

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1406

Introduced by

Representatives Schmidt, Boe, Brandenburg, D. Johnson, Onstad

Senators Heckaman, Oehlke, Schaible

1 A BILL for an Act to create and enact section 57-39.4-33.4 and chapter 57-39.8 of the North
2 Dakota Century Code, relating to administration of the streamlined sales and use tax agreement
3 and to authorizing entry of state-tribal agreements for administration and collection of state and
4 tribal sales, use, and gross receipts, ~~and motor vehicle excise~~ taxes imposed and collected
5 within the exterior boundaries of the Standing Rock Reservation within this state; and to amend
6 and reenact subsection 2 of section 57-39.2-04.1, sections 57-39.4-29 and 57-39.4-31, and
7 subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code, relating to the definition
8 of prepared food for sales tax purposes, the taxability matrix to be used for administration of the
9 sales and use tax agreement, the streamlined sales tax governing board and advisory council
10 and the definition of prepared food for use tax purposes.

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

12 **SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-04.1 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 2. For purposes of this section:
- 15 a. "Alcoholic beverages" means beverages that are suitable for human consumption
16 and contain one-half of one percent or more of alcohol by volume.
- 17 b. "Candy" means a preparation of sugar, honey, or other natural or artificial
18 sweeteners in combination with chocolate, fruits, nuts, or other ingredients or
19 flavoring in the form of bars, drops, or pieces. Candy does not include any
20 preparation containing flour and does not require refrigeration.
- 21 c. "Dietary supplement" means any product, other than tobacco, intended to
22 supplement the diet which contains one or more of the following dietary
23 ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a
24 dietary substance for use by humans to supplement the diet by increasing the

1 total dietary intake; an oral concentrate, metabolite, constitute, extract, or
2 combination of any dietary ingredients described in this sentence and which is
3 intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form,
4 or if not represented for use as a sole item of a meal or of a diet; and is required
5 to be labeled as a dietary supplement, identifiable by the supplemental facts box
6 found on the label and as required pursuant to 21 CFR section 101.36.

7 d. "Prepared food" means:

8 (1) Food sold in a heated state or heated by the seller;

9 (2) Two or more food ingredients mixed or combined by the seller for sale as a
10 single item; or

11 (3) Food sold with eating utensils provided by the seller, including plates,
12 knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not
13 include a container or packaging used to transport the food.

14 e. "Prepared food" does not mean:

15 (1) Food that is only cut, repackaged, or pasteurized by the seller.

16 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods
17 requiring cooking by the consumer as recommended by the food and drug
18 administration in chapter 3, part 401.11, of its food code so as to prevent
19 foodborne illness.

20 (3) If sold without eating utensils provided by the seller:

21 (a) Food sold by a seller whose proper primary North American industry
22 classification system classification is manufacturing in sector 311,
23 except subsector 3118, bakeries.

24 (b) Food sold in an unheated state by weight or volume as a single item.

25 (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants,
26 pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars,
27 cookies, and tortillas.

28 (d) Food sold that ordinarily requires additional cooking, as opposed to
29 just reheating, by the consumer prior to consumption.

30 f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial

31 sweeteners. "Soft drinks" does not include beverages that contain milk or milk

1 products, soy, rice, or similar milk substitutes, or greater than fifty percent of
2 vegetable or fruit juice by volume.

3 g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item
4 that contains tobacco.

5 **SECTION 2. AMENDMENT.** Section 57-39.4-29 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-39.4-29. (328) Taxability matrix.**

8 1. a. To ensure uniform application of terms defined in part II and part III(B) of the
9 library of definitions as adopted by the governing board under section 57-39.4-28,
10 each member state shall complete ~~a, to the best of its ability, section 1 of the~~
11 taxability matrix ~~adopted by the governing board.~~

12 b. To inform the general public of its practices regarding certain products,
13 procedures, services, or transactions adopted by the governing board under
14 section 57-39.4-33.4, each member state shall complete, to the best of its ability,
15 section 2 of the taxability matrix.

16 2. The member state's entries in the matrix shall be provided and maintained in a
17 database that is in a downloadable format approved by the governing board. A
18 member state shall provide notice of changes in the taxability of the products or
19 services listed in the taxability matrix as required by the governing board.

20 ~~2.3.~~ A member state shall relieve sellers and certified service providers from liability to the
21 member state and its local jurisdictions for having charged and collected the incorrect
22 amount of sales or use tax resulting from the seller or certified service provider relying
23 on erroneous data provided by the member state in the taxability matrix. If a member
24 state amends an existing provision of its taxability matrix, the member state shall, to
25 the extent possible, relieve sellers and certified service providers from liability to the
26 member state and its local jurisdictions until the first day of the calendar month that is
27 at least thirty days after notice of change to a member state's taxability matrix is
28 submitted to the governing board, provided the seller or certified service provider
29 relied on the prior version of the taxability matrix.

30 ~~3.4.~~ If a state levies sales and use tax on a specified digital product and provides an
31 exemption for an item within the definition of such specified digital product under

1 subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability
2 matrix.

