

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/14/2019**

Amendment to: SB 2257

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2257 authorizes the governor, in consultation with the tax commissioner, to enter into state-tribal agreements with any tribe regarding the administration of alcoholic beverage and tobacco wholesale taxes, and the alcoholic beverages gross receipts tax.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2257 sets forth the parameters for an agreement between any tribe and the state to administer a wholesale alcoholic beverage tax, a wholesale tobacco tax, and a alcoholic beverage gross receipts tax. The bill also provides the parameters for the tax revenue allocation between the tribe and the state.

Any fiscal impact will depend on which tribes enter into an agreement and when it will become effective. The fiscal impact cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701.328.3402

**Date Prepared:** 02/05/2019

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**Date Prepared:** 02/05/2019

**2019 SENATE FINANCE AND TAXATION**

**SB 2257**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2257  
2/6/2019  
Job #32256

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Alicia Larsgaard
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### Explanation or reason for introduction of bill/resolution:

A BILL for 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.

### Minutes:

Attachments: 5
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**Chairman Cook:** Called the hearing to order on SB 2257.

**Vice Chairman Kannianen took over the hearing while Senator Cook introduced the bill.**

**Chairman Cook:** Introduced the bill. This is a bill that allows the state of ND and our tribes to enter into tribal agreements on tobacco tax, alcohol tax (both wholesale and retail). There are three points to this bill. I want to take you first to page 8, line 13. That is the inapplicability of chapter 54-40.2. If you recall, a few years ago, there was a bill passed this chapter of law, that said that any tax agreement between the governor and the tribe could not go under effect until it was approved by the legislature. This has caused a lot of consternation between the tribes as their inability to form agreements with the governor while we are not here. The intent of this is to remove that and make this a proactive bill so that as long they follow what is in the bill, they may enter into an agreement. The other two parts of this bill is the split of the money between the tribes and the state. If they are going to impose a tax and the state is going to collect it, it has to be identical to the state's tax. This comes out of the tribal tax committee. There was a lot of work put into it. Tribal tax law has a few things you need to understand. We do not impose tax on tribes; only a tribe can impose tax on its tribal members. A tribe can pose tax on its tribal members. They can collect the tax themselves, or they can ask the state to collect the tax. This is going to allow the state to collect the tax. Tax has to be simple. Today's tax collection is done at the State Tax Department. There are seven people up there right now working on upgrading our software systems for the tax. The other

thing I learned a lot about during the tribal tax committee is that there are big differences between states and tribes. There are differences in culture, and governance. There are also great opportunities to work together. The tribal tax committee was very unique. It has 6 legislators. It had the majority and minority leaders, and the two tax committee chairmen. It also has four members from the executive branch; the Lieutenant Governor, the Tax Commissioner, and the Indian Affairs Director. We did something that this legislature has never done before. We made the governor the chairman of this legislative interim committee. We did that for a reason. Tribes like to talk to the governor. This is what enabled us to have good dialogue throughout this interim as we met with all the other tribes. Not only did you have the governor there, you had legislative leaders there. We had a lot of good, in-depth conversations. There is a lot more we can do. There are win-win situations on how we work with the tribes. This is just one step that can bridge a lot of differences. This is not the end. One thing I try to live by, is that the road to perfection, is always under construction. We have an opportunity to go down that road. Chairman Fox is sitting behind me. He wants to go down that road. I think we need to go down that road with him. I think we need to continue to work on perfecting an area where there is room for a lot of improvement. I look at these three bills as a start. Maybe the most important one is the oil tax bill. It is not the end of our journey down that road. It is the beginning. With that, I would hope you give this bill favorable consideration. Thank you. I will be happy to answer any questions.

**Chairman Cook:** Took over the hearing.

**State Tax Commissioner Ryan Rauschenberger:** Testified in favor of the bill. See attachment #1.

**Donnita Wald, Office of State Tax Commissioner:** Testified in favor of the bill. See attachment #2. I am going to briefly walk through the bill. It is very complicated. There are a lot of provisions. I will mostly focus on how the revenue is shared. That formula is specified in the bill. This bill is enabling legislation that allows the governor to enter into an agreement. The Tax Commissioner must be consulted before that agreement is entered into, to make sure we can administer those provisions. The provisions of the bill are identical for all three of the tax types except for the gross receipts. Because of alcohol gross receipts tax, we had to add a few provisions because of the nature of the tax. The bill clarifies that the local taxes are not subject to allocation and distribution. They would not be part of the agreement. In the testimony, it does a line by line explanation of the bill. If you look on page 6, I have a cross reference guide for you. The very last page is how we calculate the revenue that is distributed to the tribes that enter in an agreement. There are two calculations to determine that amount. The calculation is the same for all three tax types in this agreement; the alcohol wholesale tax, tobacco wholesale tax, and the alcohol retail gross receipts tax. The first calculation you have to make is the ND state wide tax revenue per capita. That will be calculated by taking the state wide quarterly tax revenue that is deposited in the general fund and you divide that by the ND state wide population. With the amount, you multiply it by the number of enrolled members living of the reservation. That will end with the quarterly amount that will be distributed to the tribes. It is relatively simple. It is not a census based calculation like our other agreements have been. The only thing where there is a census base is when we use that for ND's population. That would be on the most recent estimated, published numbers. I think 760,000 is the most recent population certified by the census bureau. For tribal enrollment, we would not use the census. There is a lot of issues with the census in respect

of the counting of enrolled members in the tribal nations. This bill requires that the tribe can use its own enrollment records, BIA enrollment records, or other enrollment records that are maintained by the tribe. We have made it broad because there are a number of ways the tribes maintain their enrollment records. Those records and the population for the first years of the agreement; we would have to get those numbers 60 days after an agreement is signed. They would be certified by the state and by the tribe. After that, the calculation is adjusted annually. At the time, the tribe would update their tribal enrollment numbers. We would update the state's population. Every calendar year after that, we would be doing it on September 30. That new per capita calculation would be effective for January and the following calendar year. The agreement also provides that it can be terminated with or without clause. The Tax Commissioner can terminate the agreement after consulting the governor. The agreement will incorporate the specific processes and procedures like we had with Standing Rock on the sales tax agreement. On page 8 we create the funds and the allocation and the distribution as required by the Constitution. The money in a special fund would be distributed quarterly by the State Treasurer. The effective date has an emergency clause. If it is passed immediately and the emergency clause carries, it would become effective the first calendar quarter that is at least 90 days after the agreement is signed. If an agreement is signed before April 1<sup>st</sup>, we could start revenue sharing beginning with the July 1 quarter. Anything after April 1<sup>st</sup> between Jun 30<sup>th</sup>, could be started October 1<sup>st</sup>. Anything after that, the agreement would have to start revenue sharing January 1<sup>st</sup> of 2020. There will be some technical amendments to the bill. We do not have those drafted yet. On page 7, line 49 is going to be placed in the portion of the bill that has the requirements for all agreements. Every agreement must have these statements in it. On page 16, line 19, we will have to correct the title to that. They missed alcohol gross receipts tax. With that, I will stand for any questions.

**Chairman Cook:** Committee, my intent is to really get into the details of this bill on Monday. This is the first chance a lot of you have had to be involved in the discussion. It is not the first chance for the tribes. We have had this bill before. The most important thing I would like to accomplish this morning is to hear from our tribes as to what changes they would like to see. Dee, explain the grimace we have in place today. We have gas agreements with all tribes except Sisseton, and we have a cigarette tax agreement with Standing Rock. Are there any more?

**Dee Wald:** We have the oil and gas agreement as well. You are right, Mr. Chairman, motor fuels with all the tribes except Sisseton. Each of those is census lit. We have had those motor vehicle fuels with the three affiliated tribes since 2007. We just updated Standing Rock's motor fuel and cigarette tax agreement in 2015. Turtle Mountain was in 2010 and Spirit Lake was in 2006.

**Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation:** Testified in favor of the bill. See attachment #3. Thank you for the opportunity to address this bill. The written testimony is not lengthy. Before, I would like to acknowledge three of our council members who are with me this morning. Two of the remaining three both contacted me and told me they are supportive of the direction we are going. When I say "we" in my testimony, I truly mean it. I am thankful they were able to be here. I also want to commend the interim Senate and House Tribal State Taxation Committee that did a lot of the groundwork it setting this opportunity for positive passage of this legislation and adjusting this area of taxation. I thank



