of this section, a delinquent tax is defined as a tax liability that is due and owing for a
10 period longer than six months and for which the taxpayer has been given at least three
11 notices in writing requesting payment. The notices must be sent by first-class mail to
12 the taxpayer at the taxpayer's last-known mailing address. The third notice must be
13 sent with a copy of an affidavit of mailing. If the tax commissioner has assigned a
14 delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle
15 fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,
16 telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic
17 beverage gross receipts taxes that become due from the same taxpayer may be
18 assigned immediately and without further notice to the taxpayer, so long as the
19 originally assigned liability has not been fully collected.

- 20 2. a. Fees for services, reimbursement, or any other remuneration to a collection or
21 credit agency must be based on the amount of tax, penalty, and interest actually
22 collected. Each contract entered into between the tax commissioner and the
23 collection or credit agency must provide for the payment of fees for the services,
24 reimbursements, or other remuneration not in excess of fifty percent of the
25 amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for
26 use, aviation fuel, motor vehicle excise, income, or ~~business and corporation~~
27 privilegealcoholic beverage gross receipts taxes, including penalties and interest
28 actually collected.
- 29 b. All funds collected by the collection or credit agency must be remitted to the tax
30 commissioner monthly from the date of collection from a taxpayer. Forms to be
31 used for the remittances must be prescribed by the tax commissioner. The tax

1 commissioner shall transfer the funds to the state treasurer for deposit in the
2 state general fund. An amount equal to the amount of fees for services,
3 reimbursement, or any other remuneration to the collection or credit agency as
4 set forth in the contract authorized by this section is appropriated as a standing
5 and continuing appropriation to the tax commissioner for payment of fees due
6 under the contract.

7 c. Before entering into a contract, the tax commissioner shall require a bond from
8 the collection or credit agency not in excess of ten thousand dollars,
9 guaranteeing compliance with the terms of the contract.

10 3. A collection or credit agency entering into a contract with the tax commissioner for the
11 collection of delinquent taxes pursuant to this section thereby agrees that it is doing
12 business in this state for the purposes of the North Dakota income tax and ~~business-~~
13 ~~and corporation privilege tax laws.~~

14 **(Contingent effective date - See note) Collection of delinquent sales, use, motor**
15 **vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,**
16 **telecommunications carriers, income, and ~~business and corporation privilege~~alcoholic**
17 **beverage gross receipts taxes.**

18 1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38
19 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North
20 Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel,
21 motor vehicle excise, telecommunications carriers, income, or ~~business and-~~
22 ~~corporation privilege~~alcoholic beverage gross receipts taxes due from a taxpayer not
23 residing or domiciled in this state, contract with any collection or credit agency, within
24 or without the state, for the collection of the delinquent sales, use, motor vehicle fuels,
25 special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications
26 carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross
27 receipts taxes, including penalties and interest thereon. For purposes of this section, a
28 delinquent tax is defined as a tax liability that is due and owing for a period longer than
29 six months and for which the taxpayer has been given at least three notices in writing
30 requesting payment. The notices must be sent by regular mail to the taxpayer at the
31 taxpayer's last-known mailing address. The third notice must be sent with a copy of an

1 affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability
2 pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels,
3 importer for use, aviation fuel, motor vehicle excise, income, or ~~business and~~
4 ~~corporation privilege~~alcoholic beverage gross receipts taxes that become due from the
5 same taxpayer may be assigned immediately and without further notice to the
6 taxpayer, so long as the originally assigned liability has not been fully collected.

- 7 2. a. Fees for services, reimbursement, or any other remuneration to a collection or
8 credit agency must be based on the amount of tax, penalty, and interest actually
9 collected. Each contract entered into between the tax commissioner and the
10 collection or credit agency must provide for the payment of fees for the services,
11 reimbursements, or other remuneration not in excess of fifty percent of the
12 amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for
13 use, aviation fuel, motor vehicle excise, income, or ~~business and corporation~~
14 ~~privilege~~alcoholic beverage gross receipts taxes, including penalties and interest
15 actually collected.
- 16 b. All funds collected, less the fees for collection services, as provided in the
17 contract, must be remitted to the tax commissioner monthly from the date of
18 collection from a taxpayer. Forms to be used for the remittances must be
19 prescribed by the tax commissioner.
- 20 c. Before entering into a contract, the tax commissioner shall require a bond from
21 the collection or credit agency not in excess of ten thousand dollars,
22 guaranteeing compliance with the terms of the contract.

- 23 3. A collection or credit agency entering into a contract with the tax commissioner for the
24 collection of delinquent taxes pursuant to this section thereby agrees that it is doing
25 business in this state for the purposes of the North Dakota income tax ~~and business~~
26 ~~and corporation privilege~~ tax laws.

27 **SECTION 3. AMENDMENT.** Section 57-37.1-06 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **57-37.1-06. Estate tax return required - Tax commissioner to assess tax - District**
2 **court to apportion federal and state estate taxes.**

3 ~~Th~~elf an estate owes tax under this chapter, the personal representative of an~~the~~ estate
4 shall file with the tax commissioner the estate tax return required by this chapter. The tax
5 commissioner shall assess the tax payable pursuant to the provisions of this chapter and
6 furnish the personal representative with a statement thereof; if all or any part of the property
7 included in the federal gross estate is being administered by the district court serving any
8 county in this state, the tax commissioner shall also furnish a copy of the statement to that
9 district court. The federal and North Dakota estate taxes must be apportioned as provided in
10 section 30.1-20-16.

