

# Native American Tax Contributions in North Dakota

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*North  
Dakota  
Association  
of Tribal  
Colleges*

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ANC/Empowerment First

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The author assumes responsibility for any errors of omission, logic, or otherwise. Any opinions, findings, and conclusions expressed in this publication are those of the author.

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## Executive Summary

There has long been a myth that Native Americans in North Dakota do not pay taxes. This report will attempt to estimate the tax contribution of Native Americans to the State of North Dakota's tax base. No analysis of Native American tax contribution has ever been attempted before.

The state-wide Native American population is approximately 43,000 enrolled members of tribes from all across the Nation. North Dakota has a number of taxes that citizens pay each year. We have selected five types of tax that are paid by Native Americans to the state of North Dakota: Personal Income Tax, Sales & Use tax, Motor Fuels Tax, Property Tax, and Corporate Tax.

There is no current published data regarding consumption patterns of Native Americans on the reservations. However, the only known attempt was conducted by Dr. Jim Young prior to his passing in 1997.

Reservation per capita income lags well behind the rest of North Dakota. We estimate that the 43,000 Native Americans generate about \$509,550,000 in income per year statewide. The personal income tax contribution for Native Americans in North Dakota is estimated to be \$3,143,864 or \$178 per person annually. It is safe to estimate that 80% of the wage and salary income of Native Americans is consumed by purchases made off the reservations and generates approximately \$20,382,000 in sales and use tax annually. We estimate that 10% of consumption is related directly to Motor fuels taxes and generates \$11,719.650 in motor fuels taxes annually. Native Americans and Tribes do pay property taxes. This contribution is estimated to be \$168,000 annually. The 2012 contribution of Oil Extraction and Production Taxes to the state was \$21,060,888.

The annual contribution of the five selected tax areas by Native Americans in North Dakota is estimated to be \$57,698,170. This equates to \$1,342 for every Native man, woman and child in North Dakota.

# Native American Tax Contributions in North Dakota

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True or False? Native Americans don't pay taxes. False, Native Americans pay federal taxes on their income and capital gains, just as any other American does. Native Americans do not pay taxes on moneys earned from their land allotments, since those lease fees are from the government and were negotiated as part of a treaty. While earning money on the reservation, Native Americans also do not pay state, corporate, or state license fees for income or enterprises on the reservations due to the sovereign status of the reservation. While earning money off the reservation, however, Native Americans are subject to state income, corporate, and licensing taxes.

There has long been a myth that Native Americans in North Dakota do not pay taxes. Further, it is widely surmised that Native Americans do not substantially contribute to the state's taxes in a manner consistent with all non-Native citizens of North Dakota. The general rule of thumb is that Tribes are tax-exempt, individual Native Americans are not. However, there are always exceptions to the rules.

This report will attempt to estimate the tax contribution of Native Americans to the State of North Dakota's tax base. No analysis of Native American tax contribution has ever been attempted before. Therefore, there is no literature or example of an estimate of any kind.

## Native Americans in North Dakota

Native Americans in North Dakota enjoy tri-citizenship; they are citizens of the United States, they are citizens of their respective Native Nation, and they are citizens of the State of North Dakota. They vote in National, Tribal and statewide elections and pay taxes as well.

The state-wide Native American population is approximately 43,000 enrolled members of tribes from all across the Nation. The enrolled membership of the four Native American tribes is approximately 67,750. Not all enrolled members of the four tribes in North Dakota live in this state. Many reside outside North Dakota and abroad serving in the military services. The enrolled membership that resides on each reservation in North Dakota is approximately 25,313. There are approximately 17,687 Native Americans that live off the reservations in North Dakota.

Native Nation Populations	Enrollment	Reservation
MHA	12,204	6,341
Spirit Lake	6,748	4,238
Standing Rock	16,000	6,414
Turtle Mountain	31,000	8,320
Trenton Indian Service Area	1,800	

Source: ND Indian Affairs Commission

Source: U.S. Census Bureau, 2006-2010 American Community Survey

State Native Population	Reservation Population	Off Reservation
43,000	25,313	17,687

Source: U.S. Census Bureau, 2006-2010 American Community Survey

### Native American Consumption in North Dakota

There is no current published data regarding consumption patterns of Native Americans on the reservations. However, the only known attempt was conducted by Dr. Jim Young prior to his passing in 1997. Dr. Young received his Doctorate in Economics from UCLA. Dr. Young passed prior to publishing his study data. This data is dated and is being used as a reference only since there is no other available data.