the committee for your efforts in this regard. This bill talks about alcohol and tobacco in particular. There are generally two items I want to address. One is to commend the language that give the legislation and the governor the opportunity to create and negotiate into agreements. We thought that when it was taken away in 2017, it set us back. Not that we have total inclination to only work with the governor, we have learned in numerous time that it requires working with the legislative branch just as much as working with the executive branch. We have made that effort in the last four years. The governor is there throughout the year. Having that authority in place, maximizes out interaction at least on an interim basis until our legislation gets back together again. We are thankful for the insight and the willingness to say the governor and executive authorities have that responsibility that can further agreements. As far as many of the provisions of this bill, our tax directors and attorneys have submitted comments to your staff as well. We are not as concerned about many of the particulars. The one that comes to mind the most is how we make determinations to split the tax. Historically, on motor fuels, we did use a census basis. There was a lot of reluctance by the previous governor and the legislature to deviate from that. In recent years, our tribes have raised the concern that there are other factors that could be part of the equation in figuring out that split. Some reservations with the motor fuels have an 80/20 split where ours has a 70/30 split. That is trying to estimate usage and those that are paying the tax. That is not an exact number. We would want to consider needs, law information, historical trauma, and things of that nature. That might give an opportunity to look at a standardized amount rather than going from reservation to reservation and having different formulas. If we could just have a generic split that would go to all reservations and we would be all the same, that would maybe even make it easier on your side of things as well. We would ask for the possible amendment. In doing so, that would give us a definite position to support this legislation. When it comes to the tobacco side of things, we suffer cancer rates that are far greater than the rest of the U.S. population. Unfortunately for us, the revenues are not exceedingly high but anything helps. The biggest ticket for us in this equation of tobacco and alcohol is alcohol. For seventy plus year, alcohol has been sold to tribal members and non-tribal members on our reservation. During that whole time, not one dime has been direct tax revenue off of alcohol which has gone to our tribal government to offset our needs. These are needs created by domestic violence, law enforcement needs, and our new treatment facility. As your government needs to operate with a tax base, so does ours. Without that tax base in alcohol helping to offset those costs, we end up shifting a lot of our revenue for greatly needed areas, over to those things. With this passage of the bill, it will make a significant impact to our nation. The first time we agree to have a taxation system, now the revenues are coming back to the tribes to do these programs. Also in my leadership with the other tribes, we are anxious to hear what they want to possibly amend. For ourselves, we are very thankful for your sponsorship and putting this out there because this is a great opportunity to have a mechanism to have one single tax, avoid dual taxation, and provide necessary revenue for what we are trying to do with Fort Berthold. We thank you. If there is some fine tuning to do and some amendments to make, then let's do it. Overall, the mechanism of a joint tax agreement is a positive thing. With thank, I thank you and I will stand for any questions.

**Chairman Cook:** I understand your biggest concern is the revenue split?

**Mark Fox:** Yes.

**Chairman Cook:** Just so the members of this committee understand, and you can correct me if I am wrong, the state imposes alcohol tax. A non-tribal member the reservation has to collect and remit that tax correct?

**Mark Fox:** Non-tribal members that own establishments that have taxes do it in two ways. There is a retail tax they collect which is sent to the state. There is also a wholesale tax that the wholesaler pays prior to the retailer getting it. That goes directly to the state as well.

**Chairman Cook:** If you were to impose your own tax, which you have the right to do, that tax would be imposed on both tribal and non-tribal members, correct? That is what gives us the opportunity for dual taxation.

**Mark Fox:** Yes. It absolutely does. It is in our federal approved alcohol ordinance. The federal government says that tribal has authority to tax every sale made within our reservation boundaries.

**Chairman Cook:** There is no disagreement in that. We all agree that dual taxation is not good.

**Mark Fox:** It is not good for an economy and we try to avoid it at all costs. With that, we are hoping that we can have the mechanism to jointly tax.

**Douglas Yankton, Vice-Chairman of the Spirit Lake Tribe:** Testified in support of the bill. See attachment #4. I would like to commend Chairman Fox for wanting to work with the state because of his current issues. Ours are pretty similar. The only difference in regards to the alcohol portion is that we are a dry reservation but we have two establishments that are non-native that make a ton of money off the people who live in the boundaries of our reservation. At Spirit Lake, we are in full support of this bill. We hope to go into future agreements in regard to the different types of taxing of tobacco and alcohol. I am not going to take up a lot of time. I would just like to commend the Senators that have put forth this bill and the committee members that have work with the tribes in drafting the language to be proposed. I think this will offer the prosperity for the tribes to generate another source of revenue and help address the issues that arrive from the sales. Unfortunately, they are legal. Alcohol is legal and so is tobacco. A lot of bad outcomes come from those sales. We do have the one agreement in place currently which is the fuel tax agreement. That has been in place since 2006. It was supported back then by the tribal administration and the people of Spirit Lake. They passed it to come into this current agreement. To me, this is executing our sovereignty if we do go into agreements with the state. With that, thank you. I hope we can get this supported, passed, and moved forward.

**Chairman Cook:** I want to thank you for all your work during the interim. You were at many of the meeting and thank you for that.

**Ron His Horse Is Thunder, Chairman of Standing Rock Sioux Tribe North Dakota Tribal Tax Commission:** Testified in support of the bill. See attachment #5. Standing Rock does have a cigarette tax agreement with the state. We do not on the alcohol portion of it. That is my first point to take a look at an amendment with. The way we read the current bill, we would have to enter into both cigarette and an alcohol collection agreement. We couldn't do one or

the other. If this passes, our current cigarette tax agreement would go out the window. We would propose that you amend it to allow tribes to enter either alcohol or cigarette agreements. The second is that right now, it has no flexibility in terms of the amount of allocation of the taxes that would be collected. This legislation sets how this allocation would take place. We would prefer that each tribe be allowed to negotiate with the state, the governor, and tax commissioner on how this distribution would take place. When the tribes sit down, we should have that ability to negotiate with each other on what that formally would be. Right now, it is saying that only enrolled members would be included under the formula. Right now we have a lot of non-enrolled, non Standing Rock enrolled Indians that we recognize, who live on the reservation. This is happening in other tribes as well. They all have other non-enrolled Indians. They are still within our jurisdiction and our civil rules still apply to them and they are under our civil rule. We would hope it would take into consideration not just enrolled members of our tribes, but all Indians on our reservations. In terms of Standing Rock, we have a large population on both sides of the reservation. I understand this piece of legislation strictly talks about ND. Our population is in flux all the time because of the shortage of housing, job locations, and many move on a regular basis. Having some flexibility to say that if you count for some of that population, it will change every year. We go back to the idea that the formula doesn't allow for that flexibility. Alcoholism as well as the consumption of tobacco is concerning in terms of it effecting a greater number of our population than your population in the state of ND. Alcoholism in any place where there are large amounts of poverty, is rampant. It is rampant on the reservation as well as the consumption of tobacco. Over 50% of our population smokes. That is not the same in the state of ND as a whole. We want to be able to have that negotiation in terms of the tax split to be a little more flexible than currently set out in the legislation. We would like to look at changing the arbitration portion of the bill. We would object to binding arbitration. One way to have tax agreements is to walk away at any time without any costs as both a state and tribes. If we get into a dispute, binding arbitration means nothing because we can walk away. Binding arbitration is a red flag to tribes. You should allow us to negotiate our differences. The other point that we have a problem with in terms of binding arbitration is that the current legislation says we couldn't exercise our sovereign right to federal laws and precedents that are currently governing tribes. There are some federal exclusions out there. There are federal preemptions that the tribe cannot take advantage of as of now. We do not wish to give up those federal exclusions. One of them is the Indian Gaming Regulatory Act. That says that anything that happens within that casino, cannot be governed by the state. If we wanted to sell cigarettes or alcohol in our casinos, you cannot tax it no matter who we sell to. We can sell to Indians and non-Indians and within the casinos, you cannot tax it. We would not want to give up that federal exemption that is provided to us. There are other exemptions that the federal laws and regulations provide for us. We do not wish to give those up either. Instead of commanding it in this legislation, allow the Governor and the Tax Commissioner to negotiate those with the tribes. During those negotiations, if we wish to give up those federal exemptions, then that is an act of sovereignty. You should allow us to negotiate those in or out of an agreement as opposed to saying they must not be in there at all. I have already spoken to the tribally owned businesses. Again, we support the bill with some amendments. Thank you very much for bringing the legislation up to begin with it. As Chairman Fox said, it is the beginning of true sovereign to sovereign negotiations but it must be a negotiation. It cannot be one party saying this is how it is going to be or we are not going to do this at all. Thank you.

**Chairman Cook:** We recognize that only Standing Rock can collect on the Standing Rock people. The agreement is simply, do you want the state to collect it and remit it for you. Does that still come in conflict with the federal rights as you mentioned?

**Ron His Horse Is Thunder:** It doesn't. If it is a tribally owned business, we are going to say we don't want the tax collected from that business. It is no different than the state owning its own business. That may not be ones that sell alcohol and tobacco, but it is no different than the state owning a business and not collecting taxes from itself. You are simply taking that from one pocket of the state and putting it into another pocket. That is all that would happen/

**Chairman Cook:** I understand that as it applies to the next bill on sales tax but, as far as alcohol and cigarette tax, where does the casino actually pay that taxes? Is it not just the customers who use the casino who pay the taxes?

**Ron His Horse Is Thunder:** That is correct. Again, the federal laws allow that to be an exemption. It says that state cannot impose a tax on non-Indian customers within that particular business.

**Chairman Cook:** Does Standing rock have agreements with SD?

**Ron His Horse Is Thunder:** Yes, we do.

**Chairman Cook:** Cigarettes and alcohol?

**Ron His Horse Is Thunder:** Yes.

**Chairman Cook:** What about sales and use?

**Ron His Horse Is Thunder:** We do, but we allow it to apply to the casino. That is a point of negotiation we have with the state of SD. We allow it to fly because we have a casino on the SD side as well. We come to an agreement with the state on that. We will split that and allow the imposition of the state taxes based on the idea that we will split it on a formula.

**Chairman Cook:** Is there a good way of counting non enrolled Indians that are living on the reservation?

**Ron His Horse Is Thunder:** No. That is a point of negotiation that we could come to an agreement with the Governor and the Tax Commissioner on as opposed to prescribing a formula.