3 4.5. Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a
4 format approved by the governing board, give notice in the taxability matrix of the
5 products for which a tax exemption is provided.

6 **SECTION 3. AMENDMENT.** Section 57-39.4-31 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-39.4-31. Membership of streamlined sales tax governing board ~~and state and local~~**
9 **~~advisory council.~~**

10 1. Two members of the house of representatives and two members of the senate, to be
11 appointed by the chairman of the legislative management, shall represent ~~the~~this state
12 ~~of North Dakota~~ on the streamlined sales tax governing board.

13 2. ~~One member of the house of representatives and one member of the senate, to be~~
14 ~~appointed by the chairman of the legislative management, shall represent the state of~~
15 ~~North Dakota on the streamlined sales tax state and local advisory council.~~

16 ~~3.~~ The tax commissioner shall designate a member of the tax commissioner's staff to
17 accompany and advise the members appointed under this section with regard to
18 multistate discussions to review or revise the agreement or to conduct such other
19 business as comes before the board ~~or council.~~

20 **SECTION 4.** Section 57-39.4-33.4 of the North Dakota Century Code is created and
21 enacted as follows:

22 **57-39.4-33.4. Best practices.**

23 1. For purpose of this section, "best practices" means those practices adopted by the
24 governing board as the best practices in administration of the sales and use taxes in
25 the member states regarding certain identified products, procedures, services, or
26 transactions.

27 2. A majority vote of the entire governing board is required to approve a motion to adopt
28 a best practices standard. The governing board shall provide public notice and
29 opportunity for comment prior to voting on a motion to adopt a best practice.

30 3. Best practices adopted by the governing board must be maintained in an appendix to
31 the agreement.

1 4. Conformance by a member state to best practices adopted by the governing board is
2 voluntary and a state may not be found to be out of compliance with the agreement
3 because the effect of the state's laws, rules, regulations, and policies do not follow
4 each of the best practices adopted by the governing board.

5 5. A state shall complete the best practice matrix by the first day of the calendar month
6 that is at least thirty days after the date the governing board approves a best practice
7 and submits it to the executive director for posting on the governing board's website.
8 For subsequent best practices approved by the governing board, a state shall update
9 its best practice matrix by the first day of the calendar month that is at least thirty days
10 after the date the governing board approves a new best practice and submits it to the
11 executive director for posting on the governing board's website.

12 **SECTION 5.** Chapter 57-39.8 of the North Dakota Century Code is created and enacted as
13 follows:

14 **57-39.8-01. Authority to enter state-tribal sales, use, and gross receipts, ~~or motor~~**
15 **vehicle excise tax agreements.**

16 The governor, ~~in consultation with the tax commissioner,~~ may enter an agreement on behalf
17 of the state with the governing body of the Standing Rock Sioux Tribe which complies with the
18 provisions of this chapter relating to administration and allocation of state and tribal sales, use,
19 and gross receipts ~~or motor vehicle excise taxes, or all of those taxes,~~ imposed and collected
20 within the exterior boundaries of the Standing Rock Reservation within this state.

21 **57-39.8-02. Agreement requirements.**

22 Any agreement under this chapter is subject to the following:

- 23 1. The only taxes subject to agreement are state and tribal sales, use, and gross receipts
24 ~~or motor vehicle excise taxes, or all of those taxes,~~ for taxable transactions and
25 activities within the exterior boundaries of the Standing Rock Reservation within this
26 state.
- 27 2. If the Standing Rock Sioux Tribe governing body chooses to impose sales, use, and
28 gross receipts ~~or motor vehicle excise taxes, or all of those taxes,~~ on persons subject
29 to the tribe's taxing powers and enter an agreement under this chapter, the tribal tax
30 code provisions:

- 1 a. Must impose a tribal tax of equal rate, except as provided in subdivision b, and
2 conform in all respects with regard to the taxable or exempt status of transactions
3 and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and
4 57-40.3. However, but must be applied to only those taxable transactions and
5 activities that are exempt from state taxes because they occur within the tribe's
6 jurisdiction are taxable by the tribe.
- 7 b. Must also impose a separate and additional tribal sales, use, and gross receipts
8 tax at a rate of one-fourth of one percent which conforms in all respects with
9 regard to the taxable or exempt status of transactions and activities under
10 chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2. However, taxable transactions
11 and activities exempt from state taxes because they occur within the tribe's
12 jurisdiction must also be subject to the tax under this subdivision by the tribe. The
13 entire tax revenue from the tax imposed under this subdivision must be
14 transferred to the state treasurer and paid to the Standing Rock Sioux Tribe.
- 15 c. May not be newly imposed except to be effective on the first day of a calendar
16 quarter beginning at least one hundred eighty-nine days after the imposition is
17 approved by the governing body and notice is provided to the tax commissioner.
- 18 e.d. The provisions of chapter 57-39.2 pertaining to administration of the retail sales
19 tax, including provisions for refunds, credits, retailer compensation, adoption of
20 rules, and allocation and deposit of the state share of revenues, not in conflict
21 with this chapter or federal law, must govern the administration of any tax subject
22 to an agreement under this chapter.
- 23 3. The agreement must provide for an agreed amount equal to three percent of the total
24 amount collected, from the tribal taxes imposed under subdivisions a and b of
25 subsection 2, to be allowed to the tax commissioner for collection and administration
26 services to the Standing Rock Sioux Tribe government under this chapter. Any sums
27 collected for services must be paid to the state treasurer for deposit in the general
28 fund.
- 29 4. The tax revenue from taxable transactions and activities within the exterior boundaries
30 of the Standing Rock Reservation within this state and subject to taxes imposed by the
31 state or the tax imposed under subdivision a of subsection 2 is to be allocated

