

July 2001

TOBACCO, ALCOHOL, AND FUELS TAX COMPLIANCE AND JURISDICTIONAL ISSUES - BACKGROUND MEMORANDUM

Senate Bill No. 2448 (attached as an appendix) directs the Legislative Council to study compliance and jurisdictional issues under the tobacco, alcohol, and fuels tax laws. The bill as introduced would have required cigarette packages to be stamped by the distributor to show payment of North Dakota state tobacco products taxes under North Dakota Century Code (NDCC) Chapter 57-36. The bill would have reinstated use of tax stamps, which were required by law from April 1, 1925, until September 1, 1991. Since 1991, distributors have been required to remit taxes monthly on all taxable sales of cigarettes, but stamps on packages have not been required. Senate Bill No. 2448 was introduced because of the sponsors' expressed concerns that evasion of the state tax might be the cause of recent substantial declines in tobacco tax revenues.

During Senate Taxation Committee testimony on Senate Bill No. 2448, a substantial amount of testimony was received in opposition to reinstating tax stamps. The bill was amended into a Legislative Council study directive and alcohol and fuels taxes were added to the study subjects. Committee minutes do not indicate why alcohol and fuels taxes were added, but each of the three tax types covered by the study directive is collected at the wholesale level, so it appears the committee that adopted the amendment thought common compliance and jurisdiction issues might exist.

TOBACCO TAX COMPLIANCE AND JURISDICTION ISSUES

Because the state lacks tax jurisdiction on Indian reservations under federal law and court decisions, sales by a distributor to enrolled tribal members are not subject to state taxes. The sponsor of Senate Bill No. 2448 stated concern that licensed or unlicensed retailers are buying untaxed cigarettes on Indian reservations and illegally reselling them outside reservation boundaries to evade the state tax of 44 cents per package. The Tax Commissioner's office has investigated and can be called upon for testimony on the issue of whether illegal resale of cigarettes is occurring.

An area for consideration is tribal imposition of taxes and collection of those taxes by the state. A 1993 agreement was entered between the Tax Commissioner and the Standing Rock Sioux Tribe for tribal tobacco tax collection. The Tax Commissioner acts as an agent of the tribe for collection of tribal cigarette and tobacco taxes.

FUELS TAX COMPLIANCE AND JURISDICTION ISSUES

Under NDCC Chapters 57-43.1 and 57-43.2, a motor vehicle fuels tax and a special fuels tax of 21 cents per gallon are imposed on fuels sold to retailers or directly to consumers. It does not appear from the minutes on Senate Bill No. 2448 that there is reason to suspect a substantial level of fuels tax evasion. The Tax Commissioner acts as an agent of the Standing Rock Sioux Tribe for collection of tribal fuels taxes under a tax collection agreement.

ALCOHOL TAX COMPLIANCE AND JURISDICTION ISSUES

Alcoholic beverage taxes are imposed by NDCC Chapter 5-03 at the wholesale level. Taxes are imposed on a per gallon basis ranging from eight cents per gallon for beer in bulk containers to \$4.05 per gallon for alcohol. It does not appear from the minutes on Senate Bill No. 2448 that there is reason to suspect a substantial level of alcoholic beverage tax evasion.

Passage of Senate Bill No. 2053 transfers alcoholic beverage tax collection responsibilities from the State Treasurer to the Tax Commissioner, effective July 1, 2001.

TAX COLLECTION AGREEMENTS

If issues arise regarding state-tribal tax collection agreements, it should be remembered that any agreement between the state and a tribe must be previously approved by the Governor under NDCC Section 54-40.2-04. Any such discussions should involve the Governor or the Governor's staff.

SUGGESTED STUDY APPROACH

The committee should review revenue data under tobacco, alcohol, and fuels taxes. If there are unexplained declines in revenue collections, information must be pursued to determine the reasons. The committee should review developments in other states to determine whether there are improvements that might be emulated. The Tax Commissioner's office will be the primary source for information and recommendations on this study.

ATTACH:1