**Chairman Cook:** This bill sets the template where you can enter in an agreement with the Governor at any time. You always have the right to negotiate an agreement with him and bring it before this body. I want to make sure you know that.

**Chairman Cook:** Did you say that you have something at the end? In your testimony, you said the tribe has made needed modifications and I will present those to the committee.

**Ron His Horse Is Thunder:** I believe in the testimony, it outlines those. The lawyers can get you the exact language they think needs to be prescribed in there. We actually have that and will share that with you.

**Chairman Cook:** Thank you.

**Patrick Ward, ND Wholesale Liquor Dealers:** Testified in support of the bill. During the past few years, I have been representing both the liquor dealers and some beer wholesalers that deliver to one of the reservations in particular. My firm has also been representing some of the retailers on that reservation. We strongly support this common sense approach to resolving this and providing for a seamless method of tax collection distribution accounting regulation state wide. We think it makes a lot of sense. We are appreciative of all the work the NHA tribe has done with us and for allowing us to have exemptions while this has been going on. We certainly support the emergency clause as well. We would urge a do pass with any refinements the committee feels are necessary to make it work. We strongly support the emergency clause. Thank you for all the work you have all done. This shows a cooperative arrangement that recognizes the integrity and sovereignty of the tribes and also makes businesses move smoothly state wide.

**Mark Levitan, Turtle Mountain:** I wanted to reiterate a few points that have been made. One is the on reservation tribally owned business that should be exempt from the taxation if the tribes want them to be. That is a point that the tribes are going to all be in agreement on. Second is that the imposition of the tax on tribal members that are buying products, should also be something that is subject to negotiation. Thank you.

**Chairman Cook:** Any further testimony is support? Testimony opposed? Any neutral testimony? Hearing none, we will close the hearing on SB 2258.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2257  
2/13/2019  
Job #32646

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Alicia Larsgaard
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### Explanation or reason for introduction of bill/resolution:

A BILL for 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.

### Minutes:

Attachments: 1
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**Chairman Cook:** Called the Committee to order on SB 2257.

**Chairman Cook:** Distributed proposed amendments. See attachment #1.

**Dee Wald, Tax Department:** Explained the amendments to the committee. This bills allows the governor to enter into the wholesale tobacco tax, wholesale alcohol tax, and alcohol gross receipts tax. The first amendment is on page 3 line 16. That is some clean up language that clarifies that there is no double taxation. If a tribe has a tax already, they would not be required to collect the tribal tax, our tax, and whatever was on top of there. It also states that we should cooperate to collect only one tax. The portion of the tax we would be collecting would be from non-enrolled members. Their tax would be imposed on members. No-enrollment cards have to be shown. This was requested by the wholesalers and liquor distributors. The rest of the agreement is clean up language. Some of that was missed when it was put into the council system. On page 6 line 29, when we drafted it, we missed putting in the bill that the tribes should also impose an alcoholic beverages gross receipts tax that is identical to ours. The amendment on page 3 line 16 is clean up language as well. All the other bills have to too.

**Chairman Cook:** So the state is collecting all the tax and the intent is that we give back to the tribe tax that is paid for by tribal members only.

**Dee Wald:** That is correct.

**Chairman Cook:** They don't have to show the enrollment cards so how do we know what the split is.

**Dee Wald:** This bill identifies how the tax is split.

**Chairman Cook:** Is it by whether the bar is owned by a tribal member or not?

**Dee Wald:** It is not. It is a state wide per capita consumption number that we multiply times the enrolled members. That is the amount we send back.

**Senator Dotzenrod:** A lot of the subdivisions have a state tax and then a local tax. Does this bill deal with that situation? Is this just the whole sale where there is only local tax or is there some of this that has the ability for a local tax to be added on?

**Dee Wald:** There are some that do have a retail sales tax on alcohol purchases. That would not be effected by this bill. On page 8, line 11, it provides that the split does not apply to any county or city lodging alcohol taxes. They are held harmless under this bill.

**Chairman Cook:** So they get it all?

**Dee Wald:** Yes, they get all their locally imposed taxes.

**Senator Patten:** Moved to adopt the amendments.

**Senator Meyer:** Seconded.

**Chairman Cook:** Any Discussion?

**Senator Dotzenrod:** Are any of these alcohol or tobacco products available online? Can they legally be purchased and delivered online?

**Chairman Cook:** Yes. Tobacco, I do not think is legal.

**Senator Dotzenrod:** Does that effect how and what taxes are imposed.

**Dee Wald:** You are able to ship both alcohol and cigarettes into the state. We have specific provisions that require certain information that direct shippers may have and who they can deliver the product to. For alcohol and tobacco, the consumer is responsible to pay the tax.

**Senator Dotzenrod:** In the process of ordering these things, are they aware of what the taxes are? Is there some communication from the distributor or seller? If they are liable to pay those, do they know that?

**Dee Wald:** There are some out of state wineries that are registered with us and collect the tax on that. They probably do not know before 2191 and now those out of state retailers are required to collect the tax.

**Chairman Cook:** Are you legally allowed to buy cigarettes online? I thought we has a prohibition on that.

**Dee Wald:** The issue is whether or not there is a prohibition against purchasing cigarettes online. You can do it. There is really no way for us to track it unless we get information from the online retailer. Most of the cigarettes purchased are Russian and from out of country. It is really hard to get jurisdiction over those internet retailers.

**Senator Patten:** I believe that you can buy cigars online and have them delivered. I have seen magazines or catalogs that advertise that.

**Dee Wald:** Anytime you purchase something online, it is a matter of us finding them in compliance. Even 2191 isn't going to help with all that. Hopefully that marketplace fairness might.

**A Voice Vote Was Taken.**

**Motion Carried.**

**Senator Dotzenrod:** During the hearing, it was mentioned that there are some reservations that have boundaries that cover two states. It sounds like in SD, they have had some agreements and some taxes for some time. This works fine. I remember wondering if there were some issues with that. I guess there is no issue.

**Senator Kannianen:** The one person who testified thought this would force tribes to enter into all these agreements. This simply sets the templates right and the tribes can choose to enter into one or none or all of these agreements, correct?

**Chairman Cook:** No. As written, you have to enter all three agreements.

**Dee Wald:** That is correct. You enter all or none.

**Chairman Cook:** The main reason for that is that there is alcohol wholesale tax. It is taxed on the wholesaler. All the wholesalers are located off of tribal land.

**Senator Dotzenrod:** There is some oversight or audit function that we have as a state. The sales tax section of our Tax Department can exercise some oversight and can do some verification and audit compliance and work with their retailers. Would that same function apply of the reservation?

**Chairman Cook:** Yes.

**Senator Doztenrod:** There was a question during the hearing about exempting tribal owned business from the sales tax.

**Chairman Cook:** That is tribal bill 2258.

**Senator Kannianen: Moved a Do Pass on SB 2257 as Amended.**



**Senator Dotzenrod: Seconded.**

**Chairman Cook: Any Discussion?**

**A Roll Call Vote Was Taken. 5 yeas, 0 nays, 1 absent.**

**Motion Carried.**

**Senator Cook will carry the bill.**

February 12, 2019

SK  
1501

PROPOSED AMENDMENTS TO SENATE BILL NO. 2257

Page 3, line 15, remove "and"

Page 3, line 16, after the second "parties" insert ":

- (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"

Page 3, line 18, after "the" insert "exterior"

Page 3, line 24, after the first "the" insert "exterior"

Page 4, line 23, after the first "the" insert "exterior"

Page 5, line 27, after the first "the" insert "exterior"

Page 6, line 19, replace "Agreement" with "Alcoholic beverages gross receipts tax agreement"

Page 6, line 20, replace "alcohol" with "alcoholic"

Page 6, line 22, replace "sales, use, and" with "alcoholic beverages"

Page 6, line 23, replace "taxes" with "tax"

Page 6, line 29, after "2." insert "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."

Page 7, line 1, replace "3." with "4."

Page 7, remove lines 4 through 9

Page 8, line 4, after "the" insert "exterior"

Page 9, line 29, replace "3." with "4."

Page 10, line 2, after "refund" insert "paid under this section"

Renumber accordingly

Date: 2-13-19  
Roll Call Vote #:

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2257

Senate	Finance and Taxation	Committee
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☐ Subcommittee

Amendment LC# or Description: 19-0349-02001

Recommendation: ☒ Adopt Amendment

☐ Do Pass      ☐ Do Not Pass      ☐ Without Committee Recommendation

☐ As Amended      ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Patten Seconded By Meyer

[illegible]

Total	(Yes)	No

Absent

## Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-13-19  
Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2257**

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Kannianen Seconded By Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Cook	<input checked="" type="checkbox"/>		Senator Dotzenrod	<input checked="" type="checkbox"/>	
Vice Chairman Kannianen	<input checked="" type="checkbox"/>				
Senator Meyer	<input checked="" type="checkbox"/>				
Senator Patten	<input checked="" type="checkbox"/>				
Senator Unruh					

Total (Yes) 5 No 0

Absent 1

Floor Assignment COOK

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2257: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2257 was placed on the Sixth order on the calendar.