1 between eighty percent to the Standing Rock Sioux Tribe and twenty percent to this
2 state, in proportion to the percentage of enrolled members of the Standing Rock Sioux
3 Tribe and nonenrolled persons living within the exterior boundaries of the Standing
4 Rock Reservation, as reported in the most recent decennial census by the United
5 States census bureau. The tribal share of the tax allocated under this subdivision must
6 be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe.
7 However, the tribal share paid to the Standing Rock Sioux Tribe under the agreement
8 is limited to two million dollars during a state biennium and any amount exceeding that
9 limitation must be deposited by the state treasurer in the state general fund.

10 5. The governing body of the Standing Rock Sioux Tribe must agree not to impose
11 additional tribal any other taxes or any fee on transactions and activities subject to a
12 sales, use, and gross receipts tax or motor vehicle excise tax, or all of those taxes,
13 administered by the tax commissioner.

14 6. The agreement must allow the tax commissioner to offset future distributions to the
15 tribe if there was a previous overpayment of the tax distributed to the tribe.

16 7. The tax commissioner must be given authority to administer and enforce within the
17 exterior boundaries of the Standing Rock Reservation state and tribal taxes that are
18 subject to an agreement authorized by this chapter.

19 8. The federal district court for the western division of North Dakota is the venue for any
20 dispute arising from an agreement under this chapter.

21 9. The agreement must require that the governing body of the Standing Rock Sioux Tribe
22 report annually to the budget section of the legislative management and that the report
23 identify projects totaling investment in essential infrastructure of at least ten percent of
24 tribal receipts under the agreement for that year.

25 10. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under
26 any agreement entered under the provisions of this chapter.

27 **57-39.8-03. Inapplicability of chapter 54-40.2.**

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

29 **SECTION 6. AMENDMENT.** Subsection 2 of section 57-40.2-04.1 of the North Dakota
30 Century Code is amended and reenacted as follows:

31 2. For purposes of this section:

- 1 a. "Alcoholic beverages" means beverages that are suitable for human consumption
2 and contain one-half of one percent or more of alcohol by volume.
- 3 b. "Candy" means a preparation of sugar, honey, or other natural or artificial
4 sweeteners in combination with chocolate, fruits, nuts, or other ingredients or
5 flavoring in the form of bars, drops, or pieces. Candy does not include any
6 preparation containing flour and that does not require refrigeration.
- 7 c. "Dietary supplement" means any product, other than tobacco, intended to
8 supplement the diet which contains one or more of the following dietary
9 ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a
10 dietary substance for use by humans to supplement the diet by increasing the
11 total dietary intake; an oral concentrate, metabolite, constitute, extract, or
12 combination of any dietary ingredients described in this subdivision and which is
13 intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if
14 not represented for use as a sole item of a meal or of a diet; and is required to be
15 labeled as a dietary supplement, identifiable by the supplemental facts box found
16 on the label and as required pursuant to 21 CFR 101.36.
- 17 d. "Prepared food" means:
- 18 (1) Food sold in a heated state or heated by the seller;
- 19 (2) Two or more food ingredients mixed or combined by the seller for sale as a
20 single item; or
- 21 (3) Food sold with eating utensils provided by the seller, including plates,
22 knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not
23 include a container or packaging used to transport the food.
- 24 e. "Prepared food" does not mean:
- 25 (1) Food that is only cut, repackaged, or pasteurized by the seller.
- 26 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods
27 requiring cooking by the consumer as recommended by the food and drug
28 administration in chapter 3, part 401.11, of its food code so as to prevent
29 foodborne illness.
- 30 (3) If sold without eating utensils provided by the seller:

- 1 (a) Food sold by a seller whose proper primary North American industry
2 classification system classification is manufacturing in sector 311,
3 except subsector 3118, bakeries.
- 4 (b) Food sold in an unheated state by weight or volume as a single item.
- 5 (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants,
6 pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars,
7 cookies, and tortillas.
- 8 (d) Food sold that ordinarily requires additional cooking, as opposed to
9 just reheating, by the consumer prior to consumption.
- 10 f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial
11 sweeteners. "Soft drinks" does not include beverages that contain milk or milk
12 products, soy, rice, or similar milk substitutes, or greater than fifty percent of
13 vegetable or fruit juice by volume.
- 14 g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item
15 that contains tobacco.