

TAXATION

CHAPTER 487

HOUSE BILL NO. 1106

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

MYRON G. NELSON FUND REFERENCES ELIMINATED

AN ACT to amend and reenact subsection 14 of section 57-01-02 and subdivision q of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to the elimination of obsolete or incorrect references in the income tax laws relating to offers in compromise and the Myron G. Nelson Fund, Incorporated; and to repeal subdivision p of subsection 1 of section 57-38-01.2 and subdivision h of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to obsolete income tax law references to the Myron G. Nelson Fund, Incorporated.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 57-01-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14. May waive, upon a showing of good cause, any and all tax due. A lien must have been filed against the debtor's property prior to the request for a waiver. The attorney general shall approve the waiver. Notwithstanding the provisions of this section, if a debtor and the internal revenue service enter into an offer ~~and~~ in compromise pursuant to section 7122 of the Internal Revenue Code [26 U.S.C. 7122], as amended, the tax commissioner may reduce a debtor's individual income tax liability. However, if the federal offer ~~and~~ in compromise, for any reason, is subsequently declared void by the internal revenue service, the debtor is liable for the original amount of tax due.

³⁰⁵ **SECTION 2. AMENDMENT.** Subdivision q of subsection 1 of section 57-38-01.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- q. Reduced by the amount, up to a maximum of five thousand dollars for any person or ten thousand dollars if a joint return is filed, of investment made after January 1, 1989, in ~~either~~ a venture capital corporation organized pursuant to chapter 10-30.1 ~~or in the~~

³⁰⁵ Section 57-38-01.2 was also amended by section 5 of Senate Bill No. 2009, chapter 31, section 20 of House Bill No. 1201, chapter 211, and section 3 of House Bill No. 1106, chapter 487.

~~Myron G. Nelson Fund, Incorporated, or a separate legal entity such as a limited partnership or limited liability company created by the Myron G. Nelson Fund, Incorporated, as an affiliate, which entities are organized pursuant to chapter 10-30.2. This deduction may only be taken in the tax year in which the taxpayer qualifies for a credit pursuant to chapter 10-30.1 or 10-30.2. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a deduction if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities.~~

³⁰⁶ **SECTION 3. REPEAL.** Subdivision p of subsection 1 of section 57-38-01.2 and subdivision h of subsection 1 of section 57-38-01.3 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved January 27, 1999
Filed January 27, 1999

³⁰⁶ Section 57-38-01.2 was also amended by section 5 of Senate Bill No. 2009, chapter 31, section 20 of House Bill No. 1201, chapter 211, and section 2 of House Bill No. 1106, chapter 487.

CHAPTER 488

HOUSE BILL NO. 1053

(Legislative Council)
(Taxation Committee)

BEGINNING FARMER FARM BUILDING EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to application of the property tax exemption for farm buildings for beginning farmers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁷ **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands. This subsection ~~shall~~ must be construed to exempt farm buildings and improvements only, and ~~shall~~ may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or improvement used in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection.
- b. It is the intent of the legislative assembly that this exemption as applied to a residence ~~shall~~ must be strictly construed and interpreted to exempt only a residence ~~which~~ that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption ~~shall~~ may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
 - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has ~~not received more than fifty percent of~~ received more than fifty percent of annual net income from ~~nonfarm income~~ farming activities which is fifty percent or more of annual net income, including ~~that~~ net income of a

³⁰⁷ Section 57-02-08 was also amended by section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1363, chapter 490, section 1 of House Bill No. 1351, chapter 491, and section 11 of Senate Bill No. 2334, chapter 503.

- spouse if married, during ~~each~~ any of the three preceding calendar years.
- (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and has ~~not~~ received more than fifty percent of annual net income from nonfarm income farming activities which is fifty percent or more of annual net income, including that net income of a spouse if married, during each any of the three preceding calendar years. "Farmer" includes ~~an individual~~ a "retired farmer" who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which the person lives and for which the exemption is claimed. "Farmer" includes a "beginning farmer" who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.
- (3) "Net income from farming activities" ~~described in paragraph 2~~ means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
- (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, net income from farming activities; provided, that if that occupant is married and both spouses occupy the residence, it shall be stated in the written statement whether their net income from farming activities was fifty percent or more of their combined net income from all sources.
- (5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. ~~The provisions of this~~ This paragraph ~~do~~ does not

apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed a retired farmer or a beginning farmer as defined in paragraph 2.

- (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 9, 1999

CHAPTER 489

HOUSE BILL NO. 1054

(Legislative Council)
(Taxation Committee)

FARM BUILDING EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to application of the property tax exemption for farm buildings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁸ **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands.
 - (1) This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
 - (2) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.
 - (3) The following factors may not be considered in application of the exemption under this subsection:
 - (a) Whether the farmer grows or purchases feed for animals raised on the farm.
 - (b) Whether animals being raised on the farm are owned by the farmer.

³⁰⁸ Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1363, chapter 490, section 1 of House Bill No. 1351, chapter 491, and section 11 of Senate Bill No. 2334, chapter 503.

- (c) Whether the farm's replacement animals are produced on the farm.
 - (d) Whether the farmer is engaged in contract feeding of animals on the farm.
 - b. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
 - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has not received more than fifty percent of annual net income from nonfarm income, including that of a spouse if married, during each of the three preceding calendar years.
 - (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and has not received more than fifty percent of annual net income from nonfarm income, including that of a spouse if married, during each of the three preceding calendar years. "Farmer" includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which the person lives and for which the exemption is claimed.
 - (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
 - (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
 - (4) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities; provided, that if that occupant is married and both spouses occupy the residence, it shall be stated in the written statement whether their net income from farming

activities was fifty percent or more of their combined net income from all sources.

- (5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved February 5, 1999
Filed February 5, 1999

CHAPTER 490

HOUSE BILL NO. 1363

(Representatives Renner, Nicholas, Rennerfeldt)
(Senators Urlacher, Wanzek)

DEPRECIATION FOR FARM BUILDING EXEMPTION

AN ACT to amend and reenact paragraph 3 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to inclusion of depreciation expenses from farming activities in net income for purposes of the farm buildings property tax exemption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁹ **SECTION 1. AMENDMENT.** Paragraph 3 of subdivision b of subsection 15 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
 - (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
 - (c) Depreciation expenses from farming activities which have been deducted in computing taxable income.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 9, 1999
Filed March 9, 1999

³⁰⁹ Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1351, chapter 491, and section 11 of Senate Bill No. 2334, chapter 503.

CHAPTER 491

HOUSE BILL NO. 1351 (Representatives Galvin, Tollefson) (Senators Christmann, O'Connell)

ADULT DAY CARE CENTER EXEMPTION

AN ACT to amend and reenact subsection 37 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for adult day care centers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁰ **SECTION 1. AMENDMENT.** Subsection 37 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37. The governing body of the city, for property within city limits, or of the county, for property outside city limits, may grant a property tax exemption for the portion of fixtures, buildings, and improvements, used primarily to provide early childhood services by a corporation, limited liability company, or organization licensed under chapter 50-11.1 or used primarily as an adult day care center. However, this exemption is not available for property used as a residence.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 9, 1999
Filed March 9, 1999

³¹⁰ Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1363, chapter 490, and section 11 of Senate Bill No. 2334, chapter 503.

CHAPTER 492

HOUSE BILL NO. 1052

(Legislative Council)
(Taxation Committee)

HOMESTEAD CREDIT INCOME LIMITATIONS

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to income limitations to qualify for the homestead credit for persons sixty-five years of age or older with limited income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a licensed physician approved by the local governing body, with an income of ~~thirteen~~ fourteen thousand ~~five hundred~~ dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, ~~shall~~ is entitled to receive a reduction in the assessment on the taxable valuation on the homestead as defined in section 47-18-01, except that this exemption applies to any person who otherwise qualifies under ~~the provisions of~~ this subsection regardless of whether the person is the head of a family. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person. The exemption to which any person may be entitled must be determined according to the following schedule:
 - a. If the person's income is not in excess of ~~seven~~ eight thousand ~~five hundred~~ dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
 - b. If the person's income is in excess of ~~seven~~ eight thousand ~~five hundred~~ dollars and not in excess of nine thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.
 - c. If the person's income is in excess of nine thousand five hundred dollars and not in excess of ~~ten~~ eleven thousand ~~five hundred~~ dollars, a reduction of sixty percent of the taxable valuation of the

person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

- d. If the person's income is in excess of ~~ten~~ eleven thousand ~~five hundred~~ dollars and not in excess of twelve thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of twelve thousand five hundred dollars and not in excess of ~~thirteen~~ fourteen thousand ~~five hundred~~ dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case may a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection may not reduce the liability of any person for special assessments levied upon any property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that the person's income, including that of any dependent, as determined in this chapter does not exceed ~~thirteen~~ fourteen thousand ~~five hundred~~ dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars including the value of any assets divested within the last three years. The term "dependent" includes the spouse, if any, of the person claiming the exemption. The assessor shall attach the statement to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate at the end of the taxable year of the death of the applicant.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a licensed physician approved by the local governing body, with an income of ~~thirteen~~ fourteen thousand ~~five hundred~~ dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters is eligible for refund for that part of the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of the person's income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, ~~said the applicant shall~~ is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. In no case may a husband and wife

who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund, but the tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case may this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation and is not making a payment in lieu of property taxes.

3. All forms necessary to effectuate this section must be prescribed and designed by the tax commissioner who shall distribute annually ~~distribute~~ an adequate supply of them to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.
4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes.
5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may receive any property tax credit under this section.
6. For the purposes of this section, "permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1999.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 493**HOUSE BILL NO. 1271**
(Representatives Berg, Grosz)
(Senator Lee)**ASSESSMENT INFORMATION CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to the protection of certain commercial information provided for assessment purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of information provided by commercial property owners for assessment purposes. Unless directed otherwise by judicial order or as otherwise provided by law, records and information provided by the owner or occupant of commercial property with regard to income and expenses of the property in connection with an assessment are confidential. This section does not prohibit the publication of statistics classified to prevent the identification of a particular property and information relating to that property or the disclosure of the records or information when an action or proceeding has been brought by the owner or occupant to set aside or review the assessment.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 494**HOUSE BILL NO. 1055**

(Legislative Council)
(Taxation Committee)

ASSESSMENT OF EXEMPT PROPERTY

AN ACT to amend and reenact section 57-02-14 of the North Dakota Century Code, relating to assessment of real property that is exempt from property taxation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-14 of the North Dakota Century Code is amended and reenacted as follows:

57-02-14. Valuation of real property exempt from taxation. At the time of making the assessment of real property, the assessor shall enter in a separate list each description of property exempt by law; ~~except property of the United States, or the state of North Dakota, or of any county or municipal corporation,~~ and shall value it in the same manner as other property, designating in each case to whom such property belongs and for what purpose used. This section does not apply to property of the United States, this state, or a political subdivision of this state or farm buildings or farm residences exempt from property taxes by law.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 495

SENATE BILL NO. 2052 (Legislative Council) (Taxation Committee)

ASSESSMENT OF INUNDATED AGRICULTURAL LAND

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to the valuation and assessment of inundated agricultural land for property tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹¹ **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for inundated agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.
2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.
3. The "average annual gross return" for each county must be determined as follows:
 - a. For taxable year 1998, total the annual gross returns for the most recent eight years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the eight. For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and

³¹¹ Section 57-02-27.2 was also amended by section 1 of Senate Bill No. 2054, chapter 496.

thereafter, total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

2. b. For taxable year 1998, divide the figure arrived at in ~~subsection 4 subdivision a~~ by six. For taxable year 1999, divide the figure arrived at in ~~subsection 4 subdivision a~~ by seven. For taxable year 2000 and thereafter, divide the figure arrived at in ~~subsection 4 subdivision a~~ by eight.
4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in ~~subsection 4~~ under subdivision a of subsection 3, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.
5. The agricultural economics department of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis;_i shall compute the average agricultural value per acre [.40 hectare] for cropland and_i noncropland, ~~which is and inundated~~ agricultural land; for each county;_i and shall provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.
6. For purposes of this section, "inundated agricultural land" means property classified as agricultural property which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for a full growing season or more. Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands for purposes of this section must be determined by the agricultural economics department of North Dakota state university to be ten percent of the average agricultural value of noncropland for the county as determined under this section. Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.
7. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the

average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 496

SENATE BILL NO. 2054

(Legislative Council)
(Taxation Committee)

ASSESSMENT OF AGRICULTURAL LAND

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to inclusion of a production cost factor in the formula for valuation and assessment of agricultural land for property tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹² **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.
2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.
3. The "average annual gross return" for each county must be determined as follows:
4.
 - a. ~~For taxable year 1998, total the annual gross returns for the most recent eight years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the eight.~~ For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and

³¹² Section 57-02-27.2 was also amended by section 1 of Senate Bill No. 2052, chapter 495.

thereafter, total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

- b. The agricultural economics department of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. For taxable year 1999, the agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the nine years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining seven years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. For taxable year 2000 and thereafter, the agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.
- ~~2.~~ c. For taxable year 1998, divide the figure arrived at in ~~subsection 4~~ subdivision b by six. For taxable year 1999, divide the figure arrived at in ~~subsection 4~~ subdivision b by seven. For taxable year 2000 and thereafter, divide the figure arrived at in ~~subsection 4~~ subdivision b by eight.
4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used ~~in subsection 4~~ under subdivision a of subsection 3, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.
5. The agricultural economics department of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; _i shall compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land; for each county; _i and shall provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. Before January first of each year, the tax commissioner shall provide to each

county director of tax equalization these estimates of agricultural value for each county.

6. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.
7. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 497

HOUSE BILL NO. 1456

(Representatives S. Kelsh, Berg, Clark, Glassheim, Winrich)
(Senator Grindberg)

NEW INDUSTRY AND IMPROVEMENTS EXEMPTION

AN ACT to amend and reenact sections 40-57.1-03, 57-02.2-02, and 57-02.2-03 of the North Dakota Century Code, relating to tax exemptions for new industries and improvements to commercial and residential buildings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹³ **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project ~~upon which initial construction is begun after June 30, 1994.~~ The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After

³¹³ Section 40-57.1-03 was also amended by section 1 of Senate Bill No. 2051, chapter 368.

receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

SECTION 2. AMENDMENT. Section 57-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-02.2-02. Improvement defined. In this chapter, unless the context or subject matter otherwise requires, the term "improvement" means the renovation, remodeling, or alteration, but not the replacement, of an existing building or structure for use for commercial or residential purposes. An improvement for residential purposes is limited to a building or structure at least twenty-five years old. An addition constructed to an existing building or structure to enlarge it ~~may not be regarded as~~ is an improvement for the purposes of this chapter.

SECTION 3. AMENDMENT. Section 57-02.2-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02.2-03. Tax exemption for improvements to commercial and residential buildings and structures - Property owner's certificate. Improvements to commercial and residential buildings and structures as defined in this chapter may be exempt from assessment and taxation for up to ~~three~~ five years from the date of commencement of making the improvements, if the exemption is approved by the governing body of the city, for property within city limits, or the governing body of

the county, for property outside city limits. The governing body of the city or county may limit or impose conditions upon exemptions under this section, including limitations on the time during which an exemption is allowed. A resolution adopted by the governing body of the city or county under this section may be rescinded or amended at any time. The exemption provided by this chapter shall apply only to that part of the valuation resulting from the improvements which is over and above the assessed valuation, exclusive of the land, placed upon the building or structure for the last assessment period immediately preceding the date of commencement of the improvements. Any person, corporation, limited liability company, association, or organization owning real property and seeking an exemption under this chapter shall file with the assessor a certificate setting out the facts upon which the claim for exemption is based. The assessor shall determine whether the improvements qualify for the exemption based on the resolution of the governing body of the city or county, and if the assessor determines that the exemption should apply, upon approval of the governing body, the exemption is valid for the prescribed period and shall not terminate upon the sale or exchange of the property but shall be transferable to subsequent owners. If the certificate is not filed as herein provided, the assessor shall regard the improvements as nonexempt and shall assess them as such.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 498

SENATE BILL NO. 2100

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

TAX LAW REFERENCE CORRECTIONS

AN ACT to amend and reenact sections 23-15-01 and 57-15-01.1 of the North Dakota Century Code, relating to the removal of a reference to personal property taxes on fireworks and to delete a duplicate reference to mill levy limitations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁴ **SECTION 1. AMENDMENT.** Section 23-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-15-01. Fireworks defined. The term fireworks means and includes any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, sparklers, or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. Nothing in this regulation may be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.

Any person, firm, corporation, or limited liability company having operated a retail business ~~wherein merchandise was assessed by the local taxing authority, on April first immediately preceding thereto,~~ and having a retail license as provided in section 23-15-04 may offer for sale and sell at retail, to persons of twelve years of age or more, only during the period beginning June twenty-seventh and ending July fifth, both dates inclusive, the following items:

1. Star lights, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty grams each in weight (10 ball).
2. Helicopter type flyers, total pyrotechnic composition not to exceed twenty grams each in weight.
3. Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter may not exceed three-fourths inch [19.05 millimeters].

³¹⁴ Section 23-15-01 was also amended by section 1 of Senate Bill No. 2437, chapter 238.

4. Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight.
5. Wheels, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes may not be over one-half inch [12.7 millimeters].
6. Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.
7. Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate may not exceed five grams.
8. Comets and shells, of which the mortar is an integral part, except those designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight.
9. Soft shell firecrackers not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter, total pyrotechnic composition not to exceed fifty milligrams each in weight.
10. Whistles without report, total pyrotechnic composition not to exceed forty grams each in weight.

SECTION 2. AMENDMENT. Section 57-15-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-01.1. Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
 - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year;
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section;
 - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable property in the base year plus the taxable value of the property exempt by local discretion or charitable status, calculated in the same manner as the taxable property; and
 - d. "Property exempt by local discretion or charitable status" means property exempted from taxation as new or expanding businesses under chapter 40-57.1; improvements to property under chapter

57-02.2; or buildings belonging to institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements under section 57-02-08.

3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and property exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or property exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. ~~A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.~~
5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. 5. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.

- ~~7.~~ 6. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
- ~~8.~~ 7. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 499

SENATE BILL NO. 2382

(Senators Mutzenberger, Krauter, Kringstad)
(Representatives Grosz, Hoffner)

SENIOR CITIZEN MILL LEVY

AN ACT to amend and reenact subsection 25 of section 57-15-06.7, subsection 26 of section 57-15-10, and subsection 3 of section 57-15-56 of the North Dakota Century Code, relating to the mill levy for senior citizen programs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁵ **SECTION 1. AMENDMENT.** Subsection 25 of section 57-15-06.7 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25. A county levying a tax for programs and activities for senior citizens according to section 57-15-56 may levy a tax not exceeding ~~one mill~~ two mills.

³¹⁶ **SECTION 2. AMENDMENT.** Subsection 26 of section 57-15-10 of the North Dakota Century Code is amended and reenacted as follows:

26. Taxes levied for programs and activities for senior citizens in accordance with section 57-15-56 may be levied in an amount not exceeding ~~one mill~~ two mills.

SECTION 3. AMENDMENT. Subsection 3 of section 57-15-56 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors of the county or city voting on the question directing the governing body to do so. The levy authorized by this section may not be increased to a levy of more than one mill under the authority of this section unless approved by a vote of a majority of the qualified electors of the county or city voting on the question. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to the governing body.

³¹⁵ Section 57-15-06.7 was also amended by section 2 of Senate Bill No. 2215, chapter 154, and section 3 of Senate Bill No. 2358, chapter 501.