Page 3, line 15, remove "and"

Page 3, line 16, after the second "parties" insert ":

- (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"

Page 3, line 18, after "the" insert "exterior"

Page 3, line 24, after the first "the" insert "exterior"

Page 4, line 23, after the first "the" insert "exterior"

Page 5, line 27, after the first "the" insert "exterior"

Page 6, line 19, replace "**Agreement**" with "**Alcoholic beverages gross receipts tax agreement**"

Page 6, line 20, replace "alcohol" with "alcoholic"

Page 6, line 22, replace "sales, use, and" with "alcoholic beverages"

Page 6, line 23, replace "taxes" with "tax"

Page 6, line 29, after "2." insert "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 "

Page 7, line 1, replace "3." with "4."

Page 7, remove lines 4 through 9

Page 8, line 4, after "the" insert "exterior"

Page 9, line 29, replace "3." with "4."

Page 10, line 2, after "refund" insert "paid under this section"

Renumber accordingly

**2019 HOUSE FINANCE AND TAXATION**

**SB 2257**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2257  
3/5/2019  
33200

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Mary Brucker
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### Explanation or reason for introduction of bill/resolution:

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; relating to a state-tribal agreement with the Standing Rock Sioux Tribe.

### Minutes:

Attachments 1-3
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**Chairman Headland:** Opened hearing on SB 2257.

**Senator Cook:** Introduced bill. This bill sets the framework to allow the governor to enter into a tax agreement with any of our tribes for wholesale tobacco, wholesale alcohol, and retail alcohol taxes. It sets the rules they have to follow. If the state is going to collect it for them they need to follow the same rules we have. Both the state and the tribe can tax people on reservations with this one caveat, the state can only tax non-Indian members. The state cannot tax Indian members on a tribe, only the tribe can do that. The potential is there if both the tribe and the state decided to tax them then the non-Indian members could get double taxed. We all agreed that dual taxation is terrible and we look forward to an agreement so it can be administered very easily. The money is then distributed back to the tribe based on the percent of population that they have of the total state population times the amount of total revenue.

**Representative B. Koppelman:** Once the alcohol tax is in place would it apply to everybody on the tribe because both parties have agreed or would tribal members still be exempt?

**Senator Cook:** It would apply to everybody.

**Chairman Headland:** We'll have the tax commissioner explain the bill.

**Ryan Rauschenberger, Tax Commissioner for the State of North Dakota:** Distributed written testimony, see attachment 1. Ended testimony at 7:42.

**Chairman Headland:** Further testimony in support?

**Mark Fox, Chairman of MHA Nation:** Distributed written testimony, see attachment 2. We've never had a tobacco tax yet tobacco plays a significant role on our reservation. At the same time the commercial use of tobacco has created a lot of health problems. We suffer greater incidence of cancer and things of that nature many of it related to consumption of tobacco products. We spend a great amount of dollars on healthcare relative to that. When we start getting tax revenue we would continue with medical care assistance, preventative programs for our youth, and other things. Any dollars we're able to obtain would definitely help. The second item is alcohol. It has a stronger history on Fort Berthold. We've been impacted from the usage for more than a century now. In the 1950s alcohol was authorized to be sold to tribal members within our reservation boundaries. Since that time the concern we've had is since that time we haven't collected one dime of taxes relative to alcohol sales on our reservation. We've had to divert our resources to deal with treatment, law enforcement, domestic violence, saturation patrols on our highways, etc. which are all costs. Without taxation or revenue, it's difficult to put regulations in the field. It's difficult to address issues that come about as a result of sales of alcohol on our reservation. We are very supportive of doing this. About two years ago we tried to implement an alcohol tax but it became a dual taxation. It has an impact to industry, to business, and to those that are involved in our economy. To avoid dual taxation, we tried to put agreements together. We staved off full implementation of our alcohol tax even though under federal law we are 100% entitled. We have here a method of trying to calculate that out. I'm not trying to throw a wrench in the spokes. We see methodology and understand motor fuels work the same way. Motor fuels are census based and that's how we split that out. That means there is a different system for splitting tax between the four different reservations. The split in motor fuels is different between Fort Berthold and Standing Rock which is a bit of a concern for us. One of the things we're going to suggest is if we have a system in place that might be based upon population or a system of assessing ratios of populations within our boundaries. If you have one reservation with a ratio of 80-20 then the other reservations should also have the opportunity to have that rate as well to standardize it. We would standardize it with the same ratio and the same amount.

**Chairman Headland:** Further testimony in support?

**Patrick Ward, represents the North Dakota Wholesale Liquor Distributors:** We support the bill. We've had disagreements about the distribution of alcohol on the reservation under the law that was passed by the tribe at Fort Berthold. We've been working under exemptions in order to continue delivering. We deliver to both non-tribal owned and tribal owned liquor facilities. When the tribe changed their law we had some concerns. Chairman Fox and the tribal council were very gracious working with us to grant us exemptions so we could continue doing business as usual. We were on a month by month arrangement so we're hoping this would be more of a long term solution.

**Chairman Headland:** Further testimony in support?

**Dee Wald, General Counsel for the Office of the State Tax Commissioner:** Distributed written testimony, see attachment 3. Ended testimony at 25:58.



**Representative Ertelt:** Is there any impact to the tax rate? Is this bill requiring the same tax rate on or off the reservation? Or is the agreement allowing for a different rate?

**Dee Wald:** For the gross receipts tax it would have to be the same rate. The wholesale rate's point of taxation is outside the reservation, it would be your distributors and wholesalers who pay the tax, so that rate would be set by the state and wouldn't change unless the legislature decided to do so.

**Representative B. Koppelman:** Are we using the census estimates per year or are we going all the way back to 2010 when we used the state numbers?

**Dee Wald:** We would use the most current U.S. census data for the state's population. For the tribal enrollment population, we would use tribal records and that would be the most recent.

**Representative B. Koppelman:** Is the census only certified every 10 years?

**Dee Wald:** Those are updated annually.

**Chairman Headland:** Further testimony in support? Is there opposition? Seeing none we will close the hearing on SB 2257.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2257  
3/18/2019  
33882

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Mary Brucker
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### Explanation or reason for introduction of bill/resolution:

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; relating to a state-tribal agreement with the Standing Rock Sioux Tribe.

### Minutes:

No attachments
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**Chairman Headland:** We're open for discussion.

**Vice Chairman Grueneich:** I think this bill and SB 2258 creates an atmosphere with us and the tribe that we're on the same taxing system. If they choose to impose it then it helps provide stability between the relationships and as we move forward. **MADE A MOTION FOR A DO PASS**

**Representative Eidson: SECONDED**

**Chairman Headland:** Discussion?

**ROLL CALL VOTE: 14 YES   0 NO   0 ABSENT**

**MOTION CARRIED**

**Vice Chairman Grueneich will carry this bill.**

Date: 3-18-19  
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2257

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Grueneich Seconded By Rep. Eidson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	X		Representative Eidson	X	
Vice Chairman Grueneich	X		Representative Mitskog	X	
Representative Blum	X				
Representative Dockter	X				
Representative Ertelt	X				
Representative Fisher	X				
Representative Hatlestad	X				
Representative Kading	X				
Representative Koppelman	X				
Representative Steiner	X				
Representative Toman	X				
Representative Trottier	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Grueneich

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2257, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2257 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**SB 2257**



SB 2257 TESTIMONY  
SENATE FINANCE & TAXATION COMMITTEE  
FEBRUARY 6, 2019

Chairman Cook and Members of the Senate Finance and Taxation Committee:

My name is Ryan Rauschenberger, Tax Commissioner for the State of North Dakota. I am here today to testify in support of SB 2257, which would create a framework for the state to enter into retail alcohol, wholesale alcohol and wholesale tobacco tax collection agreements with the tribal governments in North Dakota.

The Office of State Tax Commissioner currently administers tax agreements with the tribes in the areas of motor fuels taxes, cigarette and tobacco taxes, and oil and gas taxes. As a member of the interim tribal taxation committee we have had many productive meetings with the tribes to discuss the benefits of having a framework in law to allow the state to enter into tax agreements, including alcohol and tobacco wholesale taxes.

SB 2257 allows the Tax Department to collect these taxes on behalf of the tribal governments. If a tribe would want to enter into an agreement, the tribe's tax laws would be required to mirror ours and tribal members would be required to be subject to these taxes. The tax revenues would be distributed back to the tribes based on the per-capita formula as set out in the bill.

Currently, tribal members are not subject to the alcohol gross receipts tax if a tribal I.D. is shown to a retailer operating within the boundaries of the reservation. If a tax agreement is made with a tribal government, retailers would collect the taxes regardless of whether the customer is a tribal member or not and would be part of the taxes distributed back to a tribe that entered into an agreement. Businesses owned by the tribe or tribal members would also be required to collect the alcohol gross receipts tax, which is not the current practice and again, the taxes collected would be distributed to the tribe using the per capita formula.

Having these agreements in place would help create a statewide tax system that would be uniform regardless of whether transactions are taking place off the reservations or on the reservations and avoid possible double taxation.

On behalf of the Office of State Tax Commissioner, I ask that you give this bill favorable consideration. Thank you.

## **Testimony—**

### **Senate Finance and Taxation Committee**

### **Senate Bill 2257**

February 6, 2019

Prepared by Donnita Wald  
General Counsel  
North Dakota Office of State Tax Commissioner  
Phone: 328-2777; e-mail:dwald@nd.gov

Chairman Cook, and members of the Committee:

My name is Donnita Wald, and I am here on behalf of the Office of State Tax Commissioner. I was asked to provide an explanation of the provisions of Senate Bill 2257 to the Committee.