Personal Consumption	MHA	SLN	SRST	TMBCI	Average
Durable Goods	13%	15%	15%	15%	14.5%
Autos & Parts	5%	5%	5%	5%	5.0%
Furn & HH Equip	5%	4%	5%	5%	4.8%
Misc. Equip & Mach	2%	5%	4%	4%	3.8%
Others	1%	1%	1%	1%	1.0%
Non-Durable Goods	30%	32%	35%	35%	33.0%
Groceries	15%	18%	15%	15%	15.8%
Clothing	5%	5%	5%	5%	5.0%
Gas/Diesel	5%	5%	10%	7%	6.8%
Heating Oil/Propane	2%	4%	3%	4%	3.3%
Other (Hdwre/Mat)	3%	1%	2%	4%	2.5%
Services	57%	53%	50%	50%	52.5%
Housing	14%	16%	15%	15%	15.0%
Household Utilities	6%	7%	6%	6%	6.3%
Medical Care	16%	10%	5%	16%	11.8%
Transportation (Ins)	4%	7%	9%	4%	6.0%
Pers Svcs, Recreation	17%	13%	15%	9%	13.5%

### Native American Income in North Dakota

Reservation per capita income lags well behind the rest of North Dakota. We estimate that the 43,000 Native Americans generate about \$509,550,000 in income per year statewide. We also estimate that the

25,313 enrolled members residing on the reservation generate \$299,959,050 annually and the 17,687 enrolled members living off the reservation generate \$209,590,950 annually.

Per Capita Income	\$11,850		
	Total	Reservation	Off Reservation
	\$509,550,000	\$299,959,050	\$209,590,950

Source: U.S. Census Bureau, 2006-2010 American Community Survey

## North Dakota Tax Law application to Native Americans

North Dakota has a number of taxes that citizens pay each year. We have selected five types of tax that are paid by Native Americans to the state of North Dakota: Personal Income Tax, Sales & Use tax, Motor Fuels Tax, Property Tax, and Corporate Tax. We also include Oil Extraction and Production Taxes. The latter is contributed to the state from lands on the Fort Berthold Reservation only. Native Americans also pay Cigarette and Alcohol taxes but those taxes are very difficult to determine so we have left them out of this analysis.

### **Personal Income Tax (NDCC Chapter 57-38)**

Every resident of North Dakota who has a federal income tax filing requirement is required to file a North Dakota income tax return. Every nonresident who has a federal income tax filing requirement and derives income from North Dakota is required to file a North Dakota income tax return.

#### **Exception**

- There are exceptions for certain Native Americans, interstate transportation employees, Minnesota and Montana residents, and military personnel and their spouses.
- Income of an enrolled member of a federally recognized Indian tribe, who resides within the boundaries of a reservation in this state or in this state and an adjoining state, is exempt if the income is from activities or sources within the boundaries of the reservation.

### **Corporate Tax (NDCC Chapter 57-38)**

Every corporation engaged in business in North Dakota or having sources of income in North Dakota must file a North Dakota corporation income tax return.

#### **Exception**

- An exemption applies if the corporation is chartered as an Indian corporation and has not chartered with the Secretary of State.

### **Sales & Use Tax (NDCC Chapters 57-39.2 and 57-40.2)**

1. A 5% tax is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property.
2. The sales tax is paid by the purchaser and collected by the retailer.

**Exception**

- Gross receipts from all sales made to an Indian tribe are exempt from the 5% tax.
- Gross receipts from sales within the boundaries of any reservation in this state to an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe” are exempt from the 5% tax.

**Use Tax**

1. The purchase price of tangible personal property purchased outside of the state for storage, use or consumption within the state is subject to a use tax at the rate of 5% of the purchase price of the property.
2. In addition, tangible personal property not originally purchased for use in North Dakota is subject to a use tax at the rate of 5% of the fair market value of the property at the time it was brought into the state.
  - a. Credits are allowed for sales and use taxes paid to other states.
  - b. Use tax rates are the same as the sales tax rates.
  - c. Use tax is collected by any retailer that has sufficient presence in North Dakota.
  - d. When the retailer has not collected sales or use tax, the purchaser is required to report and remit the tax due.

**Exception**

- Use tax does not apply to items sold on an Indian reservation to an enrolled member of a federally recognized tribe.
- Use tax does not apply to untaxed property brought onto an Indian reservation by an enrolled member of a federally recognized tribe for storage, use, or consumption on the reservation by the enrolled member.