³¹⁶ Section 57-15-10 was also amended by section 73 of House Bill No. 1045, chapter 50, and section 18 of House Bill No. 1201, chapter 211.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 500

HOUSE BILL NO. 1196 (Representatives Hanson, Kroeber)

ALTERNATIVE EDUCATION MILL LEVIES

AN ACT to amend and reenact subsection 1 of section 57-15-14.2 and section 57-15-17.1 of the North Dakota Century Code, relating to mill levies for alternative education programs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁷ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A school board of any school district may levy an amount sufficient to cover general expenses including the costs of the following:
 - a. Board and lodging for high school students as provided in section 15-34.2-06.
 - b. The teachers' retirement fund as provided in section 15-39.1-28.
 - c. Tuition for students in grades seven through twelve as provided in section 15-40.2-12.
 - d. Special education program as provided in section 15-59-08.
 - e. The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in section 32-12.1-08.
 - f. A final judgment obtained against a school district.
 - g. The district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund as provided by chapter 52-09 and to provide the district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund for contracted employees of a multidistrict special education board.
 - h. The rental or leasing of buildings, property, or classroom space. Minimum state standards for health and safety applicable to school building construction shall apply to any rented or leased buildings, property, or classroom space.
 - i. Unemployment compensation benefits.

³¹⁷ Section 57-15-14.2 was also amended by section 10 of Senate Bill No. 2162, chapter 169.

- j. The removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any method approved by the United States environmental protection agency and any repair, replacement, or remodeling that results from such removal or abatement and for providing an alternative education program as provided in section 57-15-17.1.
- k. Participating in cooperative vocational education programs approved by the state board.
- l. Maintaining a vocational education program approved by the state board and established only for that school district.
- m. Paying the cost of purchasing, contracting, operating, and maintaining schoolbuses.
- n. Establishing and maintaining school library services.
- o. Equipping schoolbuses with two-way communications and central station equipment and providing for the installation and maintenance of such equipment.
- p. Establishing free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term.
- q. Establishing, maintaining, and conducting a public recreation system.
- r. The district's share of contribution to finance an interdistrict cooperative agreement authorized by section 15-47-40.1.

³¹⁸ **SECTION 2. AMENDMENT.** Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. Multiyear asbestos abatement and alternative education program levy by school district.

- 1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of ~~providing~~:
 - a. Providing funds for the removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement,

³¹⁸ Section 57-15-17.1 was also amended by section 11 of Senate Bill No. 2162, chapter 169.

or remodeling that results from removal or abatement of asbestos substances; and

- b. Providing alternative education programs.
2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsection 3, must be placed in a separate fund known as the asbestos abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos abatement.
 3. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program, but may not be used to construct or remodel facilities used to accommodate an alternative education program.
 4. Any moneys remaining in the asbestos abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos abatement project and any funds remaining in the alternative education program fund at the termination of the program must be transferred to the general fund of the school district upon the order of the school board.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 501

SENATE BILL NO. 2358

(Senators Wardner, Kinnoin, Urlacher)
(Representatives DeKrey, Froelich, Nicholas)

COUNTY AUTOMATION AND TELECOMMUNICATIONS LEVY

AN ACT to create and enact a new section to chapter 57-15 and a new subsection to section 57-15-06.7 of the North Dakota Century Code, relating to creating county levy authority for automation and telecommunications, within the levy authority for old-age and survivors' insurance; and to amend and reenact subsection 3 of section 52-09-08 and subsection 5 of section 57-15-28.1 of the North Dakota Century Code, relating to the levy limitation for old-age and survivors' insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 52-09-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The political subdivision, except a school district, a multidistrict special education board, or a center board of an area vocational and technology center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1 or, for counties, the limitation in section 3 of this Act. Within the levy limitations set out in subsection 6 of section 57-15-28.1, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section must be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter must be made out of the school district's general fund established pursuant to section 57-15-14.2.

SECTION 2. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Levy authorized for county automation and telecommunications. The county commissioners may levy an annual tax not exceeding the limitation in section 3 of this Act to provide a fund for the planning, design, acquisition, development, operation, maintenance, and support of automation and telecommunications resources.

³¹⁹ Section 52-09-08 was also amended by section 2 of House Bill No. 1070, chapter 440.

³²⁰ **SECTION 3.** A new subsection to section 57-15-06.7 of the North Dakota Century Code is created and enacted as follows:

A county levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, for an employee retirement program established by the governing body, for county automation and telecommunications under section 2 of this Act, or for any combination of those purposes, may levy a tax not exceeding thirty mills. The portion of the levy under this subsection for county automation and telecommunications under section 2 of this Act may not exceed five mills.

SECTION 4. AMENDMENT. Subsection 5 of section 57-15-28.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A political subdivision, except a school district or county, levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, or for an employee retirement program established by the governing body, or for any combination of those purposes, may levy a tax not exceeding thirty mills.

Approved March 19, 1999

Filed March 22, 1999

³²⁰ Section 57-15-06.7 was also amended by section 2 of Senate Bill No. 2215, chapter 154, and section 1 of Senate Bill No. 2382, chapter 499.

CHAPTER 502

SENATE BILL NO. 2246

(Senators Andrist, Flakoll)
(Representatives Devlin, Kerzman, Wentz)

PROPERTY TAX RECEIPTS

AN ACT to amend and reenact sections 40-24-16, 57-20-07.1, 57-20-08, and subsection 2 of section 57-22-21 of the North Dakota Century Code, relating to property tax receipts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-24-16 of the North Dakota Century Code is amended and reenacted as follows:

40-24-16. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement. Special assessments of any kind certified to the county auditor by the city auditor shall be paid to the county treasurer and included in the statement required by section 57-02-07.1 and the receipt required by section 57-20-08. ~~In the event that~~ If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, ~~he the county treasurer~~ shall allocate the amount ~~of such payment received~~ between taxes and special assessments in proportion to the respective amounts of taxes and special assessments ~~which are then~~ due. When prorating any tax payment received prior to October fifteenth, the term "due", as it pertains to real estate taxes, shall include only the first installment of real estate taxes. Special assessments shall not be subject to abatement or refund by proceedings under chapter 57-23, but shall be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the city auditor of all the taxes and special assessments collected ~~by him~~ during the preceding month, shall certify the amounts of special assessments collected. The certificate shall state specifically the lot or known subdivision thereof as it appears on the tax books of the county treasurer, and the block, addition, amount collected, and the amount credited to each lot or known subdivision thereof, and the year for which the sum was collected. The certificate shall be furnished to the city auditor.

SECTION 2. AMENDMENT. Section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-20-07.1. County treasurer to mail real estate tax statement. On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at ~~his last known~~ the owner's last-known address. The statement must be provided in a manner that allows the taxpayer to retain a printed record of the obligation for payment of taxes and special assessments as provided in the statement. If a parcel of real property is owned by more than one individual, the county treasurer shall send only one statement to one of the owners of that property. Additional copies of the tax statement will be sent to the other owners upon their request, and the furnishing of their names and addresses to the county treasurer. Such tax statements must include a dollar valuation of the true and full value as defined by law of the property and the total mill levy

applicable. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

SECTION 3. AMENDMENT. Section 57-20-08 of the North Dakota Century Code is amended and reenacted as follows:

57-20-08. Tax receipts - ~~What to specify - Numbered consecutively - Duplicate copies filed with county auditor - Triplicate copies~~ Copies retained and filed numerically by county treasurer. Upon the payment of any tax, if directed by the board of county commissioners the county treasurer shall give to the ~~person paying the same county auditor~~ a receipt therefor showing the name and post-office address of ~~such the person who paid the tax~~, the amount and date of payment, the land, lot, or other property upon which the tax is levied, according to the description on the tax list, or in some other sufficient manner, and the year or years for which the tax was levied. If for current taxes on real estate, the receipt must have written or stamped across its face "taxes for" (giving the year in figures) or "first installment taxes" (giving the year in figures) or "second installment taxes" (giving the year in figures), as the case may be. Each year's tax must be on a separate receipt. If land has been sold for taxes, either to a purchaser or to the county, and the time for redemption from such sale has not expired, the receipt for such taxes must have written or stamped across the face "sold for taxes", with a statement of the years for which any of the real estate described therein has been sold for taxes and not redeemed. ~~The~~ If directed by the board of county commissioners, the treasurer shall ~~make triplicates of all receipts and shall return a duplicate copy~~ provide receipts at the end of each day to the county auditor, who shall file and preserve them in ~~his~~ the auditor's office charging the treasurer with the amount thereof. ~~The triplicate copy~~ A copy of each receipt must be preserved in the office of the county treasurer and filed in numerical order.

SECTION 4. AMENDMENT. Subsection 2 of section 57-22-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The county auditor shall extend to and enter upon the tax list of real estate then in the hands of the county treasurer, for the year immediately preceding, opposite the descriptions of real estate designated by the board of county commissioners which belong to the personal property tax debtor, the year for which the personal property taxes are uncollected and the amount thereof. Such entry must be made without regard to any prior payment of real estate taxes on said descriptions, and the treasurer is without authority thereafter to issue ~~to the personal property tax debtor~~ any receipt in full for said real estate taxes without making collection at the same time of the personal property taxes so extended; a taxpayer holding a specific superior lien on said descriptions ahead of personal property taxes charged thereon is entitled to tax receipts without regard to nonpayment of such inferior personal taxes.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 503

SENATE BILL NO. 2334

(Senators Fischer, Andrist, Klein)
(Representatives Devlin, Maragos, Weisz)

TAX LIENS

AN ACT to create and enact two new sections to chapter 57-20 of the North Dakota Century Code, relating to notice and preservation of tax liens; to amend and reenact sections 11-11-13, 11-13-07, 11-27-08, 15-08-19, 21-02-01, 32-31-01, 32-31-02, 32-31-03, subsection 60 of section 40-05-01, section 40-25-03, subsection 3 of section 57-02-08, sections 57-20-13, 57-22-22, 57-23-07, 57-25-01, 57-25-02, 57-25-04, 57-25-05, 57-28-01, 57-28-02, 57-28-03, 57-28-04, 57-28-05, 57-28-06, 57-28-07, 57-28-08, 57-28-09, 57-28-10, 57-28-14, 57-28-18, 57-28-19, 57-28-19.1, 57-28-22, 57-28-23, 57-29-01, 57-45-05, 57-45-11, 57-45-12, 61-01-21, 61-07-05, 61-09-15, 61-16.1-31, 61-21-52, and 61-35-87 of the North Dakota Century Code, relating to sales of property for delinquent taxes and provisions for foreclosure of tax liens for unpaid property taxes; to repeal sections 40-25-04, 40-25-05, 40-25-08, 40-25-09, 40-25-10, 57-20-24, 57-20-25, chapters 57-24, 57-26, 57-27, and section 57-28-21 of the North Dakota Century Code, relating to sales of property for delinquent taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-13 of the North Dakota Century Code is amended and reenacted as follows:

11-11-13. Board to ascertain amount of ~~redemption~~ satisfaction of tax lien money. The board of county commissioners, at the first meeting of the board each year, shall examine the county treasurer's satisfaction of tax sale lien book and stub receipts and ascertain the amount of ~~redemption~~ satisfaction of tax lien money in the treasury, and shall require the treasurer to account for the same.

SECTION 2. AMENDMENT. Section 11-13-07 of the North Dakota Century Code is amended and reenacted as follows:

11-13-07. County auditor to keep tax deed record. The county auditor shall keep a record to be known as the tax deed record in which the auditor shall enter ~~the date upon which each certificate was presented for tax deed, with~~ a description of the land ~~covered thereby~~ foreclosed for unsatisfied tax lien, the date when the notice of ~~expiration of the time for redemption~~ foreclosure of tax lien was issued ~~thereon~~, the date and description of the return of service of such notice, and the date when the tax deed is issued.

SECTION 3. AMENDMENT. Section 11-27-08 of the North Dakota Century Code is amended and reenacted as follows:

11-27-08. Board of county commissioners may set aside county tax deed lands for park purposes. The board of county commissioners may set aside and transfer to any municipality for park and recreational purposes any land which the county has acquired through tax ~~sale~~ lien foreclosure proceedings and upon which tax deeds

have been issued to the county if the land is suitable and fit for use as a public park or recreational center. The transfer may be made without consideration or for such consideration as the board deems sufficient. The board also may establish such property as a county park or attach the same to and make it a part of a county park already established. All unpaid taxes against the land shall be canceled, and the land so set aside shall be withdrawn from the list of property for sale by the county.

SECTION 4. AMENDMENT. Section 15-08-19 of the North Dakota Century Code is amended and reenacted as follows:

15-08-19. Taxation of and sale for taxes of land foreclosure of tax lien on property sold by state on deferred payment contract. ~~Lands~~ Property contracted to be sold by the state ~~are~~ is subject to taxation from the date of the contract, and the taxes assessed thereon must be collected and enforced in the same manner as taxes against other ~~lands~~ property. If the contract is not canceled or if the contract has been canceled and the period of redemption has not yet run, the ~~lands~~ property upon which taxes are delinquent ~~may be sold for taxes as other lands are sold~~ is subject to foreclosure of tax lien. After ~~the expiration of three~~ four years from the date ~~of the tax sale certificate became due~~, and after notice ~~of expiration of the period of redemption~~ foreclosure has been given as required in title 57, ~~and after expiration of the time to redeem given under such notice on the date of foreclosure~~, the ~~purchaser at the tax sale~~ county shall acquire such rights and interests as belonged to the holder and owner of the contract issued under the provisions of this chapter and only such rights. ~~The holder of the tax sale certificate may present the same, together with a certificate from the county auditor that notice of expiration of the time for redemption has been given and that no redemption has been made, to the commissioner of university and school lands, and thereupon may have his name substituted in the contract for that of the original holder and owner of the contract as the assignee of such original holder and owner, upon condition that he shall make payment of any principal or interest then in default under the contract of sale. If the lands are sold to the county for taxes, the~~ The county may assign its tax sale certificate rights and interest at any time, and the assignee shall have the rights given by this section to the ~~holder of a tax sale certificate issued to an individual~~ county. No tax deed may be issued upon any tax sale certificate while the legal title to the lands remains in the state of North Dakota.

SECTION 5. AMENDMENT. Section 21-02-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-02-01. Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Political subdivision" means a local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
2. "Revenues" means any of the following:
 - a. Uncollected taxes.
 - b. Amounts to be received from a distribution of federal moneys, including currently existing bureau of Indian affairs contracts.
 - c. Amounts to be received from a distribution of moneys pursuant to a state appropriation or a state statutory or constitutional provision.

3. "Uncollected taxes" means taxes for the year during which a certificate of indebtedness is issued and the preceding four years that have been levied but from which moneys have not come into the public treasury ~~either by payment or by tax sale~~ satisfaction of tax lien, exclusive of tax levies dedicated to the payment of principal of and interest on outstanding evidences of indebtedness.

SECTION 6. AMENDMENT. Section 32-31-01 of the North Dakota Century Code is amended and reenacted as follows:

32-31-01. Jurisdiction of district court in foreclosure of tax lien. In any case in which the owner of real estate has been sold at tax sale given notice of tax lien under chapter 57-20 for general taxes, for special assessments, ~~for hail indemnity taxes,~~ for assessments of irrigation districts, for drain assessments, or for both general taxes and any such special taxes or assessments, the district court of the proper county shall have jurisdiction in an action in equity brought for that purpose to foreclose the lien of the delinquent taxes and assessments for which such land was ~~sold~~ noticed and to enter judgment foreclosing the same and decreeing that the same shall be sold under special execution in a manner similar to that prescribed in case of the foreclosure by action of a mortgage or other lien upon real property.

If in such action it shall appear that the taxes or assessments, ~~or the tax certificate,~~ are invalid or void by reason of noncompliance with the law, the court shall determine the true and just amount which the property attempted to be so assessed should pay to make the same uniform with other taxes and assessments for the same purpose, and judgment must be rendered and given against the property liable for such taxes or assessments without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which the taxes or assessments shall have been levied, of equal force and effect as the lien of the tax or assessment, and the lien of such judgment shall be enforced by the court in such action.

SECTION 7. AMENDMENT. Section 32-31-02 of the North Dakota Century Code is amended and reenacted as follows:

32-31-02. Procedure in equity governs. The ordinary procedure in an equity case shall apply to an action brought under the provisions of this chapter. The court shall include in its decree such provision as will permit such period of redemption from execution sale as may be necessary to give to those entitled to redeem at least as long a period of redemption as they would have had if the foreclosure of tax sale lien in question had been valid in all respects and tax deed thereunder had been applied for at the earliest date permitted under statutes with reference to procuring tax deeds under ~~tax sales~~ lien foreclosures. The remedy provided by this chapter shall be cumulative and in addition to all other remedies and shall not be held to impair or detract from any other remedy provided by any other statute or statutes.

SECTION 8. AMENDMENT. Section 32-31-03 of the North Dakota Century Code is amended and reenacted as follows:

32-31-03. Action brought by whom. An action to foreclose a tax lien ~~may be brought by the purchaser at tax sale or the purchaser's successor in interest and such tax sale shall be held to have assigned, transferred, and conveyed to the purchaser and the purchaser's successors in interest the lien of the taxes included therein and all subsequent taxes paid by the purchaser or the purchaser's successors in interest.~~ In case such land, at such tax sale, was struck off to the county, such action shall be brought in the name of the county in which such real estate is situated as plaintiff,

and may be instituted by the attorney general or by the state's attorney of such county.

³²¹ **SECTION 9. AMENDMENT.** Subsection 60 of section 40-05-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60. Special improvement assessments - ~~Redemptions~~ Satisfaction. To make assessments as limited by the laws of this state for local improvements on property adjoining or benefited thereby; to collect the same in the manner provided by law; and to redeem satisfy the tax lien on lands subject to special assessments after the sale thereof for delinquent general taxes; and to accept assignments of general tax sale certificates describing lands subject to special improvement assessments.

SECTION 10. AMENDMENT. Section 40-25-03 of the North Dakota Century Code is amended and reenacted as follows:

40-25-03. Sale Foreclosure of property where if only special assessment is delinquent. ~~In case~~ If there is no delinquent general tax against any parcel of real estate and it is sold foreclosed for special assessments alone, the certificate notice of foreclosure of tax sale shall ~~lien must~~ must contain a statement to the effect that the ~~sale was foreclosure is~~ sale foreclosure is for special assessments. If the ~~sale foreclosure~~ sale foreclosure is made only for special assessments assessed by a municipality or by a taxing district other than the county, the county auditor shall ~~declare the property sold~~ issue a tax deed to the municipality or taxing district which assessed such special assessments ~~if there are no private bidders. The tax certificate and tax deed in such case shall be issued to the municipality or taxing district in the usual course of procedure.~~

³²² **SECTION 11. AMENDMENT.** Subsection 3 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All property belonging to any political subdivision; ~~except that land purchased by counties at tax sales shall be taxed until the period of redemption from such tax sale has been terminated.~~

SECTION 12. AMENDMENT. Section 57-20-13 of the North Dakota Century Code is amended and reenacted as follows:

57-20-13. Negotiable paper may be accepted for taxes and fees. The county treasurer, and other officials charged with the duty of collecting public moneys, in their discretion, may accept bank checks, bank drafts, and express and post-office money orders in payment of any tax, assessment, fee, or license. Upon payment of taxes, the treasurer shall note on the tax receipt the method or manner, whether in cash, or by check, draft, or money order, and a like notation must be made on the tax list, and in case of ~~redemption~~ satisfaction of tax lien, the notation as to method

³²¹ Section 40-05-01 was also amended by section 16 of House Bill No. 1201, chapter 211.