11 **SECTION 4. AMENDMENT.** Subsection 2 of section 57-39.2-11 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. The commissioner may require the filing of returns and payment of tax on a monthly,
14 quarterly, annual, or other basis when the commissioner deems it necessary to ensure
15 payment of the tax imposed by this chapter. ~~Compensation for administrative-~~
16 ~~expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is allowed under this section-~~
17 ~~if the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07. If~~
18 the retailer's filing responsibility has been assumed by a certified service provider, the
19 retailer may authorize the certified service provider to claim on behalf of the retailer all
20 or part of the compensation to which the retailer is entitled under sections
21 57-39.2-12.1 and 57-40.2-07.1.

22 **SECTION 5.** A new section to chapter 57-39.2 of the North Dakota Century Code is created
23 and enacted as follows:

24 **Claim for refund.**

25 1. A taxpayer may file a claim for refund of tax that was not due, or for which a refund is
26 authorized under this chapter or chapter 57-40.2. A refund claim must be filed in the
27 manner provided in this section.
28 2. A taxpayer shall file a claim for refund with the tax commissioner within three years
29 after the due date of the return or the date the return was filed, whichever is later.

1 3. For purposes of this section, "taxpayer" means a person who is required under this
2 chapter or chapter 57-40.2 to file a return and who has remitted to the tax
3 commissioner the tax for which a refund is claimed.

4 **SECTION 6. AMENDMENT.** Section 57-39.2-27 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-39.2-27. Disposition of excess tax collections.**

7 Whenever a retailer has collected a sales tax from a customer in excess of the amount
8 prescribed or due under this chapter, and if the retailer does not refund the excessive tax
9 collected to the customer, the amount so collected by the retailer must be paid by the retailer to
10 the tax commissioner in the quarterly return filed for the period in which the excessive collection
11 occurred. If the excessive collection is subsequently refunded by the retailer to the customer,
12 the retailer may deduct, ~~as a credit against the retailer's sales tax liability on the next return that~~
13 ~~the retailer is required to file, the amount of sales tax properly refunded to the customer. In the~~
14 ~~event such deduction exceeds the amount of sales tax due the state by the retailer in the next~~
15 ~~regular return, such excess must be allowed as a credit against future sales tax due from the~~
16 ~~retailer. If the credit, or any part of it, cannot be utilized by the retailer because of a~~
17 ~~discontinuance of a business or for other valid reasons, the amount thereof may be refunded to~~
18 ~~the retailer~~ file an amended return with the tax commissioner for the period the excess tax was
19 collected and file a claim for refund.

20 **SECTION 7. AMENDMENT.** Section 57-40.2-17 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-40.2-17. Disposition of excess tax collections.**

23 Whenever a retailer maintaining a place of business in this state has collected a use tax
24 from a customer in excess of the amount prescribed or due under this chapter, and if the retailer
25 does not refund the excessive tax collected to the customer, the amount so collected by the
26 retailer must be paid by the retailer to the tax commissioner in the quarterly return filed for the
27 period in which the excessive collection occurred. If the excessive collection is subsequently
28 refunded by the retailer to the customer, the retailer may deduct, ~~as a credit against the~~
29 ~~retailer's use tax liability on the next return that the retailer is required to file, the amount of use~~
30 ~~tax properly refunded to the customer. In the event such deduction exceeds the amount of use~~
31 ~~tax due the state by the retailer in the next regular return, such excess must be allowed as a~~

1 ~~credit against future use tax due from the retailer. If the credit, or any part of it cannot be utilized~~
2 ~~by the retailer because of a discontinuance of a business or for other valid reasons, the amount~~
3 ~~thereof may be refunded to the retailer~~file an amended return with the tax commissioner for the
4 period the excess tax was collected and file a claim for refund.

5 **SECTION 8. AMENDMENT.** Section 57-40.3-09 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-40.3-09. Credit for excise tax paid in other states - Reciprocity.**

8 If any sales tax, use tax, or motor vehicle excise tax has been paid on a motor vehicle has-
9 been subjected already to a sales tax, use tax, or motor vehicle excise tax byin any other state,
10 or political subdivision thereof, in respect to its sale or use in an amount less than the tax
11 imposed by this chapter, the provisions of this chapter apply, but ~~at a rate measured by~~in an
12 amount equal to the difference only between the ~~rate fixed in~~tax imposed by this chapter and
13 the ~~rate by which the previous tax paid in the other state, or political subdivision thereof, upon~~
14 ~~the sale or use was computed.~~ If the rate of tax imposed~~paid~~ in ~~such~~the other state, or political
15 subdivision thereof, is the same or more than the rate of tax imposed by this chapter, then no
16 tax is due on ~~such~~the motor vehicle. The provisions of this section apply only if ~~such~~the other
17 state, or political subdivision thereof, allows a tax credit with respect to the excise tax imposed
18 by this chapter which is substantially similar in effect to the credit allowed by this section. The
19 tax commissioner may require the purchaser to provide written proof from the other state, or
20 political subdivision thereof, that the tax was legally due and paid. For purposes of this section,
21 "state" means a state, territory, or possession of the United States, the District of Columbia, or
22 the Commonwealth of Puerto Rico.

23 **SECTION 9. REPEAL.** Section 57-39.2-24 of the North Dakota Century Code is repealed.

24 **SECTION 10. EFFECTIVE DATE.** This Act becomes effective July 1, 2017.