**Motor Fuels Tax (NDCC Chapters 57-43.1 and 57-43.2)**

A motor vehicle fuel tax of 23 cents per gallon is imposed on motor vehicle fuel, such as gas and gasohol, sold to retailers and consumers. A special fuels tax of 23 cents per gallon on fuels including diesel, biodiesel, kerosene, compressed natural gas, and propane is imposed on fuel sold for use in licensed vehicles. An excise tax of 2% of the value of the sale is applied to sales of propane. An excise tax of 4 cents per gallon is imposed on dyed diesel fuel which is used primarily in vehicles and equipment operating off of the roadways.

**Exception**

- Native American Tribal agencies are exempt from North Dakota motor vehicle and special fuel taxes. If the tax is paid, the Tribal agency may apply for a full refund.
- A Native American may also apply for a refund of motor vehicle or special fuel taxes paid if the fuel was purchased from a retail fuel dealer located on the Indian reservation where the Native American is an enrolled member and a Fuel Tax Agreement is not in place.
- A Native American, living on the reservation where enrolled, is exempt from tribal tax on purchases of dyed diesel.
- A Native American, living on the reservation where enrolled, is exempt from tribal tax on purchases of propane if the propane is used for purposes such as heating or agriculture. The exemption will not apply if the propane is purchased for use in a vehicle.

**Property Tax (NDCC Chapter 57-02)**

All real property, unless specifically exempted, is subject to a property tax. In general, personal property is not taxed.

1. The majority of real property is locally assessed.
2. Other properties, such as railroads, public utilities, and air transportation companies, are centrally assessed by the State Board of Equalization.

A mobile home used as a residence or business is subject to the tax if it is 27 or more feet long or is attached to utility services.

The property tax is determined by multiplying the mill rate times the taxable value of real property.

1. Local mill rates are established to meet the revenue needs of the taxing district. To determine the mill rate, the county auditor divides the total property taxes to be collected for each taxing district by the district's total taxable value.
2. The determination of taxable value begins with the true and full value or market value of the property. The true and full value of residential property is usually established by the local assessor. The assessed value is 50% of the true and full value and the taxable value is 9% of the assessed value.

The county determines and collects the tax and distributes the revenue to the county, cities, townships, school districts, and other taxing districts. The tax is due January 1 of each year following the year of assessment and is payable without penalty until March 1.

**Exception**

- Property of Native Americans, where the title cannot be transferred without the consent of the U.S. Secretary of the Interior, is exempt.
- A mobile home located within the boundaries of a reservation and owned by a Native American who resides on that reservation is not subject to taxation.
- Note that a mobile home located within the boundaries of a reservation, and owned by a Native American, will be subject to tax if the owner does not reside on the reservation.

**Native Tax Contributions****Personal Income Tax**

Personal income tax is typically paid by Native Americans residing off the reservations. North Dakota law requires that every resident of North Dakota who has a federal income tax filing requirement is required to file a North Dakota income tax return. There is an estimated 17,686 Native Americans that live off reservations in North Dakota. Those citizens of North Dakota generate approximately \$209,590,950 in wages and salaries. The lowest tax rate in North Dakota is 1.5%. Since most of the Native American population in North Dakota is well below the poverty line, we have opted to use that figure as the most likely. Accordingly, the personal income tax contribution for Native Americans in North Dakota is estimated to be \$3,143,864 or \$178 per person annually.

According to the Tax Foundation, North Dakota's 2010 state-level individual income tax collections were \$454 per person. If that is the case the personal income tax contribution of Native Americans could be as high as \$8,029,898 per year.

<b>Single</b>			
<b>If taxable income is:</b>			
Over	But not over	The tax is:	
\$ 0	\$ 35,350	1.51%	of North Dakota Taxable Income
35,350	85,650	\$ 533.79	+ 2.82% of amount over \$35,350
85,650	178,650	1,952.25	+ 3.13% of amount over \$85,650
178,650	388,350	4,863.15	+ 3.63% of amount over \$178,650
388,350		12,475.26	+ 3.99% of amount over \$388,350

<b>Married Filing Jointly and Qualifying Widow(er)</b>			
<b>If taxable income is:</b>			
Over	But not over	The tax is:	
\$ 0	\$ 59,100	1.51%	of North Dakota Taxable Income
59,100	142,700	\$ 892.41	+ 2.82% of amount over \$59,100
142,700	217,450	3,249.93	+ 3.13% of amount over \$142,700
217,450	388,350	5,589.61	+ 3.63% of amount over \$217,450
388,350		11,793.28	+ 3.99% of amount over \$388,350