³²² Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1363, chapter 490, and section 1 of House Bill No. 1351, chapter 491.

or manner of payment must be made on the auditor's satisfaction of tax sale lien record.

SECTION 13. A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

Treasurer to give notice of tax lien by mail. Between the first and fifteenth of November of each year, the county treasurer shall mail to each owner of any lot or tract of land for which taxes are delinquent a notice giving the legal description of that lot or tract and stating that the taxes are delinquent and constitute a lien against the property. The notice must advise the owner that unless the delinquent taxes and special assessments with penalty, interest, and costs are paid by October first of the fourth year following the year in which the taxes became delinquent, the county auditor will foreclose on the tax lien and issue a tax deed to the county.

SECTION 14. A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

Mistake in name of owner does not invalidate tax lien. A tax lien may not be considered invalid for the reason that the real estate has been charged in any name other than that of the rightful owner.

SECTION 15. AMENDMENT. Section 57-22-22 of the North Dakota Century Code is amended and reenacted as follows:

57-22-22. Extended personal property taxes to be collected with real estate taxes. Collection of personal property taxes entered and extended as a lien on real estate may be enforced by ~~the sale of lands against which they are entered at any annual tax sale of such real property for taxes in the same manner as if originally charged against such lands as real estate taxes~~ foreclosure of tax lien. The lands to be ~~sold~~ foreclosed for personal property taxes entered and extended thereon must be designated by resolution of the board of county commissioners.

SECTION 16. AMENDMENT. Section 57-23-07 of the North Dakota Century Code is amended and reenacted as follows:

57-23-07. County commissioners may compromise tax. ~~Whenever taxes~~ If tax on any real estate ~~remain~~ remains unpaid ~~and the property has not been sold to any purchaser other than the county after the second Tuesday in December in the year it is due,~~ the board of county commissioners, subject to the approval of the state tax commissioner, by reason of depreciation in the value of the property or for other valid cause, may compromise with the owner of the property by abating a portion of the delinquent taxes, ~~together~~ with any penalty and interest on that portion, on payment of the remainder. The county commissioners may not compromise the tax after the county auditor has issued a tax deed to the county.

SECTION 17. AMENDMENT. Section 57-25-01 of the North Dakota Century Code is amended and reenacted as follows:

57-25-01. Application for division of property for ~~redemption~~ satisfaction of tax lien. In case a mortgage, lien, or sheriff's certificate, or any other instrument conveying an interest in property, affects only a part of the real estate taxed as a unit, any person interested therein may petition the county auditor that ~~he~~ the person be permitted to pay taxes and ~~make redemption from~~ satisfy any outstanding tax sale lien as to that part only of the real estate in which ~~he~~ the party is interested. Such petition must set forth the petitioner's interest in the property. It must be

verified and may be in the form of an affidavit. Immediately upon the receipt of such petition, the county auditor shall consider the same and shall make a fair and equitable valuation of the whole tract. ~~He~~ The county auditor shall apportion to the petitioner a part of the taxes, interest, and penalty to be paid by ~~him~~ the petitioner in order to effect ~~redemption~~ satisfaction, which must bear to the taxes, special assessments, interest, ~~and~~ penalty, and costs accrued on the whole tract the ratio which the value of the part or parcel of land in which ~~he~~ the petitioner claims an interest bears to the value of the entire assessed tract of land. Thereupon the county auditor, by ~~registered or~~ certified mail, shall notify all persons interested in such real property according to the record, either as owner or as the holder of a mortgage or other lien or sheriff's certificate, of the filing of such petition and of ~~his~~ the auditor's assessment of such tract or parcel of land and of ~~his~~ the auditor's apportionment of the taxes thereon, and the date when the same will be considered and heard by ~~him~~ the auditor. Such hearing may not be less than ten days after the mailing of such notice. Upon the date set, the county auditor shall hear the parties interested and shall assess such tract and apportion the taxes thereon as ~~he~~ the auditor deems fair and equitable.

SECTION 18. AMENDMENT. Section 57-25-02 of the North Dakota Century Code is amended and reenacted as follows:

57-25-02. Appeal to board of county commissioners. ~~In case~~ If any interested person is dissatisfied with the determination of the county auditor as provided in section 57-25-01, ~~he~~ the person, within five days after such hearing and determination, shall file with the auditor a written request that the matter be considered by the board of county commissioners. The county auditor thereupon shall give notice, by ~~registered or~~ certified mail, to all persons having an interest of record in such land, of the date when the matter will be heard by the board. Such date may not be less than ten days after the mailing of such notice. The hearing must be held at the next regular meeting of the board of county commissioners after said ten-day period has expired. Upon the date fixed, the board of county commissioners shall hear the parties interested and shall make a division of the assessed valuation of the tract of land in question, and shall apportion the taxes thereon as said board deems fair and equitable.

SECTION 19. AMENDMENT. Section 57-25-04 of the North Dakota Century Code is amended and reenacted as follows:

57-25-04. Tax deed proceedings to be stayed. When any person files with the county auditor a petition, as provided in this chapter, that ~~he~~ the person be permitted to pay taxes, or to ~~make redemption from~~ satisfy any outstanding tax sale lien as to a part only of the real estate sold, the issuance of a tax deed thereon and all proceedings preliminary thereto must be stayed until the matter is finally determined and settled.

³²³ **SECTION 20. AMENDMENT.** Section 57-25-05 of the North Dakota Century Code is amended and reenacted as follows:

57-25-05. Procedure on payment of tax or ~~redemption~~ satisfaction of tax lien of portion of tract. Upon payment by the petitioner of the amount as finally

³²³ Section 57-25-05 was also amended by section 28 of House Bill No. 1044, chapter 51.

apportioned, a tax receipt or certificate of redemption satisfaction of tax lien, or both, as the case may be, must be issued to such petitioner by the county auditor. If there are outstanding tax certificates, the proper amount of the proceeds of such redemption must be paid to the holders of such certificates. The original certificate or certificates must be deposited with, and canceled by, the county auditor, and he shall issue in lieu thereof a tax sale certificate, which must be entitled "substitute tax sale certificate", and which must be in substantially the following form:

~~—SUBSTITUTE TAX SALE CERTIFICATE~~

I, _____, auditor of the county of _____ in the state of North Dakota, do hereby certify that the following described real estate situated in said county and state to wit: _____, together with other real estate, on the _____ day of _____, 19____, was sold by me in the manner provided by law for the delinquent taxes thereon for the year _____ to _____, he being the bidder who agreed to accept the lowest rate of interest thereon from the date of sale upon the amount of taxes, penalties, and interest paid by him, that the rate of interest which said purchaser agreed to accept was _____ percent per annum, that thereafter redemption was made from said tax sale of a portion of the real estate then sold to said purchaser, that redemption of the above described real estate was not made, and I further certify that unless redemption of such real estate is made in the manner provided by law the said _____ or his assigns will be entitled to a deed of the property above described on and after the _____ day of _____, 19____, on the surrender of this certificate, and I further certify that there remains due and unpaid upon this certificate the sum of \$_____ together with interest thereon at _____ percent per annum from _____ day of _____, 19____.

In witness whereof I have hereunto set my hand and the seal of the county auditor of said county this _____ day of _____, 19____.

County Auditor of _____ County

Such substitute certificate has the same force and effect as the original certificate as to property covered thereby. The county treasurer and county auditor shall make the proper entries in the tax records of their offices showing the payment of the taxes and the cancellation of the original certificate and the issuance of the substitute tax certificate.

SECTION 21. AMENDMENT. Section 57-28-01 of the North Dakota Century Code is amended and reenacted as follows:

57-28-01. Notice of expiration of period of redemption foreclosure of tax lien to be given. On or before June first in each year, the county auditor shall give notice of the expiration of the period of redemption foreclosure of tax lien for all property for which three four or more years have passed since the tax sale certificates were issued or deemed to have been issued to the county, which have not been redeemed or assigned became due.

SECTION 22. AMENDMENT. Section 57-28-02 of the North Dakota Century Code is amended and reenacted as follows:

57-28-02. When redemption period expires tax lien is foreclosed. The period of redemption for property bid in by the county expires on tax lien foreclosure date

is ~~October first~~ after the service of the notice of the ~~expiration of the period of redemption~~ foreclosure.

SECTION 23. AMENDMENT. Section 57-28-03 of the North Dakota Century Code is amended and reenacted as follows:

57-28-03. Contents of notice of ~~expiration of period of redemption~~ tax lien. Notice of the ~~expiration of the period of redemption~~ foreclosure of tax lien must include:

1. The description of the property.
2. ~~The amount for which the property was sold at tax sale.~~
3. ~~The amount of delinquent property taxes and special assessments, with penalties and interest, and foreclosure costs, for each year the tax year foreclosed.~~
4. ~~The amount of delinquent special assessments, with penalties and interest, for each year.~~
5. 3. The total amount required to ~~redeem the property from tax deed proceedings, not including costs yet to accrue~~ satisfy the property tax lien.
6. 4. The time when the ~~redemption period will expire~~ foreclosure will occur.

SECTION 24. AMENDMENT. Section 57-28-04 of the North Dakota Century Code is amended and reenacted as follows:

57-28-04. Service of notice of ~~the expiration of the period of redemption~~ foreclosure of lien. ~~The county auditor shall serve the notice of the expiration of the period of redemption for property sold to the county for taxes in the manner prescribed in subsections 2 through 6 of section 57-27-02.~~

1. If the current assessment records show that a residential building is located on the property, the county auditor shall deliver the notice of foreclosure of tax lien to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state. If the owner is a nonresident of this state, the county auditor shall serve the notice by certified mail addressed to the owner at the owner's last-known post-office address and determine whether personal service upon any person is required under subsection 3. If the current assessment records show that no residential building is located on the property, the auditor shall serve the notice by certified mail addressed to the owner at the owner's last-known post-office address.
2. By March first, the county auditor shall request from the register of deeds and the clerk of the district court a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property except a person whose only interest is in a mineral interest that was served from the surface estate before filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax lien relates, upon whom the notice of foreclosures must be served. The register of deeds and the clerk of the

district court shall provide the county auditor with the requested lists by April fifteenth following the request.

3. The notice must be served personally upon any person actually residing upon the property subject to tax lien and upon any tenant or other person entitled to the possession of the property as may appear from the records of the register of deeds.
4. The county auditor shall serve the notice of foreclosure of tax lien upon each mortgagee, lienholder, and other person with an interest in the property except a person whose only interest is in a mineral interest that was served from the surface estate before the filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the notice of foreclosure of tax lien relates, and upon whom personal service is not required by this section, as shown by the records of the register of deeds or the clerk of the district court of the county. The notice must be served by certified mail.
5. The expense of service of the notice, publication, and other foreclosure costs under this chapter in the amount of fifty dollars must be added to the amount required to satisfy the tax lien. The auditor or sheriff shall make proof of service by mail by affidavit showing the names and addresses of all parties upon whom the notice was served with the date of mailing in each case and shall attach the registry, certification, and return receipts and file the affidavit and receipts with the original notice of foreclosure of tax lien. Service by publication under this chapter must be shown of record by filing of an affidavit of publication.

³²⁴ **SECTION 25. AMENDMENT.** Section 57-28-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-05. Form of notice ~~for~~ of foreclosure of tax lien service by certified mail.

The notice of ~~the expiration of the period of redemption~~ foreclosure of tax lien which the county auditor is required to serve by certified mail must be substantially in the following form:

~~NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION~~ FORECLOSURE
OF TAX LIEN

To _____, the owner of the record title of the real estate hereinafter described, and to all mortgagees, lienholders, and other persons interested in said real estate:

I, _____, county auditor of _____ County, North Dakota, hereby give notice that the real estate hereinafter described; ~~at the annual tax sale held in the county on the _____ of December, 19____, was offered for sale~~ has a lien for delinquent taxes against it for the year _____ and ~~was sold to the county, that subsequent tax sale certificates have been issued to the county for the years hereinafter set forth, that more than three years have expired since the date of~~

³²⁴ Section 57-28-05 was also amended by section 33 of House Bill No. 1044, chapter 51.

each of said tax sale certificates, that no redemption has been made therefrom, and that the same still are the property of such county, and unless redemption is made from each of said tax sale certificates and special assessments, with interest, penalties, and cost of foreclosure action are paid on or before October first, after the date of this notice, tax deeds will be issued to the county, granting to and vesting in it, the absolute title in fee to said real property, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and foreclosing all rights of redemption, and all other rights of the owner, mortgagees, lienholders, and other persons interested therein, as may appear from the records of the register of deeds and the clerk of the district court of said county. There is given herewith the description of such parcels of real estate, and set opposite each description is the amount which will be required upon the date of the expiration of the period of redemption to redeem such real estate from such original and each subsequent tax sale certificate issued to the county, exclusive of the cost of service of this notice to satisfy the tax lien for the year _____.

Said property is described as follows, with the amount required to redeem satisfy the tax lien set out opposite each description, to wit:

Given pursuant to authority of law this _____ day of _____, 19__.

County auditor of _____ County, North Dakota.

SECTION 26. AMENDMENT. Section 57-28-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-06. Service of notice by publication. The county auditor shall serve notice of ~~the expiration of the period of redemption~~ foreclosure by publication as to all property ~~sold to the county for taxes~~ for which notice is served upon the owner by certified mail. The notice may include any number of parcels of property and only one heading is necessary for the entire list. The notice must contain the description and any street address of each parcel of property. However, the failure to include the street address in the notice does not affect the validity of the notice. ~~The notice must include a statement of the cost of publication of the notice.~~ The notice must be published once on or before August first in the official newspaper of the county.

³²⁵ **SECTION 27. AMENDMENT.** Section 57-28-07 of the North Dakota Century Code is amended and reenacted as follows:

57-28-07. Form of notice for publication. The notice of the expiration of the period of redemption to be served by publication must be substantially in the following form:

I, _____, county auditor, of _____ County, North Dakota, hereby do give notice that the real estate hereinafter described ~~was sold to the~~

³²⁵ Section 57-28-07 was also amended by section 34 of House Bill No. 1044, chapter 51.

county at the annual tax sale on December _____, 19___, for has a lien for delinquent taxes; that subsequent tax sale certificates have been issued to the county, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, that the same still are the property of this county against it for the year _____, and that unless redemption shall be made from such tax sale and special assessments, with interest, penalties, and cost of foreclosure action are paid, on or before October first after the date of this notice, the same will become the absolute property in fee of this county, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and the former owner thereof, mortgagees, lienholders, and other persons interested therein will be forever foreclosed and barred from asserting any further rights to such real estate whatsoever. The following is a list of the real estate sold at such tax sale on which the period of redemption will expire tax lien will be foreclosed on October first. Opposite each description of such real estate appears any street address of the property, the name of the owner of the record title thereof, and the amount which must be paid to redeem from such tax sale before the period of redemption expires satisfy the tax lien. Said sum includes the amount for which said land was sold, together with subsequent delinquent taxes for _____ and prior years, and interest, penalties, and cost of service. (List descriptions, names of owners, and amount necessary to redeem satisfy the tax lien.)

Given pursuant to authority of law this _____ day of _____, 19__.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 28. AMENDMENT. Section 57-28-08 of the North Dakota Century Code is amended and reenacted as follows:

57-28-08. Effect of failure to redeem satisfy tax lien. The failure of the owner, any mortgagee, or other lienholder to redeem property bid in by the county satisfy the tax lien before the period of redemption expires operates date of foreclosure shall:

1. ~~To pass~~ Pass any interest of the owner, mortgagee, or lienholder in the property to the county. The interest acquired by the county is subject only to the lien for installments of special assessments certified to the county auditor or which may become due after the service of the notice of expiration of the period of redemption foreclosure of tax lien.
2. ~~To foreclose~~ Foreclose all rights of redemption satisfaction.
3. ~~To waive~~ Waive all errors, irregularities, or omissions which do not affect the substantial rights of the parties, except jurisdictional defects.

SECTION 29. AMENDMENT. Section 57-28-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the expiration of the period of redemption date of foreclosure for property that was sold to the county for taxes, and which has not been assigned or redeemed with an unsatisfied tax lien, the county auditor shall issue a tax deed to the county, or in cases in which the state

engineer has made an assessment against the property under section 61-03-21.3, the county auditor shall issue a tax deed to the state. The tax deed passes the property in fee to the county or the state, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of ~~expiration of the period of redemption~~ foreclosure of tax lien and except for a homestead credit for special assessments lien provided for in section 57-02-08.3. While the county or the state holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners or the state has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

SECTION 30. AMENDMENT. Section 57-28-10 of the North Dakota Century Code is amended and reenacted as follows:

57-28-10. Appraisal for annual sale - Minimum sale price. All property acquired by the county by tax deed must be appraised by the board of county commissioners at least thirty days before the annual sale under this chapter. The appraised price must be sufficient to cover all taxes, special assessments, homestead credit for special assessments, penalties, interest, and costs which were due against the property at the time of the service of the notice of ~~expiration of the period of redemption~~ foreclosure of tax lien, plus an amount equal to the estimated taxes and special assessments for the current assessment year. If the fair market value of the property is more than the total amount due against the property, the minimum sale price of the property must be at least equal to the total amount due against the property. If the fair market value of the property is less than the total amount due against the property, the board shall fix a fair minimum sale price for the property.

SECTION 31. AMENDMENT. Section 57-28-14 of the North Dakota Century Code is amended and reenacted as follows:

57-28-14. Notice of annual sale - Contents. Notice of the annual sale must include a description, any street address, and minimum sale price for each parcel of property to be sold. Notice must be given in both of the following manners:

1. By posting a notice at the ~~front door of the courthouse~~ county auditor's office at least fifteen days before the date of sale.
2. By publishing a notice in the official newspaper of the county once, not less than ten days before the date of sale.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 32. AMENDMENT. Section 57-28-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-18. Terms of private sale ~~and redemption~~ and distribution of proceeds. Any private sale of real property made between the annual November sales must be made upon the same terms and conditions as a sale may be made at the November sale. The sale ~~of redemption~~ of farmland acquired by the county by tax deed is subject to any existing lease of the property for the year of the sale ~~of redemption~~. If the farmland is to be sold by private sale to any person other than the former owner or other interested person, a deed or contract for deed may not be delivered to the purchaser until thirty days after service by certified mail upon the former owner or other interested party of the pending sale, the date when the sale will

become final, and the amount required to ~~redeem~~ repurchase the property. For the purposes of this section, "other interested party" means the executor, administrator, parent, spouse, or child of the former owner who has notified the county auditor in writing of that status, the address at which service may be made, and that the person should be notified of the expiration of the period of ~~redemption~~ repurchase in connection with any private sale of the property.

In case of the sale, contract for sale, or ~~redemption~~ repurchase by the former owner of tax deed property during January, the property must be assessed and taxed for that year, and the purchaser or ~~redemption~~ repurchaser is entitled to the rental and landlord's share of crops on the property for the year. In case of the sale, contract for sale, or ~~redemption~~ repurchase by the former owner of tax deed land after January, the property must not be assessed and taxed for that year, and the county is entitled to the rental and landlord's share of the crops on the property for the year. The proceeds realized from a sale between annual November sales must be apportioned in the same manner as the proceeds of the annual November sale.