This bill, creating a new chapter to Title 57 of the North Dakota Century Code is enabling legislation allowing the Governor and the Tax Commissioner to enter into per capita revenue sharing agreements with the 5 Tribal Nations located in North Dakota for the: 1) Alcoholic Beverages Wholesale Tax; 2) Tobacco Products Wholesale Tax; and 3) Alcoholic Beverages Gross Receipts Tax.

The bill is divided into 4 parts. The new Subsection 1 (Pages 1-2) is the enabling legislation. The new Subsection 2 (Pages 3-4) sets out agreement requirements. Subsections 3, 4, and 5, provide the formula for calculating the per-capita revenue sharing for these 3 taxes and the provisions that are specific to each tax type subject to an agreement. Subsections 6, 7, 8, 9, and 10, (Pages 8-10) relate to the current tribal agreement requirements, distribution of the revenue, and the effective date of the bill. Accompanying this written testimony is an example of the per-capital revenue calculation as provided in a 2-page document that I believe will help you visualize how the revenue sharing formula works.

Following is a brief description of the parts of the bill. Because the sections specific to each tax type are virtually identical, I will walk you through the Alcoholic Beverages Wholesale Tax, and provide references to where the corresponding provisions are in the Tobacco Products Wholesale Tax and Alcoholic Beverages Gross Receipts Tax sections. Because the Alcoholic Beverages Gross Receipts Tax is a gross receipts tax and is reported on the sales and use tax returns, there are additional agreement requirements.

## Section 1 of bill

- Pages 1 and 2      Enables the Governor, after consulting with the tax commissioner to ensure that the agreement provisions can be enforced, to enter into a revenue sharing agreement that includes the Alcoholic Beverages Wholesale Tax and Tobacco Products Wholesale Tax, for delivery to retailers within the exterior boundary of the reservation, and Alcoholic Beverages Gross Receipts Tax for sales of alcoholic beverages within the exterior boundaries of the reservation.
- Page 2, lines 30-31      Requires that any agreement under this chapter must include all three taxes. In other words, an agreement cannot be for tobacco products wholesale tax only.
- Page 3, line 1      This new section identifies provisions that must be in the agreement. Other provisions can be included in the agreement but only to the extent that they are consistent with this chapter.
- Page 3, lines 2-16      Requires that an agreement provide a statement that:
- a) The state and tribe are not relinquishing the right to impose other taxes that are not in conflict with this chapter.
  - b) Recognizes each other's sovereignty.
  - c) The agreement controls the rights of the parties for the taxes subject to the agreement.
  - d) Prohibits the state and the tribe from raising issues of sovereignty or pre-emption. As an example, if the Supreme Court issues an opinion that would give either the state or the tribe additional taxation authority, the agreement's provisions would not change.
  - e) If a third party challenges the right of the tribe or state to enter the agreement, both the state and the tribe will defend the agreement provisions.
- Page 3, line 17-20      Provides that tribally owned or tribal member owned businesses operating within the reservation are subject to the state's taxes and regulatory requirements.
- Page 3, lines 21-25      Provides that the Tax Commissioner administers and enforces the law for all businesses located within the boundary of the reservation, including the right to audit, assess, and refund taxes, as well as



determining whether an entity or transaction is exempt or not exempt from the taxes.

- Page 3, lines 26-30 If there is a disagreement between the state and the tribe over the agreement's terms, the issue will be resolved using binding arbitration. The Governor can negotiate with the tribe the processes and procedures that must be included in the agreement.
- Page 4, lines 1-3 Both the tribe and the tax commissioner have authority to terminate an agreement, with or without cause. The tax commissioner is required to consult with the governor before terminating the agreement. The exact processes and procedures for termination are negotiated and must be in the agreement.
- Our current agreements require that the party wanting to terminate an agreement give 90 days' written notice, after which the parties must meet and make a good faith effort to resolve differences.
- Page 4, lines 4-7 Specifies the effective date of a revenue-sharing agreement. The agreement must begin on the 1<sup>st</sup> day of a calendar quarter, at least 90 days after the agreement is signed.
- Pages 4-8 These pages contain the formula for the revenue sharing agreement. Each separate tax starts on:
- Alcoholic Beverages Wholesale Tax – Page 4, line 8
  - Tobacco Products Wholesale Tax – Page 5, line 15
  - Alcoholic Beverages Gross Receipts Tax – Page 6, line 19
- Page 4, lines 11-19 Identifies the tax, products, and the taxable event, which in the case of alcohol wholesale is delivery to the customers within the exterior boundaries of the reservation.
- Tobacco Products Wholesale Tax - delivery to the reservation (Page 5, line 18-24)
  - Alcoholic Beverages Gross Receipts Tax - retail sale (Page 6, lines 22-28)
- Page 4, lines 20-24 Requires the tribal tax be identical to the state tax with respect to tax rates, including administrative provisions.
- Tobacco Products Wholesale Tax - Page 5, lines 25-28
  - Alcoholic Beverages Gross Receipts Tax - Added by proposed amendment

Page 4, lines 28-31, Page 5, lines 1-5: The per capita revenue sharing formula is calculated as follows, and is adjusted annually on September 30<sup>th</sup> of each year for the next calendar year.

**Per Capita/ Consumption Revenue Sharing Formula**

Step 1: Quarterly State Wholesale Alcohol Revenue (÷) State's Total Population

(=) State Alcohol Revenue Per Capita

Step 2: State Alcohol Revenue Per Capita (x) Enrolled Tribal Membership

(=) Tribal Revenue Allocation

Formula for Other Tax Types:

- Tobacco Products Wholesale Tax - Page 6, lines 1-7
- Alcoholic Beverages Gross Receipts Tax - Page 7, lines 10-17

Page 5, lines 4-15: For the first year of an agreement, the population data must be provided to each party to the agreement sixty days after the agreement is signed. (Page 4, lines 6-7)

After the first year, tribal and state populations are to be determined no later than September 30<sup>th</sup> of each year.

The State's population must be based on the most recent actual or estimated census data.

A Tribe may use 1) the tribe's enrollment records; 2) bureau of Indian affairs enrollment records; or 3) other enrollment records maintained by the tribe.

If the tribe does not certify by September 30<sup>th</sup>, the previous year's certified enrollment number is used in the formula, unless the tribe shows enrolled members living on the reservation has increased or decreased.

- Tobacco Products Wholesale Tax – Page 6, lines 8-18
- Alcoholic Beverages Gross Receipts Tax – Page 7, lines 10-17

The following are provisions in the bill that are unique to the Alcoholic Beverages Gross Receipts Tax.

Page 8, lines 1-9 Relate to the confidentiality and sharing of tax information. The tax commissioner may disclose names of retailers to the tribe and the amount of tax collected by each, however, the tribe must agree to

maintain the confidentiality of these records. Information relating to the Tobacco Products Wholesale Tax and the Alcoholic Beverages Gross Receipts Tax are not confidential records.

Page 8, lines 11-12 Provides that the city and county gross receipts taxes are not subject to allocation.

Pages 8 and 9 These 3 sections create special funds for each tax type, to be known as the tribal allocation funds. The revenues calculated under the formulas are deposited in the special funds, for disbursement to the tribes on a quarterly basis. These sections also identify the procedures for refund claims. The refunds are initially paid out of the state general fund. The tribe's next distribution will be reduced by the refund claim. This is similar to the process currently in place for local tax refund claims.

## **Section 2 of bill**

Repeals the current State-Tribal Sales, Use, and Gross Receipts Tax Agreements chapter.

## **Section 3 of bill**

Provides that this Act applies to agreements entered into after the effective date of this Act.

## **Section 4 of bill**

Provides an Emergency Clause

Agreement signed:

- Before April 1, 2019 = July 1
- April 1 – June 30, 2019 = October 1
- After June 30, 2019 = January 1, 2020

## **Quick Cross-Reference Guide**

### Agreement Requirements for All Tax Types

Page 3 through Page 4, line 7

### Beginning of Specific Tax Provisions:

Alcohol Wholesale Tax: Page 4, line 8

Tobacco Products Wholesale Tax: Page 5, line 15

Alcoholic Beverages Gross Receipts Tax: Page 6, line 19

### Calculation of Per Capita Revenue Sharing

Alcohol Wholesale Tax: Page 4, line 28 through Page 5, line 3

Tobacco Products Wholesale Tax: Page 6, lines 1-7

Alcoholic Beverages Gross Receipts Tax: Page 7, lines 10-17

### Enrollment Census/Annual Certifications

Alcohol Wholesale Tax: Page 5, lines 4-14

Tobacco Products Wholesale Tax: Page 6, lines 8-18

Alcoholic Beverages Gross Receipts Tax: Page 7, lines 18-28

### Special Fund and Distribution Provisions – Pages 8-10

# CALCULATION OF TAX REVENUE ALLOCATED TO TRIBE

Statewide  
Quarterly Tax  
Revenue  
Deposited in  
General Fund



North Dakota  
Statewide  
Population



North Dakota  
Statewide  
Tax Revenue  
Per Capita



Enrolled  
Members Living  
on the  
Reservation  
(Certified Annually)



Quarterly Amount  
of Tax Revenue  
Allocated to Tribe

Revenue is calculated the same for all tax types subject to the agreement.