<b>Head of Household</b>			
<b>If taxable income is:</b>			
Over	But not over	The tax is:	
\$ 0	\$ 47,350	1.51%	of North Dakota Taxable Income
47,350	122,300	\$ 714.99	+ 2.82% of amount over \$47,350
122,300	198,050	2,828.58	+ 3.13% of amount over \$122,300
198,050	388,350	5,199.56	+ 3.63% of amount over \$198,050
388,350		12,107.45	+ 3.99% of amount over \$388,350

Married Filing Separately			
If taxable income is:			
Over	But not over	The tax is:	
\$ 0	\$ 29,550	1.51%	of North Dakota Taxable Income
29,550	71,350	\$ 446.21	+ 2.82% of amount over \$29,550
71,350	108,725	1,624.97	+ 3.13% of amount over \$71,350
108,725	194,175	2,794.81	+ 3.63% of amount over \$108,725
194,175		5,896.65	+ 3.99% of amount over \$194,175

#### **Sales and Use Tax**

Sales and use tax touches nearly every Native American in the state regardless of whether they live on the reservation or off the reservation. Native Americans generate \$509,550,000 in wages and salary income annually. Approximately 85.5% of that income is consumed by non-durable and services purchases of Native Americans. Since reservation economies are not very robust, nearly all those purchases occur off the reservations where Native Americans are subject to sales and use tax. The ND Department of Commerce reports that less than 10% of Native American Reservation economies support non-durable and services purchases. It is safe to estimate that 80% of the wage and salary income of Native Americans is consumed by purchases made off the reservations and generates approximately \$20,382,000 in sales and use tax annually. Furthermore, most of those purchase occur in the major cities of the state; Bismarck, Minot, Grand Forks, Devils Lake. Those local jurisdictions levy local taxes above the 5% state sales and use tax. Those cities benefit greatly by purchases made by Native Americans as well.

#### **Motor Fuels Tax**

Motor fuels taxes are collected at the pump as consumers by gasoline and diesel fuel. However, that tax is collected up front from the petroleum retailers as they purchase gasoline and diesel fuel from wholesalers. Every Native American citizen of North Dakota is subject to this tax. We estimate that 10% of consumption is related directly to Motor fuels taxes and generates \$11,719.650 in motor fuels taxes annually to North Dakota from Native American citizens of North Dakota.

#### **Corporate Income Tax**

The North Dakota Department of Commerce reports that there are 85 Native American owned corporations off the reservation that average \$340,361 in net income each year that is subject to

corporate income tax. We choose to estimate a middle range of tax liability of 4.23% that generates \$1,223,768 in corporate income tax each year.

If taxable income is:			
Over	But not over	The tax is:	
\$ 0	\$ 25,000	1.68%	of North Dakota Taxable Income
25,000	50,000	\$ 420.00	+ 4.23% of amount over \$25,000
50,000		1,477.50	+ 5.15% of amount over \$50,000

### **Property Tax**

Native Americans and Tribes do pay property taxes. Tribes do own fee simple land on and adjacent to reservations that are subject to property taxes. Many Native Americans residing off the reservation are home-owners and they also pay property taxes in the same manner as everyone else in North Dakota. This category is difficult to estimate. However, the Standing Rock Sioux Tribe pays \$42,000 annually in property taxes for fee simple land it owns. That is about the middle ground. Some tribes own more land than that and pay more and some Tribes own less land than that and pay less. So, we estimate that that is a conservative number for estimating purposes. This figure does not include personal property tax contributions of individual Native American off the reservation. This contribution is estimated to be \$168,000 annually.

### **Oil Extraction and Production Tax (NDCC Chapters 57-51 and 57-51.1)**

Oil Extraction and Production Taxes are contributed to the state from lands on the Fort Berthold Reservation only. This tax is a revenue sharing agreement between the MHA Nation and the State of North Dakota. The 2012 contribution of Oil Extraction and Production Taxes to the state was \$21,060,888. As Oil Extraction and Production increases on the reservation, this amount will also increase.

### Annual Tax Contributions by Native American Citizens in North Dakota

The estimated annual contribution of Native American citizens of North Dakota is \$36,637,282. This equates to \$852 for every Native man, woman and child in North Dakota. If the Oil Extraction and Production Taxes from the MHA Nation are factored in, that annual contribution increases to \$57,698,170. This equates to \$1,342 for every Native man, woman and child in North Dakota.

Source	Base	Contribution
Personal Income Tax	\$209,590,950	\$3,143,864
Sales & Use	\$407,640,000	\$20,382,000
Motor Fuels	\$50,955,000	\$11,719,650
Corporate	\$28,930,685	\$1,223,768
Property*		\$168,000
Total		\$36,637,282
Oil Production		\$21,060,888
Grand Total		\$57,698,170