SECTION 33. AMENDMENT. Section 57-28-19 of the North Dakota Century Code is amended and reenacted as follows:

57-28-19. Rights of repurchase. The former owner; the former owner's executor or administrator; or any parent, spouse, or child of the former owner may repurchase any property forfeited to the county under tax deed proceedings, so long as the tax title to the property remains in the county. If any city has made a special assessment for public improvements against the property and the special assessment has become delinquent and remains unpaid, the city has a right to purchase the property for cash, at the appraised value, prior to that of any party. Upon appraisal of the property, the county auditor shall give notice to the auditor of any such city and the city has thirty days within which to exercise its priority right to purchase the property under this section. A repurchase by a private party under this section may be for cash or contract for deed made by and between the board of county commissioners and the former owner; the executor or administrator of the former owner; or any parent, spouse, or child of the former owner. The consideration of the repurchase contract with a private party must include:

1. The total amount required to be paid to effect a ~~redemption~~ satisfaction of tax lien.
2. The total amount of all subsequent taxes and special assessments with interest, penalties, and costs.

If the fair market value of the property at the time of the repurchase is less than the amount to be paid under subsections 1 and 2, the board shall fix a fair sale price for the property. If a repurchase under this section is by contract for deed, the party making the repurchase must pay at least twenty-five percent of the total contract price in cash and the remainder must be payable in no more than ten annual equal installments. The board of county commissioners shall establish the rate of interest for a contract for deed under this section, not exceeding the prime rate of interest established by the Bank of North Dakota for the month immediately preceding the month in which the contract was entered. A contract for deed under this section must provide that if the repurchaser or the successor in interest fails to pay one or more of the installments when due, with interest, the board of county commissioners may cancel the contract and all payments and improvements made by the repurchaser or the successor in interest will be forfeited to the county as liquidated damages for breach of contract unless otherwise expressly provided. Upon the completion of a cash sale or payments under a contract for deed under this section,

the county auditor shall execute and deliver a deed conveying to the repurchaser the entire interest of the county in the property. Upon the execution and delivery of a deed or contract for deed under this section, the property becomes taxable to the repurchaser. In case of repurchase or contract for repurchase of tax deed property during January, the property must be assessed and taxed for that year, and the repurchaser is entitled to the rental and landlord's share of crops on the property for the year. In case of the repurchase or contract for repurchase of tax deed land after January, the property must not be assessed and taxed for the current year, and the county is entitled to the rental and landlord's share of crops on the property for the year. The repurchase or contract for repurchase of tax deed farmland is subject to any existing farm lease of the property for the year in which the repurchase or contract for repurchase is made.

SECTION 34. AMENDMENT. Section 57-28-19.1 of the North Dakota Century Code is amended and reenacted as follows:

57-28-19.1. Real estate sold to city or acquired by the county by tax deed to be marketable. A city that has purchased property or a county that has acquired a tax deed to property under this chapter is deemed to have marketable record title to the property if all of the following apply:

1. The county deed conveying the property has been recorded.
2. The city or county has entered into possession of the property and continued its possession for three months or longer.
3. No lis pendens giving notice of the pendency of an action challenging the validity of tax proceedings or of the deed has been recorded within three months of the date on which the city or county entered into possession of the property.

A city or county that is deemed to have marketable record title may convey title free of any claims based on a defect in the process through which the city or county obtained title to the property. If title of the city or county is deemed marketable under this section, a claimant who would be entitled to some claim on the property because of a defect in the process by which the city or county obtained title has instead the right to recover from the city or county the net value of that claim, subject to the statutory restrictions on claims against a city or county. For the purpose of this section, the fact of possession by the city or county may be shown of record by one or more affidavits that contain the legal description of the property and show that the city or county entered into possession of the property and continued possession for three months or longer. The posting on the property of a sign or notice, legible from the street adjacent to the property, stating that the property is owned or for sale by the city or county is an act of possession by the city or county, but is not required.

SECTION 35. AMENDMENT. Section 57-28-22 of the North Dakota Century Code is amended and reenacted as follows:

57-28-22. Sale of city lots property owned by county more than ten years. The board of county commissioners may sell property acquired by the county at tax sale or by foreclosure of tax lien more than ten years ago without further notice ~~of the expiration of the time of redemption from the tax sale~~ if all of the following apply:

1. ~~The property is within an addition to the city which has been platted into lots for more than thirty years.~~
2. ~~No streets, sidewalks, or other improvements have been made in the addition.~~
3. ~~More than ten years have elapsed since the tax sale at which the county acquired the property.~~
4. ~~The property has remained under ownership of the county.~~
5. ~~No taxes have been paid on the property since the county acquired ownership.~~

SECTION 36. AMENDMENT. Section 57-28-23 of the North Dakota Century Code is amended and reenacted as follows:

57-28-23. County lands may be leased. The board of county commissioners may lease any property acquired by the county by tax deed. A mineral lease in farmland acquired by the county by tax deed may not be entered until thirty days after giving the former owner or other interested party notice of the right to ~~redeem~~ repurchase the property from tax ~~sale~~ lien foreclosure in the manner provided in section 57-28-18.

SECTION 37. AMENDMENT. Section 57-29-01 of the North Dakota Century Code is amended and reenacted as follows:

57-29-01. Suspension of tax liens on state acquired lands. In any transaction where the state of North Dakota or any of its agencies, departments, or instrumentalities, prior to the taking effect of this code, has acquired, or thereafter acquires, title to any tract of land and there are listed and legally charged against the tract unpaid general property or other taxes, ~~or tax sale certificates,~~ or tax deeds, the holders of the liens of the taxes ~~or certificates~~ or tax titles are without power to enforce or to effectuate the same. All remedies for the enforcement or enjoyment of the liens or titles are suspended wholly and all proceedings to enforce or effectuate the liens or titles subsequent to the acquisition of the tract of land by the state of North Dakota or any of its agencies, departments, or instrumentalities and during the time the tract is owned by the state of North Dakota or any of its agencies, departments, or instrumentalities, are null and void, except that any tax title acquired previous to the acquisition of title by the state of North Dakota or any of its agencies, departments, or instrumentalities may be made effectual and may be enjoyed until the time the state of North Dakota or any of its agencies, departments, or instrumentalities acquires title based upon a mortgage or other conveyance previous in time to the due date of the taxes upon which the tax title is based, whereupon all rights, interests, powers, privileges, and immunities theretofore owned and enjoyed under the tax title are suspended forthwith, and the state of North Dakota or any of its agencies, departments, or instrumentalities may enter into possession of the tracts of land and shall have the entire control, use, and enjoyment thereof.

SECTION 38. AMENDMENT. Section 57-45-05 of the North Dakota Century Code is amended and reenacted as follows:

57-45-05. Officer's refusal to perform duty - Penalty. Every officer or employee of any political subdivision of this state who in any case knowingly refuses to perform any duty enjoined upon ~~him~~ the officer or employee by any provision in

this title, or who consents to or connives at any evasion of the provisions of this title whereby any proceeding is prevented or hindered, is guilty of malfeasance in office, and is subject to removal from office. Any person aggrieved by the failure of any officer or employee to perform ~~his~~ the officer's or employee's duties as provided in this title may file a complaint under section 12.1-11-06. In addition, the state's attorney or any aggrieved party may proceed to obtain a writ of mandamus to compel performance by such officer or employee. Any failure of an officer or employee to do any act at the particular time specified in this title in no manner invalidates any tax levy, or any ~~certificate of tax sale~~ foreclosure of tax lien, or tax deed.

SECTION 39. AMENDMENT. Section 57-45-11 of the North Dakota Century Code is amended and reenacted as follows:

57-45-11. Limitation of action against tax deed. Any person having or claiming title to or a lien or encumbrance upon any land, whether in ~~his~~ that person's possession or the possession of another, or vacant or unoccupied, may commence and maintain an action against any person, county, or state claiming any title to or interest in such lands, or a lien upon the same, adversely to ~~him~~ the person by or through any ~~tax sale, tax certificate, or~~ tax deed, to test the validity of the tax sale, tax certificate, or tax deed, or to quiet the title to said land as against the claims of such adverse claimant, or to remove the cloud from the title arising from such ~~tax sale, tax certificate, or~~ tax deed. No action nor defense based upon the invalidity of any such ~~tax sale, tax certificate, or~~ tax deed may be commenced or interposed after three years from the issuance of a tax deed unless such ~~tax sale, tax certificate, or~~ tax deed is void by reason of jurisdictional defects. The ~~purchaser at any tax sale or the holder of any tax certificate or tax deed may maintain an action to establish the validity thereof or to quiet title to said lands, and if he is the holder of a tax deed he may demand the possession of such lands.~~

SECTION 40. AMENDMENT. Section 57-45-12 of the North Dakota Century Code is amended and reenacted as follows:

57-45-12. Procedure when taxes or tax sales lien foreclosures are declared invalid. When any ~~sale foreclosure~~ of land for taxes is adjudged to be void, the judgment must state the reason why it is void. In all such cases, and in cases where by the mistake or wrongful act of the county treasurer or auditor, land has been ~~sold~~ foreclosed upon which no taxes were due, and in cases where taxes have been or may be paid on lands not subject to taxation, or on lands where subsequent to payment the entry has been or may be canceled, the money so paid and all subsequent taxes, penalties, and costs which have been or which may be paid must be refunded, with interest at seven percent per annum from the date of payment to the person making such payment, ~~his~~ the person's heirs or assigns, and the same must be refunded out of the county treasury to which such money was paid, on an order from the county auditor. A pro rata share of the money so refunded must be charged to the state and to any city, township, school district, or other taxing district which may have received any part of such void tax. Whenever any ~~sale of land or certificate or~~ tax deed made and delivered under this title is adjudged to be void, unless the judgment declares the tax to be illegal, the tax and all subsequent taxes ~~returned to the purchaser or assignee~~ shall remain and be a lien upon the land ~~sold~~, and the county auditor shall ~~advertise and resell the same at the next succeeding annual sale~~ serve notice of foreclosure of tax lien on the following October first pursuant to chapter 57-28 for the full amount of taxes, penalties, and costs due thereon.

SECTION 41. AMENDMENT. Section 61-01-21 of the North Dakota Century Code is amended and reenacted as follows:

61-01-21. Sale Foreclosure of property where when only special assessment is delinquent. ~~In case~~ If there are no delinquent general taxes against any parcel of real estate and it is ~~sold~~ foreclosed for special assessments ~~levied pursuant to the provisions of~~ under this title, the ~~certificate~~ notice of foreclosure of tax sale lien shall contain a statement to the effect that the ~~sale was~~ foreclosure is for special assessments. If the ~~sale foreclosure~~ is made only for special assessments levied by a municipality or by a taxing district other than the county, the county auditor shall ~~declare the property sold~~ issue a tax deed to the municipality or taxing district which levied such special assessments ~~if there are no private bidders.~~ The tax certificate and tax deed in such case shall be issued to the municipality or taxing district in the usual course of procedure.

SECTION 42. AMENDMENT. Section 61-07-05 of the North Dakota Century Code is amended and reenacted as follows:

61-07-05. Purchase of land at tax sale - Assignment of tax sale certificates after foreclosure of tax lien. When the board shall deem it necessary to protect the interests of the district, or of the electors thereof, or to protect the interests of bondholders or other creditors of the district, it, if funds are available for that purpose, may purchase ~~at tax sale,~~ land within the district ~~sold,~~ after foreclosure by the county for unpaid and delinquent taxes; ~~or it may purchase an assignment of any tax sale certificate from the county and may acquire, own, and sell any lands thus acquired.~~

SECTION 43. AMENDMENT. Section 61-09-15 of the North Dakota Century Code is amended and reenacted as follows:

61-09-15. Assessment made to be general tax - When due and delinquent - Tax sale lien to be preferred lien. All assessments made pursuant to the provisions of this chapter on real property, and assessments on leasehold estates owned by this state or any of its subdivisions, and, to the extent provided by the act of Congress of August 11, 1916, assessments on entered or unentered public lands, shall be a general tax against the real property on which assessed in like manner and to the same effect as general state and county taxes and shall be of the same order. The lien thereof shall share ratably with general tax liens in all tax proceedings and tax ~~sales~~ lien foreclosures, and shall be subject to all provisions of law relating to general taxes. Such assessment shall become due and payable and delinquent at the same time as other general state and county taxes; ~~and at the annual tax sale the said assessment shall be included in the total amount of taxes for which the property affected is being offered for sale, and such property, in the absence of other bidders, shall be sold to the county.~~ A tax sale certificate therefor may issue to the county lien foreclosure and shall remain subject to all statutory provisions applying to tax sale certificates issued to a county lien foreclosure. In case leasehold estates only are affected by said assessments the ~~tax sale certificate issued therefor~~ lien foreclosure notice shall state that fact. The lien for the bonds of any series shall be preferred to that of any subsequent series, and the lien for the payments due to the United States under any contract between the district and the United States, accompanying which bonds have not been deposited with the United States, shall be a lien preferred over that of any issue of bonds or any series of any issue subsequent to the date of such contract. All funds arising from assessment and levy, if any, shall be devoted to the obligations of the district payable from said funds and as to all obligations from the bond and United States contract a fund shall be so devoted in the order of priority of the creation of the obligation. No error or omission which may be made in the

proceedings of the board, or of any officer of an irrigation district in referring, reporting upon, ordering or otherwise acting concerning the establishment, construction, or acquisition of irrigation works, or concerning the issuance of bonds or improvement warrants, or in making or certifying any assessment shall vitiate or in any way affect any such assessment; but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced. Whenever the validity of any assessment, or the validity of any ~~tax sale certificate or deed~~ given pursuant to a sale foreclosure of tax lien for such assessment shall be drawn in question in any action in any district court in this state, and such assessment shall be held to be invalid by reason of noncompliance with the laws of this state, the court shall determine the true and just amount which the property attempted to be so assessed by said assessment should pay, to make the same uniform with other assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the property liable for such assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which the assessment shall have been levied, of equal force and effect as the lien of irrigation district assessments, and the lien of such judgment shall be enforced by the court in such action.

SECTION 44. AMENDMENT. Section 61-16.1-31 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-31. Sale Foreclosure of tax lien on property when general and special assessment taxes are delinquent. Special assessments imposed under this chapter shall become due and delinquent and shall be subject to penalties and nonpayment at the same date and rates as first installments of real estate taxes: ~~Real property shall be sold to enforce the collection of special assessments or installments of special assessments which have become delinquent at the same time and in the same manner as provided in title 57. The sale shall be made by the same officer making the sale as in the case of the sale of real property for general taxes. Delinquent general taxes and delinquent special assessments, or installments thereof, shall be advertised and sold together in one sum and one certificate shall be issued therefor.~~

~~If real estate is sold for both delinquent general taxes and delinquent special assessments or installments of special assessments and there shall be no bidders, the county auditor shall strike off the parcel of land to the county and one certificate of sale shall cover both general taxes and special assessments which are delinquent.~~

~~If there is no delinquent general property tax against a tract or parcel of land and it is sold foreclosed for special assessments alone, the certificate of tax sale notice of foreclosure of tax lien shall state that the sale was foreclosure is for special assessments and; if there is no private bidder the tax sale certificate and a tax deed in such case shall be issued in the usual course of procedure.~~

SECTION 45. AMENDMENT. Section 61-21-52 of the North Dakota Century Code is amended and reenacted as follows:

61-21-52. Lien for and enforcement of drain assessments. Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city shall be served on the auditor thereof promptly following completion. The assessment list shall then be filed in the office of

the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected, the specific amounts of the drain assessments according to the drain assessment list prepared by the board. From and after the filing of a drain assessment list with the county auditor the specific amounts levied and assessed against each benefited tract shall constitute a special tax thereon and shall be a lien upon such tract until fully paid. Such lien shall have precedence over all other liens except general tax liens, and shall be of equal rank and order with the lien of general taxes and shall not be divested by any judicial sale, tax sale, or foreclosure. This chapter shall be notice to all subsequent encumbrancers of the superior rank of drain liens imposed under the provisions hereof. Special drain taxes shall be collected and enforced as other taxes are collected and enforced: ~~The affected real property shall be sold to enforce the collection of drain assessments which have become delinquent at the same time and in the same manner as is provided in title 57 for the sale of real property for delinquent general taxes. The sale shall be made by the same officer, upon like notice, subject to redemption and on like record as a sale of real property for delinquent general taxes. If property to be sold is subject to sale for general taxes and also for drain assessments, such property shall be advertised and sold for the total due for both general taxes and drain assessments and one certificate shall issue. If there are no bids for real estate so offered for sale, the county auditor shall sell the same to the county and shall issue one certificate of sale therefor. If the property to be sold is not subject to sale for general taxes it may be sold for drain assessments alone and a certificate of sale for such assessments shall issue to the proper board, unless sale is made to a private bidder. The board may purchase from the county any unassigned tax certificates against property sold to the county for general taxes and for drain assessments made by the board or its predecessor. Assignments of such certificates shall be on the terms provided for assignments to individuals except that the amounts of drain assessments shall not be collected. If no redemption satisfaction of tax lien is made, the affected property shall pass absolutely to the board on expiration and termination of the time for redemption foreclosure of tax lien provided the board pays the amount for satisfaction of lien, except the amounts of drain assessments, and may thereafter be sold by the board at public sale. The governing body of each city against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law. When the cost of any drain, or of an extension or enlargement or renovation thereof, shall be in such amount that the board finds that assessment of such total cost against the affected property for collection in full in a single payment would be unduly burdensome to such property, the board may determine to divide such cost into equal annual amounts to be assessed and collected over a period of not more than fifteen years. Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges, and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain.~~

SECTION 46. AMENDMENT. Section 61-35-87 of the North Dakota Century Code is amended and reenacted as follows:

61-35-87. Sale Foreclosure of tax lien on property when general and special assessment taxes are delinquent. Special assessments imposed under this chapter become due and delinquent and are subject to penalties for nonpayment at the same date and rates as first installments of real estate taxes: ~~Real property must be sold to enforce the collection of special assessments or installments of special assessments which have become delinquent at the same time and in the same manner as provided in title 57. The sale must be made by the same officer making the sale as~~

in the case of the sale of real property for general taxes. Delinquent general taxes and delinquent special assessments, or installments thereof, must be advertised and sold together in one sum and one certificate of sale must be issued therefor.

If real estate is sold for both delinquent general taxes and delinquent special assessments or installments of special assessments and there are no bidders, the county auditor shall strike off the parcel of land to the county and one certificate of sale covers both general taxes and special assessments that are delinquent.

If there is no delinquent general property tax against a tract or parcel of land and it is ~~sold~~ foreclosed for special assessments alone, the ~~certificate of tax sale~~ notice of foreclosure of tax lien must state that the ~~sale was~~ foreclosure is for special assessments and, ~~if there is no private bidder the tax sale certificate and a tax deed~~ in such case must be issued in the usual course of procedure.

³²⁶ **SECTION 47. REPEAL.** Sections 40-25-04, 40-25-05, 40-25-08, 40-25-09, 40-25-10, 57-20-24, 57-20-25, chapters 57-24, 57-26, 57-27, and section 57-28-21 of the North Dakota Century Code are repealed.

SECTION 48. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998. Property tax proceedings relating to property taxes due or delinquent for any taxable year prior to 1999 are subject to provisions of law that were in effect December 31, 1998.

Approved March 16, 1999
Filed March 16, 1999

³²⁶ Section 57-28-21 was amended by section 1 of House Bill No. 1117, chapter 505.

CHAPTER 504**HOUSE BILL NO. 1342**
(Representatives Delzer, Belter)
(Senators Freborg, B. Stenehjem)**NATURAL DISASTER TAX ABATEMENT**

AN ACT to amend and reenact subdivision g of subsection 1 of section 57-23-04 of the North Dakota Century Code, relating to the abatement of ad valorem taxes when property is destroyed or damaged by a natural disaster; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 1 of section 57-23-04 of the North Dakota Century Code is amended and reenacted as follows:

- g. When any building, mobile home, structure, or other improvement has been destroyed or ~~injured~~ damaged by fire, flood, ~~or~~ tornado, or other natural disaster the abatement or refund must be granted only for that part of the year remaining after the property was damaged or destroyed.