2/6 8B 2257 # 2 pg. 7

**Senate Bill 2257**  
**Senate Finance and Taxation Committee**  
**February 6, 2019**  
**Testimony of Mark Fox, Chairman, MHA Nation**

Mr. Chairman and members of the Committee, my name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation. Our tribal government generally supports Senate Bill 2257 although we believe it can be improved with some minor amendments. Other tribal governments may provide more specific points or amendments for your consideration.

Senate Bill 2257 authorizes the governor, in consultation with the tax commissioner, to enter into alcoholic beverage wholesale tax, tobacco products wholesale tax and alcoholic beverages gross receipts tax revenue sharing agreements on behalf of the state.

In 2017, the state legislature conditioned the governor's authority to enter into revenue sharing agreements by requiring subsequent legislative approval. Pursuant to that change, the tribes must now wait for the legislature to come into session every two years to ratify an agreement between the governor and tribes before it can be executed, subjecting tribes to much lost revenue. Senate Bill 2257 is a positive move forward in that it partially restores the governor's authority to enter into alcoholic beverage wholesale tax, tobacco products wholesale tax and alcoholic beverages gross receipts tax revenue sharing agreements with tribes.

Senate Bill 2257 limits the allocation in revenue sharing agreements for the alcoholic beverage wholesale tax, tobacco products wholesale tax and alcoholic beverages gross receipts tax by population as provided by the United States census bureau.

While population is one consideration in determining allocations between the tribe and the state under revenue sharing agreements there are other factors to consider. The MHA Nation proposes an amendment that would allow more flexibility in determining those factors.

Senate Bill 2257 may potentially allow our tribal nation greater economic opportunity, realization of invaluable revenue without delay, and avoid the burdens of dual taxation. With the passage of this bill and proposed amendments, our nation will receive tax revenue from the sale of alcohol and tobacco on Fort Berthold for the first time in our history. These revenues are vital to providing infrastructure, services, and programs necessary to meet the concerns and demands that are created by this particular economic activity. It is for these reasons that the tribe does not object to the passage of Senate Bill 2257 subject to amendments as requested.



**SPIRIT LAKE TRIBE  
S.B. 2257  
FORMAL TESTIMONY**

**Wednesday February 6, 2019  
Bismarck, ND**

My name is Douglas Yankton, and I serve as Vice-Chairman of the Spirit Lake Tribe. I would like to thank you for the opportunity to testify regarding the importance of and need for Senate Bill 2257.

As you well know taxation is a fundamental attribute of sovereignty and for far too long the Spirit Lake Tribe and other tribes in the state of North Dakota have held back on tax reform as we try to develop administrative capacity and attempt to avoid economic development consequences. While contemplating the best approach tax reform within the Spirit Lake Tribe jurisdiction we are also mindful of potential conflicts with tribal and state tax schemes. As we wrestle with all of these concerns our tribal community continues to go without important taxation revenue streams that are necessary to help us to meet the needs of our community. It is for this reason that the Spirit Lake Tribe has participated in a number of important discussions with the Tax Committee, the Office of the State Tax Commissioner and the Governor's Office regarding the need for enabling legislation that will support the negotiation and approval of tax agreements relevant to alcohol and tobacco.

Senate Bill 2257 provides an opportunity for the Tribe to negotiate directly with the tax commissioner and the governor on such matters, without burdensome delays. The Bill provides very specific requirements for state-tribal tax agreements that contemplate and safeguard the sovereign rights of both the tribe and the state. In this way the state and the tribe can move forward with important tax agreements while agreeing to disagree on some of the more complex jurisdictional issues that might arise. This affords for a more collaborative and equitable approach to tax administration and collection. Also worthy of note is that the enabling legislation would afford both the state and the tribe to discontinue with a tax agreement should it no longer serve the best interests of one or more of the parties.

It is important that enabling legislation relevant to alcohol and tobacco be passed to expand upon the revenue collection and sharing opportunities between the state and the tribe. Currently the Spirit Lake Tribe has only one tax agreement with the State of North Dakota relevant to motor fuels and special fuels. The existing agreement became effective September 1, 2006 and includes revenue sharing that entitles the Tribe to 76% of the revenue collected in relation to the taxation of motor fuels and special fuel sales on the Spirit Lake Reservation less a 1% administration fee. The State of North Dakota retains



24% of the revenue collected in relation to the taxation of motor fuels and special fuel sales on the Spirit Lake Reservation less a 1% administration fee. Although the existing agreement has been executed amicably between the state and the tribe it is rarely revisited and provides limited opportunity to contemplate market or other changes that impact revenue collection.

The enabling legislation found in Senate Bill 2257 consistency in the approach to a state and tribal tax agreement while offering an opportunity for the parties to revisit agreements as deemed necessary. Absent the enabling legislation the state of North Dakota and the Spirit Lake Tribe are missing out on the collection of alcohol and tobacco taxes on the reservation. The Spirit Lake Tribe reservation is considered a dry reservation, but despite this fact, on reservation sales and possession of alcohol continues to occur. The state collects taxes for the sale of some of the on-reservation alcohol however none of the tax revenue comes back to the tribe. This is true even though some of the sales are being made to tribal members, the sale occurs on the reservation, and higher than average rates of alcoholism exist. In the absence of closure of these establishments, a share of the tax revenue would help the tribe to develop alcohol prevention, community safety initiatives and treatment services. A tax agreement would facilitate such revenue sharing and if the tribe and state are working collaboratively a larger tax base would be reached.

In closing, the revenue streams contemplated by this enabling legislation and the tax agreements the bill supports are necessary to self-governance. The resulting revenue will help us to reinvest in our physical infrastructure, develop necessary services for our community and foster a strong government. Ultimately stronger tribal nations contribute to a stronger North Dakota. For these reasons we encourage you to pass Senate Bill 2257. We look forward to working collaboratively with the State of North Dakota on taxation issues impacting our community and thank you for your consideration of the foregoing comments.

## TRIBAL TAXATION ISSUES COMMITTEE

February 6, 2019

Testimony for the Standing Rock Sioux Tribe Tribal Tax Commission Regarding

Legislative Draft Bill of the 66<sup>th</sup> Legislative Assembly Introduced by Senators Heckaman and Wardner

Good Morning, My name is Ron His Horse Is Thunder. I am the Chairman of the Standing Rock Sioux Tribe North Dakota Tribal Tax Commission.

The Standing Rock Sioux Tribe Generally Supports Senate Bill 2257 but with considerable amendments. We are encouraged by the spirit of the bill and it works towards fostering collaborative agreements between the Tribes and State, and recognizes both entities as sovereigns possessing the ability to tax and regulate. While the overall concept of the SB2257 is encouraging, there are numerous provisions that need revisions in order to render the bill acceptable and workable from the point of the Standing Rock Sioux Tribe.

### **1. Forces Tribes To Enter Into Agreements On All Subject Taxes**

As the members of this Committee are aware, the Tribe is not just another business to be regulated by the State. It is a sovereign government, just as the State is. Historically, and especially in matters such as cigarette and alcohol taxation, Tribes and States have negotiated agreements between them to settle differences. This system of flexible negotiations has worked well for maintaining friendly relationships between sovereigns, respecting Tribal rights, and reaching mutually beneficial revenue sharing agreements. The key word to remember from my testimony here today is "flexible." SB2257 completely removes that element from any agreement a tribe might be able to reach with the State. For instance, SB 2257 requires a tribe to make an agreement to cigarette and both alcohol taxes or make no agreement at all. Some tribes might want to make an agreement as to one area of taxation and not the other. SB2257 rules out that possibility and dictates to a fellow sovereign that it is all or nothing. The ability to negotiate an agreement must not be tied to negotiating agreements as to all taxes.

### **2. No Flexibility As To Allocated Amount**

One of the most important, if not the most important, aspects of compact negotiations is the amount of revenue each party will be allocated out of the taxes collected. This is where the largest give and take happens in negotiations. SB2257 takes this important element out of negotiations and proscribes a predetermined allocation amount. Again, the bill removes any flexibility out negotiations and dictates the amount of the allocation. If the Legislature has set an allocated amount due to concerns that the alcohol gross receipts tax is too hard to determine amounts on a state wide basis, SB2257 could address this with provisions that limit reportable product to just

reservations. The Tribe understands that given the nature of the tax imposed on wholesale liquor, it can be difficult to apportion, but just creating this inflexible formula is not a workable solution.

Additionally, the method used to determine the number of enrolled tribal members does not accurately reflect the actual number of tribal members; it is much, much smaller than the real number. This completely short changes any allocation the Tribe would receive, even under a fairer negotiated allocation formula. This methodology also does not take into account the disparate impact that alcohol and tobacco have on native populations. A large portion of the Tribe's budget goes to addressing these issues. Moreover, the methodology must reflect the entire reservation population. Standing Rock Sioux tribal members migrate daily back and forth between the North Dakota reservation and the South Dakota part of the reservation. We are constantly travelling, shopping and consuming on both the North Dakota and South Dakota portions of the reservation. This aspect must be taken into consideration when addressing an effective and fair approach. The allocation provisions of SB2257, as are written now, they would likely make it impossible to reach a compact with the state.