SECTION 2. EFFECTIVE DATE. This Act is effective for all taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 505

HOUSE BILL NO. 1117

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

OMB TAX CANCELLATION NOTICE ELIMINATED

AN ACT to amend and reenact section 57-28-21 of the North Dakota Century Code, relating to notice to the office of management and budget of cancellation of real property taxes and special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁷ **SECTION 1. AMENDMENT.** Section 57-28-21 of the North Dakota Century Code is amended and reenacted as follows:

57-28-21. Cancellations from record. After any real estate has been sold and a deed has been delivered to the purchaser, the board of county commissioners shall direct by resolution the cancellation from the record of all general taxes and special assessments remaining of record against the property at the date of sale, except installments of special assessments that had not become due at the date of the sale. The county auditor shall immediately ~~send a copy of the resolution to the state office of management and budget and~~ notify the county treasurer of the cancellation.

Approved March 9, 1999

Filed March 9, 1999

³²⁷ Section 57-28-21 was repealed by section 47 of Senate Bill No. 2334, chapter 503.

CHAPTER 506

SENATE BILL NO. 2101 (Finance and Taxation Committee) (At the request of the Tax Commissioner)

TELECOMMUNICATIONS TAX DEPOSIT AND DISTRIBUTION

AN ACT to amend and reenact subsection 2 of section 57-34-03 and section 57-34-05 of the North Dakota Century Code, relating to deposit and distribution of the telecommunications carriers tax; to provide a continuing appropriation; to provide a transfer; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁸ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A telecommunications carrier's customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated from the telecommunications carriers tax fund as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 2. AMENDMENT. Section 57-34-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation. Net gross receipts tax revenues of up to eight million four hundred thousand dollars per taxable year under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. Net gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars in a taxable year must be deposited in the state general fund. For purposes of this section, "net gross receipts tax revenues" means gross receipts tax revenues minus any refunds paid under section 57-34-03. The tax commissioner shall allocate ~~net gross receipts tax revenues~~ moneys in the telecommunications carriers tax fund among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed

³²⁸ Section 57-34-03 was also amended by section 43 of Senate Bill No. 2015, chapter 37.

property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. Gross receipts tax revenues of The balance of the telecommunications carriers tax fund, not exceeding eight million four hundred thousand dollars per taxable year are, is appropriated as a standing and continuing appropriation to the tax commissioner for allocation to counties under this section and any gross receipts tax revenues exceeding that appropriation in any taxable year must be deposited in the state general fund. If gross receipts tax revenues available for allocation in a taxable year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation from the telecommunications carriers tax fund for the taxable year, results in allocation of eight million four hundred thousand dollars to counties per taxable year. On or before the first day of March of each year, the tax commissioner shall certify for payment to the state treasurer an amount determined to be due each county. The state treasurer shall remit the certified amount to the county treasurers according to the allocation made by the tax commissioner under this section not later than the tenth working day in March of each year.

SECTION 3. TRANSFER. Within five days after the effective date of this Act, the state treasurer shall transfer net gross receipts tax revenues collected under chapter 57-34 for taxable year 1998 from the state general fund to the telecommunications carriers tax fund, but the transfer under this section may not exceed the limitation on deposits in the telecommunications carriers tax fund under section 57-34-05.

SECTION 4. EFFECTIVE DATE. This Act is retroactively effective for taxable years beginning after December 31, 1997.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 507

HOUSE BILL NO. 1082

(Political Subdivisions Committee)
(At the request of the Attorney General)

CIGARETTE IMPORTATION AND PACKAGING

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to imported cigarettes; to amend and reenact section 57-36-07 of the North Dakota Century Code, relating to the size of packages for cigarette and roll-your-own tobacco sales or distribution; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁹ **SECTION 1. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is amended and reenacted as follows:

57-36-07. Packaging - Presumption from possession. Cigarettes must be packaged as follows:

1. All cigarettes sold or distributed in this state must be in packages containing ~~five~~ twenty or more cigarettes each.
2. If the cigarettes are to be sold to an enrolled tribal member pursuant to section 57-36-11.1, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.
3. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers.
4. All packages of roll-your-own tobacco sold or distributed in this state must be in packages containing at least 0.60 ounces of tobacco.

SECTION 2. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Sale of imported cigarettes - When prohibited. A dealer, distributor, or other person may not sell or distribute in this state any tobacco product previously exported from the United States.

³²⁹ Section 57-36-07 was also amended by section 1 of Senate Bill No. 2103, chapter 508.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 1999
Filed March 31, 1999

CHAPTER 508

SENATE BILL NO. 2103

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

TOBACCO TAX AND SALES

AN ACT to create and enact a new subsection to section 57-36-09 of the North Dakota Century Code, relating to the imposition of penalty and interest under the tobacco products tax law; and to amend and reenact sections 57-36-07, 57-36-11.1, and subsections 1 and 2 of section 57-36-25 of the North Dakota Century Code, relating to the tobacco product stamp requirements on sales to enrolled tribal members, the time for filing tobacco products tax returns by licensed tobacco products manufacturers, and the imposition of penalty and interest under the tobacco products tax law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁰ **SECTION 1. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is amended and reenacted as follows:

57-36-07. Packaging - Presumption from possession. Cigarettes must be packaged as follows:

1. All cigarettes sold in this state must be in packages containing five or more cigarettes each.
2. ~~If the cigarettes are to be sold to an enrolled tribal member pursuant to section 57-36-11.1, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.~~
3. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers.

SECTION 2. A new subsection to section 57-36-09 of the North Dakota Century Code is created and enacted as follows:

Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must

³³⁰ Section 57-36-07 was also amended by section 1 of House Bill No. 1082, chapter 507.

be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 3. AMENDMENT. Section 57-36-11.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-11.1. Sales of untaxed cigarettes. ~~An enrolled tribal member conducting authorized cigarette sales activities within the exterior boundaries of the Indian reservation of the tribe of the enrolled tribal member may purchase from a licensed distributor cigarettes stamped as untaxed.~~

When a distributor makes an untaxed cigarette sale to an enrolled tribal member, the distributor must obtain from the tribal member, on forms prescribed by the tax commissioner, the following information:

1. Name of the tribal member.
2. Social security number of the tribal member.
3. Name of the tribe of the tribal member.
4. Tribal enrollment number of the tribal member.
5. Residential address of the tribal member.
6. Business address and business location of the retail sales of the tribal member.
7. Certification that the tribal member has been granted authority from the tribe to conduct cigarette sales activity within the external boundaries of the reservation.

SECTION 4. AMENDMENT. Subsections 1 and 2 of section 57-36-25 of the North Dakota Century Code are amended and reenacted as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products sold in this state an excise tax at the rate of twenty-eight percent of the wholesale purchase price at which such cigars, snuff, and other tobacco products are purchased by distributors. For the purposes of this section, the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the ~~tenth~~ fifteenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the ~~tenth~~ fifteenth day of the month following the month for which the returns are filed.

2. Any person failing to file any prescribed ~~forms of form~~ or return or to pay any tax within the time required or permitted by this section ~~shall be~~ is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of such the tax for each per month or fraction of a month of delay or fraction thereof ~~excepting the portion of~~ except the first month within which such after the return was required to be filed or such the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of ~~such the~~ penalty. ~~Such~~ The penalty ~~shall~~ must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 509

SENATE BILL NO. 2155

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

TAX LIABILITY BONDS

AN ACT to amend and reenact sections 57-36-09.3, 57-36-09.4, 57-38-60.1, 57-38-60.2, 57-39.2-15.2, 57-39.2-18.1, 57-40.2-15.1, 57-43.1-17.2, 57-43.1-17.3, 57-43.2-16.1, and 57-43.2-16.2 of the North Dakota Century Code, relating to an election to post a bond in lieu of corporate officer liability for the tobacco products tax, income tax, sales and use tax, motor vehicle fuel tax, and special fuel tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-09.3 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.3. Corporate officer liability.

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the corporation.

SECTION 2. AMENDMENT. Section 57-36-09.4 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.4. Governor and manager liability.

1. If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the

tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the limited liability company.

SECTION 3. AMENDMENT. Section 57-38-60.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-60.1. Corporate officer liability.

1. If a corporation is an employer and fails for any reason to file the required returns or to pay the tax due, the ~~chairman, president, or chief operating officer~~ president, vice president, secretary, or treasurer, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments is personally liable for such failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual income tax withholding liability of the corporation.

SECTION 4. AMENDMENT. Section 57-38-60.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-60.2. Governor and manager liability.

1. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the ~~governor~~ governors or manager managers, jointly or severally, charged with the responsibility of the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount

equal to the estimated annual income tax withholding liability of the limited liability company.

³³¹ **SECTION 5. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15.2. Governor and manager liability.

1. If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the limited liability company.

³³² **SECTION 6. AMENDMENT.** Section 57-39.2-18.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-18.1. Corporate officer ~~and limited liability company~~ ~~governor or manager~~ liability.

1. If a corporation ~~or limited liability company~~ holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer of the corporation, governors, or managers jointly or severally, having control, or supervision of, or charged with the responsibility for making such returns and payments ~~shall be~~ are personally liable for such failure. The dissolution of a corporation ~~or limited liability company~~ shall not discharge an officer's, ~~governor's, or manager's~~ liability for a prior failure of the corporation ~~or limited liability company~~ to make a return or remit the tax due. The sum due for such a liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

³³¹ Section 57-39.2-15.2 was also amended by section 1 of Senate Bill No. 2099, chapter 522.

³³² Section 57-39.2-18.1 was also amended by section 2 of Senate Bill No. 2099, chapter 522.

2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the corporation.

³³³ **SECTION 7. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-15.1. Corporate officer and limited liability company manager liability.

1. If a corporation or limited liability company holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer of the corporation, or governors or managers of a limited liability company, jointly or severally, having control, or supervision of, or charged with the responsibility for making such returns and payments shall be ~~are~~ personally liable for such failure. The dissolution of a corporation or limited liability company must not discharge an officer's, governor's, or manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers, governors, or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual use tax liability of the corporation or limited liability company.

SECTION 8. AMENDMENT. Section 57-43.1-17.2 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17.2. Corporate officer liability.

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed

³³³ Section 57-40.2-15.1 was also amended by section 3 of Senate Bill No. 2099, chapter 522.

and collected under the provisions of this chapter for the assessment and collection of other liabilities.

2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the corporation.

SECTION 9. AMENDMENT. Section 57-43.1-17.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17.3. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments; ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the limited liability company.

SECTION 10. AMENDMENT. Section 57-43.2-16.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-16.1. Corporate officer liability.

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do

business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the corporation.

SECTION 11. AMENDMENT. Section 57-43.2-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-16.2. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the limited liability company.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 510

HOUSE BILL NO. 1109

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

OBSOLETE ESTATE TAX PROVISIONS ELIMINATED

AN ACT to amend and reenact sections 47-19-06, 57-37.1-10, and 57-37.1-21 of the North Dakota Century Code, relating to the elimination of obsolete provisions relating to documents required to be filed with the tax commissioner for estate tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-19-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-19-06. Death certificates - Joint tenant - Prima facie evidence of termination of estate held. In all cases of joint tenancy in lands, and in all cases where an estate, title, or interest in, or lien upon, lands has been or may be created, which estate, title, interest, or lien was or is to continue only during the life of any person named or described in the instrument by which the estate, title, interest, or lien was created, a copy of the death certificate of the joint tenant or of the person upon whose life the estate, title, interest, or lien was or is limited, duly certified by any officer who is required by the laws of the state or country in which the record is made, to keep a record of the death of persons occurring within the jurisdiction of the officer, may be recorded in the office of the register of deeds of the county in which the lands are situated. The legal description of any property to which the recording of the death certificate relates must be attached to the death certificate. The certified copy of death certificate, or the record thereof in the office, or a duly certified copy of the last mentioned record, is prima facie evidence of the death of the person and the termination of the joint tenancy and all the estate, title, interest, and lien as was or is limited upon the life of that person. ~~The register of deeds shall forward a copy of the recorded death certificate to the tax commissioner.~~

SECTION 2. AMENDMENT. Section 57-37.1-10 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-10. Personal representative to furnish necessary documents to the tax commissioner. The personal representative shall furnish to the tax commissioner:

1. ~~One copy of application for determination of A North Dakota estate tax for the decedent return.~~
2. ~~Two copies of certificate of estate tax determination.~~
3. ~~A copy of decedent's will, if any.~~
4. A copy of the federal estate tax return.
5. ~~3.~~ 3. ~~Such other~~ Other information as the tax commissioner shall require.

The tax commissioner shall notify the personal representative of the amount of such assessment prior to execution of the certificate of estate tax determination, but failure to receive such notice from the tax commissioner does not excuse the nonpayment of the tax nor invalidate the tax or interest thereon in any way.

SECTION 3. AMENDMENT. Section 57-37.1-21 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-21. When return required - Tax commissioner's release.

1. The personal representative shall file an estate tax return pursuant to this chapter for the estate of any decedent for ~~which~~ whom a federal estate tax return is required to be filed if the federal gross estate includes any property or interest in property that has a situs in North Dakota.
2. If it appears to the personal representative of an estate that no filing requirement for an estate tax return exists, he may file a verified petition, in duplicate, with the tax commissioner showing the value and form of ownership of all the real and personal property includable in the gross estate of the decedent. In addition to including said real and personal property in the petition, the petition must also contain the name, the age at time of death, the date of death, and the residence of the decedent, and the name of the heirs and beneficiaries of the decedent.
3. If the tax commissioner finds that in no event could there be an estate tax filing requirement for the estate of the decedent, the tax commissioner shall issue to the personal representative a certificate of the tax commissioner that no estate tax return is required to be filed. Said certificate must contain a list of the real property includable in the gross estate of the decedent. This certificate may be recorded in the office of the register of deeds of the county in which lands of the decedent are situated, and such record will release as against any property described within said certificate any estate tax lien upon the estate of the named decedent.
4. If the tax commissioner finds that ~~an~~ a required estate tax return is ~~required to be~~ has not been filed, ~~he~~ the tax commissioner shall ~~so~~ notify the personal representative of ~~his~~ the tax commissioner's finding and the ~~fact determination upon which such~~ basis for the finding is ~~made~~.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act is effective for estates of decedents whose deaths occur after December 31, 1998.

Approved January 27, 1999
Filed January 27, 1999

CHAPTER 511

HOUSE BILL NO. 1474

(Representatives Niemeier, Nichols, Kerzman)
(Senators DeMers, Wardner)

FAMILY CARE TAX CREDIT

AN ACT to amend and reenact section 57-38-01.20 of the North Dakota Century Code, relating to the income tax credit for expenses of caring for certain family members; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-01.20. Credit for expenses of caring for certain family members.

1. An individual is entitled to a credit against the tax imposed under section 57-38-29 or 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.
2. A qualifying family member is an individual who has taxable income of ~~fifteen~~ twenty thousand dollars or less or a married individual with taxable income of ~~thirty~~ thirty-five thousand dollars or less, including that of the individual's spouse, for the taxable year. A qualifying family member must be related to the taxpayer by blood or marriage and either sixty-five years of age or older or determined to be disabled by the social security administration.
3. a. Qualified care expenses include payments by the taxpayer for home health agency services, companionship services, personal care attendant services, homemaker services, adult day care, respite care, health care equipment and supplies, and other expenses for goods or services that are necessary to allow the qualifying family member to avoid placement in a long-term care facility and which are:
 - (1) Provided to or for the benefit of the qualifying family member or to assist the taxpayer in caring for the qualifying family member;
 - (2) Provided by an organization or individual not related to the taxpayer or the qualifying family member; and
 - (3) Not compensated for by insurance or federal or state assistance programs.
- b. For purposes of this subsection, "companionship services" means services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person,

including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" does not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and does not include services of individuals who provide care and protection for infants and young children who are not physically or mentally disabled.

4. The percentage amount of credit allowable under this section is:
 - a. For a taxpayer whose taxable income does not exceed twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, thirty percent of qualified elderly care expenses; or
 - b. For a taxpayer whose taxable income exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, the greater of:
 - (1) Twenty percent of qualified elderly care expenses; or
 - (2) Thirty percent of qualified elderly care expenses, minus one percent of those expenses for each two thousand dollars or fraction of two thousand dollars by which the taxable income of the taxpayer for the taxable year exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return.
5. The dollar amount of credit allowable under this section is:
 - a. Reduced by one dollar for each dollar of the taxable income over fifty thousand dollars for a taxpayer whose taxable income exceeds fifty thousand dollars, or for a joint return, reduced by one dollar for each dollar of the taxable income over seventy thousand dollars for taxpayers whose taxable income exceeds seventy thousand dollars;
 - b. Limited to two thousand dollars per qualifying family member in a taxable year and to four thousand dollars total for two or more qualifying family members in a taxable year; and
 - c. Prorated among multiple taxpayers who each contribute to qualified care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified care expenses paid by those taxpayers for that qualified family member. To the extent necessary to administer proration under this subdivision, the secrecy provisions of section 57-38-57 do not apply to disclosures necessary to advise taxpayers of how proration should have been computed.
6. A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

7. In the case of a married individual filing a separate return, the percentage amount of credit under subsection 4 and the dollar amount of credit under subsection 5 are limited to one-half of the amounts indicated in those subsections.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 9, 1999

Filed March 9, 1999

CHAPTER 512

HOUSE BILL NO. 1113

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

SHORT FORM INCOME TAX LIABILITY

AN ACT to amend and reenact subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to the definition of federal income tax liability for short form income tax return purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁴ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-30.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section, ~~the term "federal income tax liability" means the individual's, estate's, or trust's federal income tax liability as computed for federal income tax purposes using tax tables, tax rate schedules, or form 8615, plus additional taxes due on federal income tax schedules or forms 4970, 4972, section 72(m)(5) penalty tax, 5329, 6251, and 8656, less any credit for prior year minimum tax (form 8801), and before credit for the elderly or the disabled (schedule R), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 4116), general business credit (form 3800), jobs credit (form 5884), credit for alcohol used as fuel (form 6478), credit for increasing research activities (form 6765), low-income housing credit (form 8586) and nonconventional fuel credit, and before reduction for federal income tax withheld, estimated payments, earned income credit, amount paid with form 4868, excess social security tax, and the federal Railroad Retirement Tax Act, tax withheld, credit for federal tax on gasoline and special fuels (form 4136), and regulated investment company credits (form 2439). The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 or form 8656 must be reduced, but not below zero, by the amount of any investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251 or form 8656. computed for the taxable year under Internal Revenue Code sections 1 and 3, relating to the computation of the regular federal income tax before credits, including calculation and tax rate modifications prescribed under other provisions of the Internal Revenue Code, adjusted as follows:~~
 - a. Add the alternative minimum tax computed under Internal Revenue Code section 55;

³³⁴ Section 57-38-30.3 was also amended by section 6 of Senate Bill No. 2009, chapter 31, and section 11 of House Bill No. 1492, chapter 369.

- b. Add the tax on a lump sum distribution computed under Internal Revenue Code section 402; however, this adjustment does not apply if the lump sum distribution is received while a nonresident of this state and is exempt from taxation by this state under federal law;
- c. Add the tax on an accumulation distribution of a trust computed under Internal Revenue Code section 667;
- d. Add the tax computed under Internal Revenue Code section 72(m)(5) on excess benefits received from a qualified plan under Internal Revenue Code section 401(a) or a qualified annuity under Internal Revenue Code section 403(a);
- e. Add the tax computed under Internal Revenue Code section 72(q)(1) on an early distribution from an annuity contract;
- f. Add the tax computed under Internal Revenue Code section 72(t)(1) on an early distribution from a qualified retirement plan;
- g. Add the tax computed under Internal Revenue Code section 4973(a) on excess contributions to an individual retirement account, medical savings account, and certain Internal Revenue Code section 403(b) and annuity contracts; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- h. Add the tax computed under Internal Revenue Code section 4974(a) on excess accumulations in a qualified retirement plan; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- i. Add the tax computed under Internal Revenue Code section 4980A on excess distributions from a qualified retirement plan; and
- j. Subtract the credit for prior year minimum tax computed under Internal Revenue Code section 53.

Unless specifically provided for in this subsection, no federal income tax credit may be subtracted in determining the federal income tax liability for purposes of this section.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 513

SENATE BILL NO. 2102

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

INCOME TAX REFUND INTEREST

AN ACT to amend and reenact section 57-38-35.2, subsection 15 of section 57-38-40, and subsections 1 and 2 of section 57-38-45 of the North Dakota Century Code, relating to the payment of interest on income tax refunds; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-35.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-35.2. Interest payments.

1. ~~If, for any portion of the time period over which interest is otherwise computed under this section on a refund, interest was previously computed under subsection 4 of section 57-38-45 on additional tax due for any tax period, the interest computed on the refund for that portion of the time period must be computed at the same rate and in the same manner that was used in computing the interest on the additional tax due, but only to the extent that the amount of the refund does not exceed the amount of the additional tax due.~~
2. ~~To the extent subsection 4 does not apply, interest~~ Interest at the rate of ~~ten percent per annum~~ one per cent per month or fraction of a month must be allowed and paid upon overpayments of ~~income taxes~~ tax as follows:
 - a. ~~No interest accrues~~ Interest on refunds arising from excess income tax withholding or overpayment of ~~declarations of~~ estimated tax reported on the taxpayer's return for that tax period if a refund accrues for payment is made ~~within~~ within forty-five days after the due date of the return or after the date the return was filed, whichever comes later.
 - b. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from the due date of the return; ~~without regard to extensions of the time for filing the return,~~ to the date of payment of the refund; ~~except that if the refund payment is made within forty-five days of the date the amended return or claim is filed, interest accrues to the date the amended return or claim is filed~~ excepting the month in which the return was required to be filed.
 - c. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from the due date of the return for the year, determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of

payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the net operating loss or capital loss carryback.

- ~~3.~~ 2. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.

SECTION 2. AMENDMENT. Subsection 15 of section 57-38-40 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. If the tax commissioner determines there has been an overpayment of tax, any overpaid penalty and interest on that tax must be refunded or credited by the tax commissioner. If interest is paid under section 57-38-35.2, no interest will be paid under this subsection.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 57-38-45 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:
 - a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
 - b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for the payment, there must be added to the tax interest at the rate of one percent per month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
 - c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one percent of the additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - e. ~~If, for any portion of the time period over which interest is otherwise computed under this subsection on additional tax due, interest was previously computed under subsection 2 of section 57-38-35.2 on a refund for any tax period, the interest computed on~~

the additional tax due for that portion of the time period must be computed at the same rate and in the same manner that was used in computing the interest on the refund, but only to the extent that the amount of the additional tax due does not exceed the amount of the refund.

- f. If a deficiency is determined for a tax period for which there was an overpayment that was applied to the following tax period's estimated tax under subsection 6 of section 57-38-62, interest accrues with respect to the amount of the deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.
 - f. If a deficiency is determined for a tax period for which there was an overpayment of estimated tax that was refunded, interest accrues, with respect to the amount of the deficiency which is equal to or less than the amount of the overpayment of estimated tax refunded, from the date of payment of the refund.
2. In addition to the interest prescribed in this chapter, a taxpayer is subject to additions to tax and penalty as follows:
- a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to pay the amount shown as tax due on any return, including tax withheld by an employer, filed on or before the due date or extended due date prescribed therefor, there shall be added to the tax a penalty of five percent thereof, or five dollars, whichever is greater.
 - b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return, including the employer's withheld tax return, on or before the due date or extended due date prescribed therefor, there shall be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate.
 - c. If upon audit of a taxpayer's return, including tax withheld by an employer, an additional tax is found to be due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - d. If the mathematical verification of a taxpayer's return, including tax withheld by an employer, results in additional tax due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - e. The provisions of subdivision a, b, c, or d do not apply to the extent it has been determined that the taxpayer has offsetting overpayments of income taxes which have not been refunded.
 - f. An employer, required to file returns under subsection 1 of section 57-38-60, with four to eight delinquent original tax returns or payments is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater. An employer with nine or

more delinquent original returns or payments is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater.

SECTION 4. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to tax years beginning after December 31, 1997.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 514

HOUSE BILL NO. 1112

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

INCOME TAX WITHHOLDING BONDS

AN ACT to amend and reenact subsection 9 of section 57-38-60 of the North Dakota Century Code, relating to bond requirements for income tax withholding purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 57-38-60 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. ~~As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this state for a period of one full year from January first to December thirty-first, shall be required, and any other~~ An employer, at the discretion of the tax commissioner, may be required, to either make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in ~~the~~ this state ~~of North Dakota~~ in such an amount ~~as is~~ reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 515**HOUSE BILL NO. 1307**

(Representatives Glassheim, Mickelson)
(Senator Cook)

INCOME TAX REFUND SETOFF

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 and subsection 1 of section 57-38.3-05 of the North Dakota Century Code, relating to claimant agencies for setoff of income tax refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, the workers compensation bureau, ~~or~~ the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, or a housing authority created under section 23-11-02. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 2. AMENDMENT. Subsection 1 of section 57-38.3-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Within a time specified by the commissioner, a claimant agency seeking to collect a debt through setoff shall supply the information necessary, in a form and in the manner prescribed by the commissioner, to identify each debtor whose refund is sought to be set off and certify the amount of the debt or debts owed by each ~~such~~ debtor.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 516

HOUSE BILL NO. 1487 (Representatives Belter, Brandenburg)

FARM MACHINERY AND PARTS SALES TAX

AN ACT to amend and reenact subsection 2 of section 57-39.2-02.1 and subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code, relating to the rate of sales and use tax for farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁵ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of new farm machinery, ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. There is imposed a tax of one and one-half percent upon the gross receipts of retailers from all sales at retail of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of used farm machinery and used irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. For purposes of this subsection, "used" means:
 - a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

³³⁶ **SECTION 2. AMENDMENT.** Subsection 2 of section 57-40.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³³⁵ Section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2217, chapter 517, and section 1 of House Bill No. 1454, chapter 518.

³³⁶ Section 57-40.2-02.1 was also amended by section 2 of Senate Bill No. 2217, chapter 517, and section 3 of House Bill No. 1454, chapter 518.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. An excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one and one-half percent of the purchase price thereof. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one and one-half percent of the fair market value of the used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. For purposes of this subsection, "used" means:
- a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after April 30, 1999, and before July 1, 2001, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 517

SENATE BILL NO. 2217

(Senators Christmann, Lyson, Wanzek)
(Representatives Boehm, Brusegaard, Nelson)

FARM MACHINERY AND PARTS SALES TAX

AN ACT to amend and reenact subsection 2 of section 57-39.2-02.1 and subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code, relating to the rate of sales and use tax for farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. There is imposed a tax of one and one-half percent upon the gross receipts of retailers from all sales at retail of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of used farm machinery and used irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. For purposes of this subsection, "used" means:
 - a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

³³⁸ **SECTION 2. AMENDMENT.** Subsection 2 of section 57-40.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³³⁷ Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1487, chapter 516, and section 1 of House Bill No. 1454, chapter 518.

³³⁸ Section 57-40.2-02.1 was also amended by section 2 of House Bill No. 1487, chapter 516, and section 3 of House Bill No. 1454, chapter 518.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. An excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one and one-half percent of the purchase price thereof. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one and one-half percent of the fair market value of the used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. For purposes of this subsection, "used" means:
- a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after April 30, 1999, and before July 1, 2001, and is thereafter ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 518

HOUSE BILL NO. 1454

(Representatives Belter, Hanson)

(Senators Kinnoin, Urlacher)

COAL TAX AND ALLOCATION

AN ACT to amend and reenact subsection 3 of section 57-39.2-02.1, subsection 9 of section 57-40.2-01, and subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code, relating to sales and use taxes on coal and allocation of tax revenues; to repeal section 57-61-01.8 of the North Dakota Century Code, relating to a reduced severance tax for coal burned in small boilers; to provide a statement of legislative intent; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 57-39.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. There is imposed a tax of ~~six cents per million British thermal units~~ seventy-five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.

SECTION 2. AMENDMENT. Subsection 9 of section 57-40.2-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand ~~or~~, gravel, or coal from the soil of this state for use within or outside this state.

³⁴⁰ **SECTION 3. AMENDMENT.** Subsection 3 of section 57-40.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of ~~six cents per million British thermal units~~

³³⁹ Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1487, chapter 516, and section 1 of Senate Bill No. 2217, chapter 517.

³⁴⁰ Section 57-40.2-02.1 was also amended by section 2 of House Bill No. 1487, chapter 516, and section 2 of Senate Bill No. 2217, chapter 517.

seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.

SECTION 4. REPEAL. Section 57-61-01.8 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the legislative assembly that sections 57-39.2-02.1, 57-39.2-26.1, and 57-40.2-02.1 remain effective, except as amended by this Act.

SECTION 6. EFFECTIVE DATE. Section 4 of this Act is effective July 1, 2003.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 519**SENATE BILL NO. 2421**

(Senators Cook, Christmann, Tomac)
(Representatives Berg, R. Kelsch, Mahoney)

OIL REFINING EQUIPMENT SALES TAX EXEMPTION

AN ACT to amend and reenact subdivision e of subsection 5 of section 57-39.2-04.3 of the North Dakota Century Code, relating to a sales tax exemption for certain machinery and equipment for refining of crude oil; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 5 of section 57-39.2-04.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, and the refining of crude oil but does not include mining, other refining, extracting oil and gas, or the generation of electricity.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after January 31, 1999, and before August 1, 2002, and is thereafter ineffective.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 520

SENATE BILL NO. 2104

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

SALES AND USE TAX RETURN FILING

AN ACT to amend and reenact subsection 1 of section 57-39.2-12, subsection 1 of section 57-39.2-12.1, subsection 7 of section 57-40.2-07, and subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code, relating to the monthly filing of sales and use tax returns in the event of a business reorganization and reimbursement of administrative expenses for monthly filing of sales and use tax returns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month, except tax collected during May in each odd-numbered year is payable on or before the twenty-second day of June of that year. The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer ~~shall~~ may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the ~~estimated~~ tax due under section 57-39.2-12 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due.

SECTION 3. AMENDMENT. Subsection 7 of section 57-40.2-07 of the North Dakota Century Code is amended and reenacted as follows:

7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter is payable monthly on or before the last day of the next succeeding month, except for taxes collected during May of each odd-numbered year, which are payable on or before the twenty-second day of June of that year. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty must be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed must be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement applies separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, a person may return to quarterly installments. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this section.

SECTION 4. AMENDMENT. Subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the ~~estimated~~ tax due under section 57-40.2-07 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 521**SENATE BILL NO. 2105**

(Appropriations Committee)
(At the request of the Tax Commissioner)

**STATE AID DISTRIBUTION FUND REVENUE
ALLOCATION**

AN ACT to provide for allocation of state aid distribution fund revenues upon transition to the allocation formula established by 1997 House Bill No. 1019; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ALLOCATION. The amount of the appropriation in section 1 of 1997 House Bill No. 1019 remaining unexpended as of December 31, 1998, must be allocated by the state treasurer in a single quarterly allocation under the formula contained in section 57-39.2-26.1, as effective January 1, 1999.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 18, 1999
Filed February 18, 1999

CHAPTER 522

SENATE BILL NO. 2099 (Finance and Taxation Committee) (At the request of the Tax Commissioner)

GOVERNOR AND MANAGER USE AND SALES TAX LIABILITY

AN ACT to create and enact section 57-40.2-15.2 of the North Dakota Century Code, relating to governor and manager liability for use tax; and to amend and reenact sections 57-39.2-15.2, 57-39.2-18.1, and 57-40.2-15.1 of the North Dakota Century Code, relating to governor and manager liability for sales taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴¹ **SECTION 1. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15.2. Governor and manager liability. If a limited liability company ~~is an employer and~~ required to hold a permit issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of ~~such the~~ returns and payments, is personally liable for ~~such the~~ failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

³⁴² **SECTION 2. AMENDMENT.** Section 57-39.2-18.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-18.1. Corporate officer ~~and limited liability company~~ governor or manager liability. If a corporation ~~or limited liability company~~ holding required to hold a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers, ~~governors, or managers~~ having control, or supervision of, or charged with the responsibility for making ~~such the~~ returns and payments ~~shall be~~ is personally liable for ~~such the~~ failure. The dissolution of a corporation ~~or limited liability company~~ shall does not discharge an officer's, ~~governor's, or manager's~~ liability for a prior failure of the corporation ~~or limited liability company~~ to make a return or remit the tax due. The sum due for ~~such a the~~ liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

³⁴¹ Section 57-39.2-15.2 was also amended by section 5 of Senate Bill No. 2155, chapter 509.

³⁴² Section 57-39.2-18.1 was also amended by section 6 of Senate Bill No. 2155, chapter 509.

³⁴³ **SECTION 3. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-15.1. Corporate officer and limited liability company manager liability.

If a corporation ~~or limited liability company~~ holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, any of its officers ~~or managers~~ having control, or supervision of, or charged with the responsibility for making ~~such~~ the returns and payments ~~shall be~~ is personally liable for ~~such~~ the failure. The dissolution of a corporation ~~or limited liability company~~ shall ~~does not~~ discharge an officer's liability for a prior failure of the corporation ~~or limited liability company~~ to make a return or remit the tax due. The sum due for ~~such a~~ the liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

SECTION 4. Section 57-40.2-15.2 of the North Dakota Century Code is created and enacted as follows:

57-40.2-15.2. Governor and manager liability. If a limited liability company fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of the returns and payments, is personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter.

Approved March 5, 1999
Filed March 5, 1999

³⁴³ Section 57-40.2-15.1 was also amended by section 7 of Senate Bill No. 2155, chapter 509.

CHAPTER 523

HOUSE BILL NO. 1110

(Transportation Committee)
(At the request of the Tax Commissioner)

MOTOR VEHICLE EXCISE TAX EXEMPTIONS

AN ACT to amend and reenact subsections 1, 8, and 10 of section 57-40.3-04 of the North Dakota Century Code, relating to motor vehicle excise tax exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴⁴ **SECTION 1. AMENDMENT.** Subsections 1, 8, and 10 of section 57-40.3-04 of the North Dakota Century Code are amended and reenacted as follows:

1. Motor vehicles acquired by, or leased and in the possession of, disabled veterans under the provisions of Pub. L. 79-663 [38 U.S.C. 1901] and any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by ~~such~~ a disabled veteran; provided, that this exemption is allowed only with respect to one ~~such~~ motor vehicle owned or leased by ~~such~~ a disabled veteran at any one time.

8. Any motor vehicle ~~which~~ that does not exceed ten thousand pounds [4535.92 kilograms] gross weight and which is acquired by, or leased and in the possession of, a permanently physically disabled, licensed driver who is restricted to operating only motor vehicles equipped with special controls to compensate for the disability, or by permanently physically disabled individuals who have either surrendered or who have been denied a driver's license because of a permanent physical disability, provided the individuals obtain from the director of the department of transportation or ~~his~~ the director's authorized representative a statement that the individual has ~~such~~ a restricted driver's license or has either surrendered or has not been issued a driver's license because of a permanent physical disability; a copy of the statement must be attached to the application for registration of the title to the motor vehicle for which the exemption from tax under this chapter is claimed. Any motor vehicle acquired subject to this exemption must be disposed of either by transfer to another permanently physically disabled person or by a trade-in on another exempt sale or by a transfer involving a sale subject to sales or use tax before another motor vehicle can be acquired subject to the benefits of this exemption clause.

³⁴⁴ Section 57-40.3-04 was also amended by section 1 of House Bill No. 111, chapter 524.

10. Motor vehicles acquired by, or leased and in the possession of, any parochial or private nonprofit school to be used for the transportation of students; provided, that to qualify a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance, and provided that the vehicles are not to be used for commercial activities.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 524

HOUSE BILL NO. 1111

(Transportation Committee)
(At the request of the Tax Commissioner)

EXEMPTION FOR MOTOR VEHICLE TRANSFERS

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to the motor vehicle excise tax exemption for transfers of motor vehicles in a business reorganization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴⁵ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Motor vehicles acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it; the transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee; the transfer of motor vehicles by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships; the transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed; and the transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization ~~but the~~ in which the ownership of which the reorganized business organization remains in the same person or persons as prior to the reorganization, but only if the title transfer is completed within one hundred eighty days from the effective date of the reorganization.

Approved March 9, 1999
Filed March 9, 1999

³⁴⁵ Section 57-40.3-04 was also amended by section 1 of House Bill No. 1110, chapter 523.

CHAPTER 525

SENATE BILL NO. 2318

(Senators Lyson, Kinnoin)
(Representative DeKrey)

TELEPHONE EXCISE TAX BALLOT MEASURES

AN ACT to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to ballot measures on the question of excise taxes on telephone access lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose excise tax on telephone access lines - Procedure. The governing body of a county or city may impose an excise tax on the use of telephone access lines in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed one dollar per month per telephone access line.
2. The question of the adoption of the excise tax must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed tax authorized under subsection 1. The question of the adoption of the excise tax may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the excise tax. The tax is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the tax for an initial six-year period.
3. Any political subdivision that desires to increase the tax, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the tax. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the tax authorized by this section is approved by the electors, the tax may be reimposed for six additional years without resubmitting the question to the electors.