### **3. The Arbitration provision Is Too Broad And Forces Tribes To Surrender Rights Guaranteed By Federal Law**

SB2257 provides that all disagreements related to a compact will be determined by arbitration. This provision prevents tribes from using rights guaranteed to them by federal law as defenses under the agreement. The Tribe's right must be read in conjunction with the agreement, not just excluded from an arbitration regarding disputes over the agreement. Additionally, as drafted SB2257 mandates any agreement must contain a statement that a tribe will not claim any additional rights under federal law. This provision is a problem because unless a tribal right is specifically surrendered in an agreement, a tribe has not surrendered that right. The Standing Rock Sioux Tribe is not amenable to waiving any rights. Again, this represents the complete lack of flexibility under SB2257. A tribe can certainly surrender a right under a compact, but it has to agree to do so. SB2257 simply dictates that provision to tribes. The arbitration provision must be tied to the provisions of the agreement and only those rights that are specifically referenced can be considered to be subject to the agreement. Additionally, simply requiring the parties to agree to a dispute resolution procedure is the more appropriate approach.

### **4. Exemption For Tribal Owned Businesses**

The Tribe's businesses, such as Prairie Knights Casino, are the financial lifeblood of the Tribe. The Tribe must protect these businesses as they are integral part of the Tribe's economic security and self-determination. SB2257 in its current form requires compacts to apply to ALL businesses within the tribe's jurisdiction, even one owned by the Tribal government; these are not private for profit business, but government operations that distributes funds to Tribal government. There is simply no way the Tribe could ever agree to a provision that does not allow for an exemption for tribal business entities, so as drafted it could not agree to a compact. The Tribe must have the ability and really is in the best position to determine what businesses are Tribally owned government operations and must be exempt from taxes under an agreement.

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Overall, SB2257 in its current form will likely make it very difficult for tribes to enter into compacts with the state. SB2257 is salvageable if amendments are made. The Tribe has made needed modifications to SB2257 and will present those to the committee in the near future for consideration.

February 12, 2019

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2257

Page 3, line 15, remove "and"

Page 3, line 16, after the second "parties" insert ";

(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"

Page 3, line 18, after "the" insert "exterior"

Page 3, line 24, after the first "the" insert "exterior"

Page 4, line 23, after the first "the" insert "exterior"

Page 5, line 27, after the first "the" insert "exterior"

Page 6, line 19, replace "Agreement" with **"Alcoholic beverages gross receipts tax agreement"**

Page 6, line 20, replace "alcohol" with "alcoholic"

Page 6, line 22, replace "sales, use, and" with "alcoholic beverages"

Page 6, line 23, replace "taxes" with "tax"

Page 6, line 29, after "2." insert "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."

Page 7, line 1, replace "3." with "4."

Page 7, remove lines 4 through 9

Page 8, line 4, after "the" insert "exterior"

Page 9, line 29, replace "3." with "4."

Page 10, line 2, after "refund" insert "paid under this section"

Renumber accordingly



SB 2257 TESTIMONY  
HOUSE FINANCE & TAXATION COMMITTEE  
MARCH 5, 2019

Chairman Headland and Members of the House Finance and Taxation Committee:

My name is Ryan Rauschenberger, Tax Commissioner for the State of North Dakota. I am here today to testify in support of SB 2257, which would create a framework for the state to enter into retail alcohol, wholesale alcohol and wholesale tobacco tax collection agreements with the tribal governments in North Dakota.

The Office of State Tax Commissioner currently administers tax agreements with the tribes in the areas of motor fuels taxes, cigarette and tobacco taxes, and oil and gas taxes. As a member of the Interim Tribal Taxation Committee, we have had many productive meetings with the tribes to discuss the benefits of having a framework in law to allow the state to enter into tax agreements, including alcohol and tobacco wholesale taxes.

SB 2257 allows the Tax Department to collect these taxes on behalf of the tribal governments. If a tribe would want to enter into an agreement, the tribe's tax laws would be required to mirror the state tax laws, and tribal members would be required to be subject to these taxes. The tax revenues would be distributed back to the tribes based on the per-capita formula as set out in the bill.

Currently, tribal members are not subject to the alcohol gross receipts tax if a tribal I.D. is shown to a retailer operating within the boundaries of the reservation. If a tax agreement is made with a tribal government, retailers would collect the taxes regardless of whether the customer is a tribal member or not and the tax would be part of the revenues distributed back to a tribe that entered into an agreement. Businesses owned by the tribe or tribal members would also be required to collect the alcohol gross receipts tax, which is not the current practice and again, the taxes collected would be distributed to the tribe using the per capita formula.

Having these agreements in place would help create a statewide tax system that would be uniform regardless of whether transactions are taking place outside the reservations or on the reservations, and avoid possible double taxation.

On behalf of the Office of State Tax Commissioner, I ask that you give this bill favorable consideration. Thank you.



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**Senate Bill 2257**  
**House Finance and Taxation Committee**  
**March 5, 2019**  
**Testimony of Mark Fox, Chairman, MHA Nation**

Mr. Chairman and members of the Committee, my name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara Nation. Our tribal government generally supports Senate Bill 2257 although we believe it can be improved with some minor amendments. Other tribal governments may provide more specific points or amendments for your consideration.

Senate Bill 2257 authorizes the governor, in consultation with the tax commissioner, to enter into alcoholic beverage wholesale tax, tobacco products wholesale tax and alcoholic beverages gross receipts tax revenue sharing agreements on behalf of the state.

In 2017, the state legislature conditioned the governor's authority to enter into revenue sharing agreements by requiring subsequent legislative approval. Pursuant to that change, the tribes must now wait for the legislature to come into session every two years to ratify an agreement between the governor and tribes before it can be executed, subjecting tribes to much lost revenue. Senate Bill 2257 is a positive move forward in that it partially restores the governor's authority to enter into alcoholic beverage wholesale tax, tobacco products wholesale tax and alcoholic beverages gross receipts tax revenue sharing agreements with tribes.

Senate Bill 2257 limits the allocation in revenue sharing agreements for the alcoholic beverage wholesale tax, tobacco products wholesale tax and alcoholic beverages gross receipts tax by population as provided by the United States census bureau.

While population is one consideration in determining allocations between the tribe and the state under revenue sharing agreements there are other factors to consider. The MHA Nation proposes an amendment that would allow more flexibility in determining those factors.

Senate Bill 2257 may potentially allow our tribal nation greater economic opportunity, realization of invaluable revenue without delay, and avoid the burdens of dual taxation. With the passage of this bill and proposed amendments, our nation will receive tax revenue from the sale of alcohol and tobacco on Fort Berthold for the first time in our history. These revenues are vital to providing infrastructure, services, and programs necessary to meet the concerns and demands that are created by this particular economic activity. It is for these reasons that the tribe does not object to the passage of Senate Bill 2257 subject to amendments as requested.



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## **Testimony—**

### **House Finance and Taxation Committee**

### **Senate Bill 2257**

March 5, 2019

Prepared by Donnita Wald  
General Counsel  
North Dakota Office of State Tax Commissioner  
Phone: 328-2777; e-mail: dwald@nd.gov

Chairman Headland, and members of the House Finance & Taxation Committee:

My name is Donnita Wald, and I am here on behalf of the Office of State Tax Commissioner. I was asked to provide an explanation of the provisions of Senate Bill 2257 to the Committee.

This bill, creating a new chapter to Title 57 of the North Dakota Century Code is enabling legislation allowing the Governor and the Tax Commissioner to enter into per capita revenue sharing agreements with the 5 Tribal Nations located in North Dakota for the: 1) Alcoholic Beverages Wholesale Tax; 2) Tobacco Products Wholesale Tax; and 3) Alcoholic Beverages Gross Receipts Tax.

The bill is divided into 4 parts. The new Subsection 1 (Pages 1-2) is the enabling legislation. The new Subsection 2 (Pages 3-4) sets out agreement requirements. Subsections 3, 4, and 5, (Pages 4- 8) provide the formula for calculating the per-capita revenue sharing for these 3 taxes and the provisions that are specific to each tax type subject to an agreement. Subsections 6, 7, 8, 9, and 10, (Pages 8-10) relate to the current tribal agreement requirements, distribution of the revenue, and the effective date of the bill. Accompanying this written testimony is an example of the per-capital revenue calculation as provided in a 2-page document that I believe will help you visualize how the revenue sharing formula works.

Following is a brief description of the parts of the bill. Because the sections specific to each tax type are virtually identical, I will walk you through the Alcoholic Beverages Wholesale Tax, and provide references to where the corresponding provisions are in the Tobacco Products Wholesale Tax and Alcoholic Beverages Gross Receipts Tax sections. Because the Alcoholic Beverages Gross Receipts Tax is a gross receipts tax and is reported on the sales and use tax returns, there are additional agreement requirements.