4. In any geographic area, only one political subdivision may impose the excise tax.
5. In the interest of public safety, where the customers exchange boundary and the boundary of the political subdivision imposing the tax do not coincide, and where all of the political subdivisions within the exchange boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the exchange boundary have voted for the tax, an exchange customer residing outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system. The telephone company may collect an additional tax, equal in amount to the basic tax on those subscribers within the exchange boundary. The additional tax amounts collected must be remitted as provided in this chapter.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 526

SENATE BILL NO. 2177

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

FUEL TAX REVISIONS

AN ACT to create and enact sections 57-43.1-06.1, 57-43.1-12.1, 57-43.1-14.1, 57-43.1-14.2, 57-43.1-15.1, 57-43.1-16.1, 57-43.1-16.2, 57-43.1-45, 57-43.1-46, 57-43.1-47, 57-43.2-04.2, 57-43.2-04.3, 57-43.2-04.4, 57-43.2-07.1, 57-43.2-07.2, 57-43.2-11.1, 57-43.2-11.2, 57-43.2-14.1, 57-43.2-38, 57-43.2-39, 57-43.2-40, 57-43.3-08, 57-43.3-09, 57-43.3-10, 57-43.3-11, 57-43.3-12, 57-43.3-13, 57-43.3-14, 57-43.3-15, 57-43.3-16, 57-43.3-17, 57-43.3-18, 57-43.3-19, 57-43.3-20, 57-43.3-21, 57-43.3-22, 57-43.3-23, 57-43.3-24, 57-43.3-25, 57-43.3-26, 57-43.3-27, and 57-43.3-28 of the North Dakota Century Code, relating to the motor vehicle fuel tax, the special fuel tax, interstate motor carriers tax, and the aviation fuel tax; to amend and reenact sections 57-43.1-01, 57-43.1-02, 57-43.1-04, 57-43.1-06, 57-43.1-08, 57-43.1-11, 57-43.1-13, 57-43.1-14, 57-43.1-15, 57-43.1-16, 57-43.1-17, 57-43.1-17.1, 57-43.1-21, 57-43.1-24, 57-43.1-25, 57-43.1-26, 57-43.1-27, 57-43.1-28, 57-43.1-30, 57-43.1-32, 57-43.2-01, 57-43.2-02, 57-43.2-02.2, 57-43.2-03, 57-43.2-04.1, 57-43.2-05, 57-43.2-07, 57-43.2-08, 57-43.2-09, 57-43.2-10, 57-43.2-11, 57-43.2-14, 57-43.2-15, 57-43.2-19, 57-43.2-20, 57-43.2-21, 57-43.2-22, 57-43.3-01, 57-43.3-02, 57-43.3-03, and 57-43.3-04 of the North Dakota Century Code, relating to the motor vehicle fuel tax, the special fuel tax, and the aviation fuel tax; to repeal sections 57-43.1-18, 57-43.1-20, 57-43.1-22, 57-43.1-23, 57-43.1-31, 57-43.1-33, 57-43.1-34, 57-43.1-35, 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40, 57-43.1-42, 57-43.1-42.1, 57-43.1-43, 57-43.2-04, 57-43.2-06, 57-43.2-12, 57-43.2-13, 57-43.2-16, 57-43.2-17, 57-43.2-18, 57-43.2-23, 57-43.2-24, 57-43.2-25, 57-43.2-26, 57-43.2-27, 57-43.2-28, 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-35, 57-43.2-35.1, 57-43.2-36, and 57-43.3-05 of the North Dakota Century Code, relating to obsolete and redundant provisions of the motor vehicle fuel tax, the special fuel tax, importer for use tax, and the aviation fuel tax; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.

3. "Common carrier" or "contract carrier" means a person involved in the movement of motor vehicle fuel from a terminal or movement of motor vehicle fuel imported into this state, who is not an owner of the motor vehicle fuel.
4. "Consumer" means a user of motor vehicle fuel including any person purchasing motor vehicle fuel in this state for use in a licensed motor vehicle; any person importing motor vehicle fuel into this state or purchasing motor vehicle fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing motor vehicle fuel in this state for use in recreational or any other types of motor vehicles. It does not include a ~~dealer or a retailer~~ person importing or purchasing motor vehicle fuel for resale.
4. ~~"Dealer" means any person importing or causing to be imported into this state any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the fuel reaches this state and any person producing, refining, manufacturing, compounding, or purchasing any motor vehicle fuel in this state for use, distribution, or sale in this state.~~
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which motor vehicle fuel is directed for delivery into a storage facility, receptacle, container, or any type of transportation equipment, for purposes of resale or use.
6. "Director" means the director of the department of transportation.
6. ~~"Importer for use" means any person importing motor vehicle fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.~~
7. "Distributor" means a person, other than a retailer, who acquires motor vehicle fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Export" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
9. "Exporter" means a refiner, supplier, or distributor who exports motor vehicle fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.

11. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
12. "Import" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
13. "Importer" means a refiner, supplier, or distributor who imports motor vehicle fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
14. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

15. "Interstate motor carrier" means any person importing motor vehicle fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
- ~~8.~~ 16. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

- 9: 17. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this chapter, but does not include aircraft.
- 40: 18. "Motor vehicle fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.
- 41: ~~"Original package" means any tank car, barrel, or other package which is in the form and condition in which it was imported into the state or into which motor vehicle fuel refined in this state or imported by pipeline is placed when removed from refinery storage or pipeline terminal storage.~~
- 42: 19. "Person" means every individual, partnership, ~~society,~~ firm, association, joint ~~stock company~~ venture, corporation, limited liability company, trustee, executor, administrator, or guardian. Whenever used in any case prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association includes the partners or members, as applied to corporations, the officers, and as applied to limited liability companies, the managers estate, business trust, receiver, or any other group or combination acting as a unit.
20. "Physical inventory reading" means a measurement of motor vehicle fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
21. "Position holder" means a person holding an inventory position of motor vehicle fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns motor vehicle fuel in a terminal.
- 43: 22. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
23. "Rack" means a mechanism used to dispense motor vehicle fuel from a terminal.

24. "Refiner" means a person who produces, manufactures, or refines motor vehicle fuel in this state or a person who produces alcohol or alcohol derivative substances in this state for blending with motor vehicle fuel.
25. "Retail location" means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.
26. "Retailer" means a person who acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.
44. 27. "Sale" means, with respect to motor vehicle fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, ~~of motor vehicle fuel between dealers or between a dealer and a retailer or a consumer.~~
15. "Wholesale dealer" has the same meaning as "dealer" with the added qualification that it means those selling or delivering motor vehicle fuel ~~to retail dealers.~~
28. "Supplier" means a refiner who distributes motor vehicle fuel from a terminal in this state, or a person who acquires motor vehicle fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal or a person who acquires motor vehicle fuel by truck or railcar for storage at and distribution from a terminal in this state.
29. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
30. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the motor vehicle fuel may be removed from the rack.
31. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
32. "Wholesale distribution" means the sale of motor vehicle fuel by a supplier or distributor.

³⁴⁶ **SECTION 2. AMENDMENT.** Section 57-43.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. (Effective through December 31, 1999) Tax imposed on motor vehicle fuels.

³⁴⁶ Section 57-43.1-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 1 of House Bill No. 1130, chapter 527.

1. Except as otherwise provided in this section, a tax of twenty cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. ~~The dealer~~ A supplier or distributor shall collect remit the tax imposed by this section from the on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer on all sales.
3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~ The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after December 31, 1999) Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. ~~The dealer~~ A supplier or distributor shall collect remit the tax imposed by this section from the on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer on all sales.
3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~ The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.

5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 3. AMENDMENT. Section 57-43.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle, the purpose or type of project for which the motor vehicle fuel was used, and such other information as the commissioner requires. The original invoices or sales tickets proving the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the ~~dealer's or retailer's~~ seller's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, the state tax as a separate item or a statement that the state tax is included in the price, and the name of the claimant. If the original invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets. A ~~dealer~~ supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

SECTION 4. AMENDMENT. Section 57-43.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-06. Refund to prevent taxation by multiple jurisdictions. Any person to whom ~~special fuel or~~ motor vehicle fuel is sold on which the tax imposed by this chapter ~~or chapter 57-43.2~~ has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state which requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter ~~or chapter 57-43.2~~. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. The refund may not be reduced by the one cent per gallon [3.79 liters] tax designated for the township highway aid fund. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

SECTION 5. Section 57-43.1-06.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-06.1. Refund of tax on tax exempt sales. When a person purchasing motor vehicle fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

SECTION 6. AMENDMENT. Section 57-43.1-08 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-08. Refund to state or political subdivision. When any construction, reconstruction, or maintenance of a public road, highway, street, or airport is undertaken by the state or any political subdivision in the state and where public funds of the United States, state, or any political subdivision are directly used for the purchasing of motor vehicle fuel to be used in publicly owned vehicles for such construction, reconstruction, or maintenance, such motor vehicle fuel is subject to a refund of the tax paid on the fuel as provided for in this chapter and under the same terms and conditions. The refund provided for in this section may not be reduced for deposit to the ~~agriculturally derived~~ agricultural fuel tax fund.

SECTION 7. AMENDMENT. Section 57-43.1-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-11. Assignment of refund claims. ~~Any~~ A consumer eligible for a motor vehicle fuel tax refund under this chapter, who ~~has been sold~~ purchased the fuel ~~by a dealer on open account with the dealer paying the motor vehicle fuel tax,~~ may assign the refund to the ~~dealer~~ seller by attaching an assignment agreement, on a form prescribed by the commissioner, to the refund claim submitted ~~by the claimant~~ in accordance with section 57-43.1-04. If an assignment of a refund is made, the refund check or warrant issued ~~must~~ shall be made payable to both the claimant and the assignee.

SECTION 8. Section 57-43.1-12.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-12.1. Credit for taxes paid on worthless accounts and refunds. Taxes paid on motor vehicle fuel represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded.

SECTION 9. AMENDMENT. Section 57-43.1-13 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-13. Dealer Refiner, supplier, distributor, importer, exporter, and terminal operator required to secure license - License fees.

1. ~~No~~ A person may not engage in business in this state as a ~~dealer in~~ refiner, supplier, distributor, importer, exporter, or terminal operator of motor vehicle fuel unless that person holds an unrevoked license issued by the commissioner ~~authorizing that person to engage in such business.~~

2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.
 - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
 - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
 - g. If a foreign limited liability company, the limited liability company name, the state and date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.

SECTION 10. AMENDMENT. Section 57-43.1-14 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-14. Form and contents of application for dealer's license - Fee - Bond or other security letter of credit required. As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the motor vehicle fuel tax liabilities imposed by this chapter. A refiner,

terminal operator, or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

1. ~~To procure a license as a dealer in motor vehicle fuel, an applicant shall file with the commissioner an application upon a form prescribed and furnished by the commissioner. Such application must contain: The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than one thousand dollars.~~
 - a. ~~The name under which the applicant intends to transact business.~~
 - b. ~~If a partnership, the name and address of each of the several persons constituting the firm.~~
 - c. ~~If a domestic corporation, the corporate name, the date of incorporation, and the names of the directors and corporate officers.~~
 - d. ~~If a foreign corporation, the corporate name, the state where and the time when incorporated, the name of the resident agent, the location of each place of business, and the date on which the business was established.~~
 - e. ~~If a domestic limited liability company, the limited liability company name, the date of formation, and the names of the governors and managers.~~
 - f. ~~If a foreign limited liability company, the limited liability company name, the state where and the time when formed, the name of the resident agent, the location of each place of business, and the date on which the business was established.~~
 - g. ~~Any other information the commissioner may require. The application must be signed and verified by the owner of the business, if an individual, partnership, or unincorporated association, by any authorized officer, if a corporation, and by any authorized manager, if a limited liability company.~~
2. ~~At the time of applying for a license, the applicant shall pay to the commissioner as a license fee the sum of twenty dollars. This fee must be paid into the state treasury and credited to the general fund. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.~~
3. ~~As a condition precedent to the issuance of a license, a dealer shall furnish a bond in an amount set by the commissioner, but not less than one thousand dollars, guaranteeing the payment of the motor vehicle fuel tax collected by the dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a dealer has had a valid license for three or more years, the commissioner may review the records of the dealer and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.~~

4. In lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner may prescribe, may be deposited with the commissioner, which securities shall be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor, if it becomes necessary to recover any tax, penalties, or interest due. All moneys deposited as security with the commissioner under the provisions of this subsection must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the "motor vehicle fuel tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much of the deposit as is necessary to satisfy the tax, penalty, and interest due. The commissioner, when in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the depositor, shall certify that information to the director of the office of management and budget who shall pay the unused money to the depositor. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the motor vehicle fuel tax, penalties, and interest due.

5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

SECTION 11. Section 57-43.1-14.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-14.1. Qualification for exporter license. As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

SECTION 12. Section 57-43.1-14.2 of the North Dakota Century Code is created and enacted as follows:

57-43.1-14.2. Qualification for importer license. As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license in this state as a refiner, supplier, or distributor.

SECTION 13. AMENDMENT. Section 57-43.1-15 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-15. License - Contents - Authority conferred Application for license - Issuance of license - Denial of license. ~~Upon the filing of an application for a license and payment of the fee to engage in business as a dealer in motor vehicle fuel, the commissioner shall issue to the applicant a license authorizing the applicant to engage in business in this state as a dealer, as defined in section 57-43.1-01, unless the license is revoked by the commissioner as provided by law.~~

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which shall be valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance with the provisions of chapter 28-32. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

SECTION 14. Section 57-43.1-15.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-15.1. Revocation of license - Hearing to show cause - Reinstatement.

1. The commissioner may revoke a license for reasonable cause. Before revoking a license, the commissioner shall grant a hearing in accordance with the provisions of chapter 28-32 to allow the person to show cause why the license should not be revoked. Written notice of a hearing must be served on the person at least ten days prior to the date established for the hearing.
2. Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the commissioner a surety bond upon which the person is the principal. The bond must be in an amount determined by the commissioner but not less than one thousand dollars. The bond must be payable to the commissioner and be conditioned upon the timely filing of correct tax reports and timely payment of the full amount of the tax due as required under this chapter. If the person fails to file the required report or to timely pay the full amount of tax due, the commissioner may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the state under this chapter.

SECTION 15. AMENDMENT. Section 57-43.1-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-16. Report Monthly report by dealer to commissioner refiner, supplier, distributor, importer, or exporter required. Each dealer in motor vehicle fuel who engages in the sale or use of motor vehicle fuel in this state shall render to the commissioner, not later than the twenty-fifth day of each calendar month, on the form prescribed, prepared, and furnished by the commissioner, a statement of the number of gallons [liters] of motor vehicle fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If the commissioner deems it necessary to ensure the payment of the tax imposed by this chapter, the commissioner may require returns and payment of the tax to be made for periods other than monthly periods. If the dealer is a domestic corporation, the statement must be signed by the president or secretary, and if a foreign corporation, by the resident general agent, attorney in fact, or by a chief accountant or officer. If the dealer is a domestic limited liability company, the statement must be signed by the president or treasurer, and if a foreign limited liability company, by the resident agent, president, or treasurer. If the dealer is a firm, or an association of individuals, the statement must be made by the managing agent or owner.

1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering motor vehicle fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain the information as required by the commissioner including:
 - a. A detailed schedule of motor vehicle fuel refined, purchased, imported, and exported.
 - b. A detailed schedule of motor vehicle fuel sold to a person eligible to purchase the motor vehicle fuel without the tax imposed by this chapter.
 - c. A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a list of persons who purchased the motor vehicle fuel for resale.
 - d. The total number of gallons of motor vehicle fuel sold and used subject to the tax imposed by this chapter.
 - e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified consumer.
 - f. The number of gallons of motor vehicle fuel in inventory at the beginning of the calendar month, the number of gallons in inventory

at the close of the calendar month, and any gains or losses experienced.

3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.
4. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The report must contain a statement of the quantities of motor vehicle fuel sold, used, received, and delivered within this state from the dealer's place of business. If any motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement must show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom it was sold and delivered.

SECTION 16. Section 57-43.1-16.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-16.1. Report by terminal operator required.

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering motor vehicle fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner and may include:
 - a. A detailed schedule of motor vehicle fuel received into the terminal for or on behalf of the position holder.
 - b. A detailed schedule of motor vehicle fuel removed from the terminal by or on behalf of a position holder.
 - c. The number of gallons of motor vehicle fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury.

4. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, which have the same validity and consequence as the actual signature and written declaration for a paper return.

SECTION 17. Section 57-43.1-16.2 of the North Dakota Century Code is created and enacted as follows:

57-43.1-16.2. Common or contract carrier - License required - Records required - Diverted loads - Commissioner to audit records.

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for a license must be made on a form prescribed by the commissioner and contain the information required by the commissioner.
2. A common or contract carrier transporting motor vehicle fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting motor vehicle fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of motor vehicle fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the motor vehicle fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
6. A diversion ticket must include the following information:
 - a. The transporter's name and address.

- b. The date and time of issuance.
 - c. The diversion ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination as stated on the original bill of lading.
 - f. The original bill of lading number.
 - g. The location diverted to, including the address to which the fuel was diverted and the destination state.
 - h. The number of gallons of fuel being diverted.
 - i. The type of fuel being diverted.
 - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
- a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The partial load ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination on the original bill of lading or as shown on the diversion ticket, if issued.
 - f. The original bill of lading number and, if available, the diversion ticket number.
 - g. The number of gallons off-loaded at each location.
 - h. The type of fuel off-loaded at each location.
 - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

SECTION 18. AMENDMENT. Section 57-43.1-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17. Commissioner to audit ~~statement~~ report and assess tax.

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of dealers and, not later than three years after the due date of a return, or three years after the return was filed,~~

whichever period expires later, assess additional tax due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the dealer in detail of the reason for the increase or decrease. The commissioner, or an authorized representative, may audit the records, books, and papers, and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit shall be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.

2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the statement report, or six years after the statement report was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
4. If a person gives false or fraudulent information ~~is given~~ in a ~~dealer's~~ tax return report or in a claim for refund, or if the failure by a ~~dealer~~ person to file a tax return report is due to the fraudulent intent or the willful attempt of the ~~dealer~~ person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time.
5. If, before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the ~~dealer or the claimant~~ person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a ~~dealer or to a~~ consumer person fixes the tax finally and irrevocably unless the ~~dealer or consumer~~ person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the ~~dealer or consumer~~ person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 19. AMENDMENT. Section 57-43.1-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17.1. Determination if no ~~return made~~ report is filed. ~~If any motor vehicle fuel dealer, whether or not licensed as such,~~ a person fails, neglects, or refuses to file a motor vehicle fuel tax ~~return~~ report when due, the commissioner shall, on the basis of available information, determine the tax liability ~~of the motor vehicle fuel dealer~~ for the period during which no ~~return~~ report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.1-21. An assessment made by the commissioner under this section or section 57-43.1-21 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

SECTION 20. AMENDMENT. Section 57-43.1-21 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-21. Failure to file report - Penalty - Revocation of license - Excuse for ~~delay~~ and interest - Violations.

1. ~~If the holder of a license to sell motor vehicle fuel~~ a person fails to file the required report ~~required to be filed~~, or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, ~~together~~ with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the ~~failure~~ delinquency continues, excepting the month within which the report was required to be filed or the tax became due. ~~The commissioner may revoke the license and, if so, the commissioner shall notify the licenseholder promptly by a notice sent by registered or certified mail to the post-office address of the licenseholder as it appears in the commissioner's records. However, if the report is filed and the tax paid within ten days after the date it becomes due and if it is established under oath that the delay was due to accident or justifiable oversight, then the commissioner may continue the license in full force and effect. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.~~ The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this ~~section~~ subsection.
2. A person is guilty of a class A misdemeanor if:
 - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or

- b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

SECTION 21. AMENDMENT. Section 57-43.1-24 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-24. ~~Deduction of cost of collecting~~ Tax collection allowance. ~~On making payments to the commissioner as provided in this chapter, the dealer~~ The person required to remit the tax imposed by this chapter shall deduct ~~retain~~ two percent from ~~of~~ the amount of tax due to cover the cost of collecting the tax and transmitting it to the commissioner. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

SECTION 22. AMENDMENT. Section 57-43.1-25 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-25. ~~Records of dealer subject~~ Retention of records - Subject to inspection. ~~The records of all purchases, receipts, sales, distribution, and use of motor vehicle fuel of every dealer, must be retained~~ A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all motor vehicle fuel refined, purchased, imported, or otherwise acquired; of all motor vehicle fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years; and. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.

³⁴⁷ **SECTION 23. AMENDMENT.** Section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-26. ~~Inventory gains - Losses - Deductions allowed to dealer - Remedies.~~ ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of motor fuel received during each calendar month from the statement submitted as required in section 57-43.1-16, but the allowance may not exceed one percent of the total received during that month.~~

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.
2. When sold or used by a supplier or distributor, a gain in motor vehicle fuel inventories is subject to the tax imposed by this chapter in the same

³⁴⁷ Section 57-43.1-26 was also amended by section 1 of House Bill No. 1462, chapter 528.

manner as motor vehicle fuel purchased, imported, or otherwise acquired.