## Section 1 of bill

- Pages 1 and 2      Enables the Governor, after consulting with the tax commissioner to ensure that the agreement provisions can be enforced, to enter into a revenue sharing agreement that includes the Alcoholic Beverages Wholesale Tax and Tobacco Products Wholesale Tax, for delivery to retailers within the exterior boundary of the reservation, and Alcoholic Beverages Gross Receipts Tax for sales of alcoholic beverages within the exterior boundaries of the reservation.
- Page 2, lines 30-31      Requires that any agreement under this chapter must include all three taxes. In other words, an agreement cannot be for tobacco products wholesale tax only.
- Page 3, line 1      This new section identifies provisions that must be in the agreement. Other provisions can be included in the agreement but only to the extent that they are consistent with this chapter.
- Page 3, lines 2-16      Requires that an agreement provide a statement that:
- a) The state and tribe are not relinquishing the right to impose other taxes that are not in conflict with this chapter.
  - b) Recognizes each other's sovereignty.
  - c) The agreement controls the rights of the parties for the taxes subject to the agreement.
  - d) Prohibits the state and the tribe from raising issues of sovereignty or pre-emption. As an example, if the Supreme Court issues an opinion that would give either the state or the tribe additional taxation authority, the agreement's provisions would not change.
  - e) If a third party challenges the right of the tribe or state to enter the agreement, both the state and the tribe will defend the agreement provisions.
- Page 3, lines 17-21      Clarifies that only one tax will be collected – either the tribal tax (enrolled members) or the state tax (non-enrolled members of the tribe)
- Page 3, lines 22-25      Provides that tribally owned or tribal member owned businesses operating within the reservation are subject to the state's taxes and regulatory requirements.

- Page 3, lines 26-30 Provides that the Tax Commissioner administers and enforces the law for all businesses located within the boundary of the reservation, including the right to audit, assess, and refund taxes, as well as determining whether an entity or transaction is exempt or not exempt from the taxes.
- Page 4, lines 1-5 If there is a disagreement between the state and the tribe over the agreement's terms, the issue will be resolved using binding arbitration. The Governor can negotiate with the tribe the processes and procedures that must be included in the agreement.
- Page 4, lines 6-8 Both the tribe and the tax commissioner have authority to terminate an agreement, with or without cause. The tax commissioner is required to consult with the governor before terminating the agreement. The exact processes and procedures for termination are negotiated and must be in the agreement.
- Our current agreements require that the party wanting to terminate an agreement give 90 days' written notice, after which the parties must meet and make a good faith effort to resolve differences.
- Page 4, lines 9-12 Specifies the effective date of a revenue-sharing agreement. The agreement must begin on the 1<sup>st</sup> day of a calendar quarter, at least 90 days after the agreement is signed.
- Pages 4-8 These pages contain the formula for the revenue sharing agreement. Each separate tax starts on:
- Alcoholic Beverages Wholesale Tax – Page 4, line 13
  - Tobacco Products Wholesale Tax – Page 5, line 22
  - Alcoholic Beverages Gross Receipts Tax – Page 6, line 25
- Page 4, lines 16-24 Identifies the tax, products, and the taxable event, which in the case of alcohol wholesale is delivery to the customers within the exterior boundaries of the reservation.
- Tobacco Products Wholesale Tax - delivery to the reservation (Page 5, lines 25-30)
  - Alcoholic Beverages Gross Receipts Tax - retail sale (Page 7, lines 1-3)

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Page 4, lines 25-29 Requires the tribal tax be identical to the state tax with respect to tax rates, including administrative provisions.

- Tobacco Products Wholesale Tax - Page 6, lines 1-4
- Alcoholic Beverages Gross Receipts Tax - Page 7, lines 4-6

### **Per Capita/Consumption Revenue Sharing Formula**

Step 1: Quarterly State Wholesale Alcohol Revenue ( $\div$ ) State's Total Population

(=) State Alcohol Revenue Per Capita

Step 2: State Alcohol Revenue Per Capita ( $\times$ ) Enrolled Tribal Membership

(=) Tribal Revenue Allocation

Formula for Other Tax Types:

- Tobacco Products Wholesale Tax - Page 6, lines 7-13
- Alcoholic Beverages Gross Receipts Tax - Page 7, lines 12-19

Page 5, lines 4-21: For the first year of an agreement, the population data must be provided to each party to the agreement sixty days after the agreement is signed. (Page 4, lines 6-7)

The per capita calculations are adjusted annually

After the first year, tribal and state populations are to be determined no later than September 30<sup>th</sup> of each year.

The State's population must be based on the most recent actual or estimated census data.

A Tribe may use 1) the tribe's enrollment records; 2) bureau of Indian affairs enrollment records; or 3) other enrollment records maintained by the tribe.

If the tribe does not certify by September 30<sup>th</sup>, the previous year's certified enrollment number is used in the formula, unless the tribe shows enrolled members living on the reservation has increased or decreased.

- Tobacco Products Wholesale Tax – Page 6, lines 7-24
- Alcoholic Beverages Gross Receipts Tax – Page 7, lines 5-30

Provisions That Apply Only To the Alcoholic Beverages Gross Receipts Tax (Page 8, Lines 1-14)

- Page 8, lines 1-9      Relate to the confidentiality and sharing of tax information. The tax commissioner may disclose names of retailers to the tribe and the amount of tax collected by each, however, the tribe must agree to maintain the confidentiality of these records. Information relating to the Tobacco Products Wholesale Tax and the Alcoholic Beverages Gross Receipts Tax are not confidential records.
- Page 8, lines 11-12      Provides that the city and county gross receipts taxes are not subject to allocation.
- Page 8, lines 13-14      Specifies that an agreement under this chapter is not subject to the notice, hearing and legislative confirmation provisions in Chapter 54-40.2
- Pages 8 and 9      These 3 sections create special funds for each tax type, to be known as the tribal allocation funds. The revenues calculated under the formulas are deposited in the special funds, for disbursement to the tribes on a quarterly basis. These sections also identify the procedures for refund claims. The refunds are initially paid out of the state general fund. The tribe's next distribution will be reduced by the refund claim. This is similar to the process currently in place for local tax refund claims.

## **Section 2 of bill**

Repeals the current State-Tribal Sales, Use, and Gross Receipts Tax Agreements chapter.

## **Section 3 of bill**

Provides that this Act applies to agreements entered into after the effective date of this Act.

## **Section 4 of bill**

Provides an Emergency Clause

If Agreement signed:

- Before April 1, 2019 = July 1
- April 1 – June 30, 2019 = October 1
- After June 30, 2019 = January 1, 2020

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## **Quick Cross-Reference Guide**

### Agreement Requirements for All Tax Types

Page 3 through Page 4, line 12

### Beginning of Specific Tax Provisions:

Alcohol Wholesale Tax: Page 4, line 13

Tobacco Products Wholesale Tax: Page 5, line 22

Alcoholic Beverages Gross Receipts Tax: Page 6, line 25

### Calculation of Per Capita Revenue Sharing

Alcohol Wholesale Tax: Page 5, lines 4-10

Tobacco Products Wholesale Tax: Page 6, lines 7-13

Alcoholic Beverages Gross Receipts Tax: Page 7, lines 5-19

### Enrollment Census/Annual Certifications

Alcohol Wholesale Tax: Page 5, lines 11-21

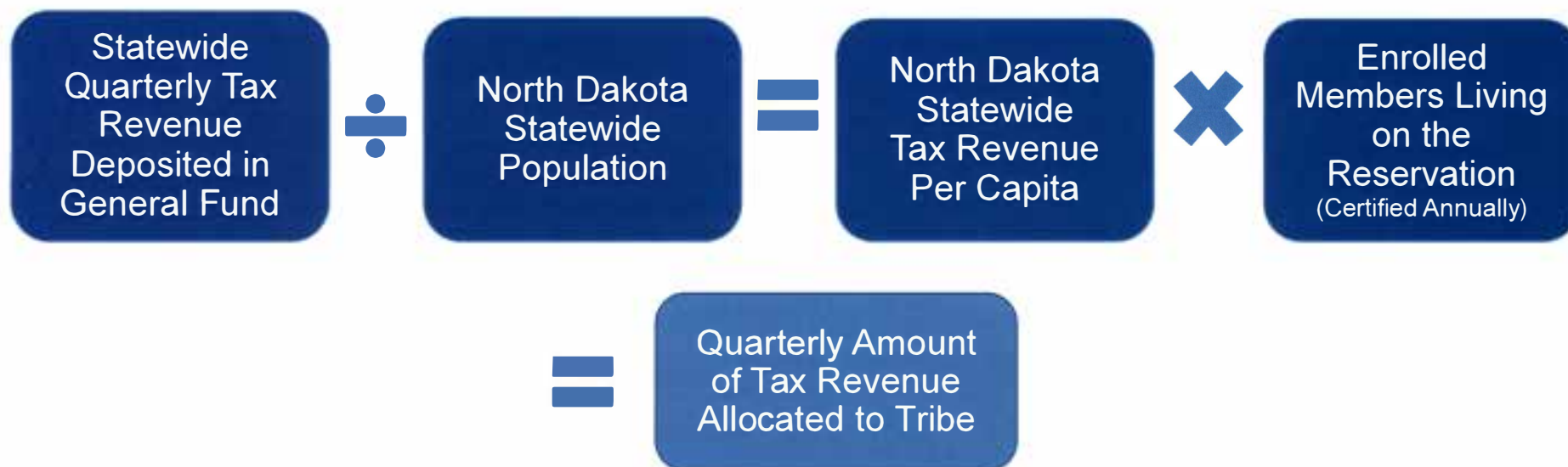
Tobacco Products Wholesale Tax: Page 6, lines 14-24

Alcoholic Beverages Gross Receipts Tax: Page 7, lines 20-30

### Special Fund and Distribution Provisions – Pages 8-10

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# CALCULATION OF TAX REVENUE ALLOCATED TO TRIBE



Revenue is calculated the same for all tax types subject to the agreement.