3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any such loss that is in excess of one percent of the motor vehicle fuel received during the period covered by the inventory reconciliation.
4. For purposes of this chapter, it is presumed that all motor vehicle fuel received ~~by each dealer~~ above ~~this~~ the one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of each calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the ~~dealer~~ supplier or distributor is liable for the amount of the motor vehicle fuel tax on each gallon [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor vehicle fuel refined at a refinery in this state and placed in storage at the refinery, and motor vehicle fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the commissioner.

³⁴⁸ **SECTION 24. AMENDMENT.** Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for losses. When a ~~wholesale dealer~~ supplier or distributor in motor vehicle fuels makes a sale to a retail outlet the ~~wholesale dealer~~ supplier or distributor shall credit the retail outlet with one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the ~~dealer~~ supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

SECTION 25. AMENDMENT. Section 57-43.1-28 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-28. Allocation of fuel tax Transfer, deposit, and distribution of funds. ~~The state treasurer shall credit to the highway tax distribution fund the motor fuel tax, including interest received on the tax, collected under the provisions of this chapter.~~ Taxes, license fees, penalties, and interest collected under the provisions of

³⁴⁸ Section 57-43.1-27 was also amended by section 2 of House Bill No. 1462, chapter 528.

this chapter must be transferred to the state treasurer who shall deposit the moneys collected to the highway tax distribution fund. The highway tax distribution fund must be distributed in the manner prescribed by section 54-27-19.

SECTION 26. AMENDMENT. Section 57-43.1-30 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-30. Administration - Assistance authorized - Rules. The commissioner shall ~~administer~~ enforce the provisions of this chapter. The commissioner may employ ~~such~~ assistance and conduct investigations as may be necessary for the efficient administration and enforcement of this chapter and may ~~make~~ adopt and enforce reasonable rules relating to the administration and enforcement of this chapter.

SECTION 27. AMENDMENT. Section 57-43.1-32 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-32. Erroneously or illegally collected taxes. If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from any person, the commissioner may permit that person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that person. The refund must be paid to the person from undistributed funds received from the tax imposed by this chapter and any credit or refund may not be approved or paid unless it is an amount which is in excess of ~~ten~~ five dollars.

SECTION 28. Section 57-43.1-45 of the North Dakota Century Code is created and enacted as follows:

57-43.1-45. Motor vehicle fuel tax for interstate motor carriers - Computation - Credits - Refunds.

1. An interstate motor carrier importing motor vehicle fuel into the state is subject to the motor vehicle fuel tax imposed by this chapter on the number of gallons [liters] of fuel used in the state to propel licensed motor vehicles upon the public roads or highways in the state.
2. The amount of fuel used in interstate fleet operations by a motor carrier is determined by using a factor, the numerator of which is the total miles [kilometers] operated in this state and the denominator of which is the total miles [kilometers] operated both within and without this state applied to the total of that fuel used both within and without this state.
3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.1-44.

SECTION 29. Section 57-43.1-46 of the North Dakota Century Code is created and enacted as follows:

57-43.1-46. Interstate motor carrier required to obtain license - Display - Revocation or cancellation of license - Occasional trip permits in lieu of license.

1. An interstate motor carrier shall apply to the director for a license subject to the requirements of a cooperative agreement authorized by section 57-43.1-44 and is required to display the license in a manner prescribed under the terms of the agreement.
2. The license issued to an interstate motor carrier is not a franchise or irrevocable and it may not be assigned or transferred.
3. The director shall issue a license to an interstate motor carrier based on the terms of the cooperative agreement authorized by section 57-43.1-44 and the license shall be in force until it is suspended, revoked, surrendered, or expires pursuant to the terms of the agreement.
4. An interstate motor carrier who makes only occasional trips into or through this state may elect to secure occasional trip permits in lieu of the license required by this section. The term "occasional" means no more than one trip into or through the state in any seventy-two-hour period. The commissioner, director, or an agent of the commissioner or director shall issue an occasional trip permit for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner or director.

SECTION 30. Section 57-43.1-47 of the North Dakota Century Code is created and enacted as follows:

57-43.1-47. Interstate motor carrier tax reports - Payments - Audits - Assessments.

1. An interstate motor carrier shall file a tax report with the director and remit to the director any taxes, penalties, and interest due at the time and in the manner prescribed by the terms of a cooperative agreement authorized by section 57-43.1-44. All moneys collected and received under this section must be transmitted monthly by the director to the state treasurer to be transferred and credited in the same manner as provided in section 57-43.1-28.
2. An interstate motor carrier shall obtain, create, maintain, and retain records as required by the terms of a cooperative agreement authorized by section 57-43.1-44 and make those records available to the director or the commissioner for examination.
3. The director or commissioner shall audit the records of an interstate motor carrier at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.1-44.

³⁴⁹ **SECTION 31. AMENDMENT.** Section 57-43.2-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a ~~dealer or a retailer~~ person importing or purchasing special fuel for resale.
4. "~~Dealer~~" means ~~any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.~~
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Director" means the director of the department of transportation.
7. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.

³⁴⁹ Section 57-43.2-01 was also amended by section 3 of House Bill No. 1462, chapter 528.

9. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
11. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
6. 12. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
7. 13. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
8. ~~"Importer for use" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.~~
9. 14. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
15. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
16. "Industrial purpose" means:
- a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;

- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

17. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
40. 18. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.
44. 19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
42. 20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
43. 21. "Person" means every ~~natural person, fiduciary individual, partnership, firm, association, joint venture, corporation, or limited liability company,~~ estate, business trust, receiver, or any other group or combination acting as a unit. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.

44. 24. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack" means a mechanism used to dispense special fuel from a terminal.
45. 26. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
46. 30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration; ~~of special fuels between special fuel dealers or between a special fuel dealer and a retailer or a consumer.~~
47. 31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
48. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
49. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

³⁵⁰ **SECTION 32. AMENDMENT.** Section 57-43.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Effective through December 31, 1999) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel to any consumer sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The dealer~~ A supplier, distributor, or retailer shall remit the tax imposed by this section on all sales to consumers special fuel used and on direct sales of special fuel to a customer.
3. ~~The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~ The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.

³⁵⁰ Section 57-43.2-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 2 of House Bill No. 1130, chapter 527.

5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after December 31, 1999) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel to any consumer sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The dealer~~ A supplier, distributor, or retailer shall remit the tax imposed by this section on ~~all sales to consumers~~ special fuel used and on direct sales of special fuel to a consumer.
3. ~~The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~ The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

³⁵¹ **SECTION 33. AMENDMENT.** Section 57-43.2-02.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02.2. Refund of tax for special fuel used for heating and or for an agricultural, industrial, or railroad purpose. ~~Any~~ A consumer who purchases or uses any special fuel for heating or for an agricultural, industrial, or railroad purpose, except special fuel used to operate a licensed motor vehicle, on which the special fuel tax imposed by section 57-43.2-02 has been paid, may file a claim with the commissioner for a refund pursuant to chapter 57-43.1. The tax imposed by section 57-43.2-03 must be deducted from the refund.

³⁵² **SECTION 34. AMENDMENT.** Section 57-43.2-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. The special excise tax applies to all special fuels taxed under section 57-43.2-02 for which taxes are later refunded to any consumer.
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
6. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.

³⁵¹ Section 57-43.2-02.2 was repealed by section 7 of House Bill No. 1462, chapter 528.

³⁵² Section 57-43.2-03 was also amended by section 4 of House Bill No. 1462, chapter 528.

7. The dealer shall person required to remit the tax imposed by this section on all sales to a shall pass the tax on to the consumer.
8. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
9. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 35. AMENDMENT. Section 57-43.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-04.1. Deduction of cost of collecting and remitting Tax collection allowance. ~~On making payments to the commissioner as provided in this chapter, the dealer~~ The person required to remit the tax imposed by this chapter shall deduct one percent from the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and remitting it to the commissioner. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

SECTION 36. Section 57-43.2-04.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-04.2. Refund to prevent taxation by multiple jurisdictions. Any person to whom special fuel is sold on which the tax imposed by this chapter has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. The refund may not be reduced by the one cent per gallon [3.79 liters] tax designated for the township highway aid fund. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

SECTION 37. Section 57-43.2-04.3 of the North Dakota Century Code is created and enacted as follows:

57-43.2-04.3. Refund of tax on tax exempt sales. When a person purchasing special fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

SECTION 38. Section 57-43.2-04.4 of the North Dakota Century Code is created and enacted as follows:

57-43.2-04.4. Credit for taxes paid on worthless accounts and refunds. Taxes paid on special fuels represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded.

SECTION 39. AMENDMENT. Section 57-43.2-05 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-05. ~~Special fuel wholesaler's or dealer's license required Refiner, supplier, distributor, importer, exporter, retailer, and terminal operator required to secure license - License fees.~~ No person may act as a special fuel wholesaler or dealer in this state unless that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by the commissioner. Application for a special fuel wholesaler's or dealer's license must be made to the commissioner. The application must be filed upon a form prepared and furnished by the commissioner and must contain such information as the commissioner requires.

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the commissioner. The commissioner may require a separate license for liquefied petroleum gases.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.
 - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
 - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.

- g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

- 3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.

SECTION 40. AMENDMENT. Section 57-43.2-07 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-07. ~~Special fuel wholesaler's or dealer's bond~~ Bond or letter of credit required. As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, retailer, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the special fuel taxes imposed by this chapter. A terminal operator or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

- 1. ~~As a condition precedent to the issuance of a license, a wholesaler or dealer shall furnish a bond in an amount set by the commissioner, but not less than five hundred dollars, guaranteeing the payment of the special fuels tax collected by the wholesaler or dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a wholesaler or dealer has had a valid license for three or more years, the commissioner may review the wholesaler's or dealer's records and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than one thousand dollars. If the commissioner requires a separate license for liquefied petroleum gases, a separate security is required for that license, and the surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than five hundred dollars.~~
- 2. ~~In lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold at public or private sale, without notice to the depositor, if it becomes necessary in order to recover any tax, penalties, or interest due. The commissioner shall pay all moneys deposited as security with the commissioner under the provisions of this subsection to the state treasurer who shall credit them into a special fund to be known as the "special fuels tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid~~

when due, by the person depositing moneys with the tax commissioner as security for the payment of tax, penalty, or interest imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the tax, penalty, and interest due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the person. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.

3. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.
4. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the special fuel tax, penalties, and interest due.
5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

SECTION 41. Section 57-43.2-07.1 of the North Dakota Century Code is created and enacted as follows:

57-43.2-07.1. Qualification for exporter license. As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

SECTION 42. Section 57-43.2-07.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-07.2. Qualification for importer license. As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license in this state as a refiner, supplier, or distributor.

SECTION 43. AMENDMENT. Section 57-43.2-08 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-08. Issuance of licenses - Fees Application for license - Issuance of license - Denial of license. Upon receipt of the application and bond in proper form and upon the payment by the applicant of a special fuel wholesaler's or dealer's license fee of ten dollars, the commissioner shall issue to the applicant a license to act as a special fuel wholesaler or dealer. The commissioner may refuse to issue a special fuel wholesaler's or dealer's license to any person who formerly held such a license but which was revoked prior to the time of filing the application, or who is a subterfuge for the real party of interest whose license prior to the time of filing of the application has been revoked, or upon other sufficient cause being shown. Before such refusal the commissioner shall grant the applicant a hearing and give the applicant at least ten days' written notice of the time and place of hearing. Each special fuel wholesaler's or dealer's license is valid until suspended or revoked for cause or otherwise canceled. No special fuel wholesaler's or dealer's license is transferable.

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which is valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance with the provisions of chapter 28-32. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

SECTION 44. AMENDMENT. Section 57-43.2-09 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-09. Revocation, cancellation, and surrender of license and bond Revocation of license - Hearing to show cause - Reinstatement. The commissioner may revoke the license of any special fuel wholesaler or dealer for reasonable cause. Before revoking any license the commissioner shall notify the licensee to show cause within fifteen days of the date of the notice why such license should not be revoked. Any time prior to and pending hearing the commissioner may, in the exercise of reasonable discretion, suspend the license. The commissioner shall cancel any license to act as a special fuel wholesaler or dealer immediately upon the surrender of the license by the holder.

1. The commissioner may revoke a license for reasonable cause. Before revoking a license, the commissioner shall grant a hearing in accordance with the provisions of chapter 28-32 to allow the person to show cause why the license should not be revoked. Written notice of a hearing must be served on the person at least ten days prior to the date established for the hearing.

2. Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the commissioner a surety bond upon which the person is the principal. The bond must be in an amount determined by the commissioner but not less than one thousand dollars. The bond must be payable to the commissioner and be conditioned upon the timely filing of required tax reports and the timely payment of the full amount of the tax due as required under this chapter. If the person fails to file the required report or to timely pay the full amount of the tax due, the commissioner may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the state under this chapter.

SECTION 45. AMENDMENT. Section 57-43.2-10 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-10. ~~Special fuel wholesaler's or dealer's records~~ Retention of records - Subject to inspection. ~~For each location where special fuel is sold or delivered to any special fuel dealer or user the special fuel wholesaler or dealer making the sale or delivery shall prepare and maintain such records as the commissioner may reasonably require with respect to all sales and deliveries, and with respect to inventories, receipts, purchases, sales, or other dispositions of special fuel. The records required under this section must be retained for a minimum period of three years and must be available at all reasonable times for examination by the commissioner. A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all special fuel refined, purchased, imported, or otherwise acquired; of all special fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.~~

SECTION 46. AMENDMENT. Section 57-43.2-11 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-11. ~~Records and returns - Penalties and interest - Powers of commissioner~~ Report by refiner, supplier, distributor, retailer, importer, or exporter required.

1. ~~A special fuel dealer shall keep such records and make such monthly returns and payments of the tax to the commissioner, in the manner, at the time, and pursuant to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The commissioner may require returns and payments of the tax to be made for other than monthly periods. A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal~~

carrier service before midnight of the due date. The commissioner may require separate reports to be filed covering liquefied petroleum gases.

2. For failure or refusal to keep such records, file returns, and make payments of the tax to the commissioner as provided in this chapter, a special fuel dealer is subject to the penalties and interest as provided in this chapter. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner including:
 - a. A detailed schedule of special fuel refined, purchased, imported, and exported.
 - b. A detailed schedule of special fuel sold to a person eligible to purchase the special fuel without the tax imposed by this chapter.
 - c. A detailed schedule of special fuel sold tax-paid to a person for resale, including a list of persons who purchased the special fuel for resale.
 - d. The total number of gallons of special fuel sold and used subject to tax imposed by this chapter.
 - e. The number of gallons of special fuel sold tax-exempt to a qualified consumer.
 - f. The number of gallons of special fuel in inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.
3. The commissioner, for good cause shown, may waive the penalty for failure to pay the tax due or for failure or refusal to file a return within the time required by this chapter or grant a reasonable extension of time for filing such a return. The commissioner may revoke the license of any special fuel dealer under the conditions and after notice as provided in ~~section 57-43.2-09~~; assess deficiencies in the tax; determine the tax when returns are not filed as required by this chapter; and permit credit for or authorize refund of erroneously or illegally collected taxes, penalties, or interest imposed by this chapter from undistributed funds received under this chapter, all in the manner and to the same extent as provided in ~~sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20~~. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a report filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.
4. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter, and may examine the records of special fuel wholesalers or dealers and special fuel users and

make such investigations as are deemed necessary in the administration and enforcement of this chapter.

5. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section ~~57-43.2-14~~.

SECTION 47. Section 57-43.2-11.1 of the North Dakota Century Code is created and enacted as follows:

57-43.2-11.1. Report by terminal operator required.

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the terminal operator is able to file the report in an electronic format. The report must contain such information as required by the commissioner and may include:
 - a. A detailed schedule of special fuel received into the terminal for or on behalf of the position holder.
 - b. A detailed schedule of special fuel removed from the terminal by or on behalf of a position holder.
 - c. The number of gallons of special fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

SECTION 48. Section 57-43.2-11.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-11.2. Common or contract carrier - License required - Records required - Diverted loads - Commissioner to audit records.

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for license must be made on a form

prescribed by the commissioner and contain the information required by the commissioner.

2. A common or contract carrier transporting special fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting special fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of special fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the special fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
6. A diversion ticket must include the following information:

 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The diversion ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination as stated on the original bill of lading.
 - f. The original bill of lading number.

- g. The location diverted to, including the address to which the fuel was diverted and the destination state.
 - h. The number of gallons of fuel being diverted.
 - i. The type of fuel being diverted.
 - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
- a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The partial load ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination on the original bill of lading as shown on the diversion ticket, if issued.
 - f. The original bill of lading number and, if available, the diversion ticket number.
 - g. The number of gallons off-loaded at each location.
 - h. The type of fuel off-loaded at each location.
 - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

SECTION 49. AMENDMENT. Section 57-43.2-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-14. Commissioner to audit returns report and assess tax.

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of special fuel dealers and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, assess additional tax due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the taxpayer in detail of the reason for the increase or decrease. The commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner~~

is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.

2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
4. If a person gives false or fraudulent information ~~is given~~ in a ~~dealer's tax return report~~ or in a ~~consumer's~~ claim for refund, or if the failure by a ~~dealer person~~ to file a tax ~~return report~~ is due to the fraudulent intent or the willful attempt of the ~~dealer person~~ in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.
5. If before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the ~~dealer or claimant person~~ consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a ~~dealer or to a consumer person~~ fixes the tax finally and irrevocably unless the ~~dealer or consumer person~~ against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the ~~dealer or consumer person~~ claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 50. Section 57-43.2-14.1 of the North Dakota Century Code is created and enacted as follows:

57-43.2-14.1. Determination if no report is filed. If a person fails, neglects, or refuses to file a special fuel tax report when due, the commissioner shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.2-15. An assessment made by the commissioner under this section or section 57-43.2-14 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

SECTION 51. AMENDMENT. Section 57-43.2-15 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-15. Refusal or failure to file return or pay tax when due - Deficiencies - Penalties Penalty and interest - Violations.

1. If any special fuel dealer refuses or fails to file a return required by this chapter or fails to pay the tax due within the time prescribed by section 57-43.2-12 If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the refusal or failure delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.
2. If any special fuel user a consumer fails to pay any tax due under this chapter, the commissioner shall impose a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the refusal or failure delinquency continues, not including the month within which the tax became due. The commissioner, for good cause shown, may waive all or part of the penalty or the interest provided by this section subsection. No licensed special fuel dealer may be held liable for taxes due from a special fuel user. No refiner, supplier, distributor, importer, exporter, or retailer may be held liable for taxes due directly from a consumer.
3. A person is guilty of a class A misdemeanor if:
 - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
 - b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

SECTION 52. AMENDMENT. Section 57-43.2-19 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-19. ~~Distribution Transfer, deposit, and distribution of funds.~~ All taxes, license fees, penalties, and interest collected under this chapter must be ~~promptly~~ transferred to the state treasurer who shall deposit ~~such~~ moneys in a highway tax distribution fund ~~which~~. The highway tax distribution fund must be distributed in the manner as prescribed by law section 54-27-19.

SECTION 53. AMENDMENT. Section 57-43.2-20 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-20. ~~Erroneously or illegally collected taxes.~~ If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from a ~~special fuel dealer~~ any person, the commissioner may permit that ~~special fuel dealer~~ person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that ~~special fuel dealer~~ person. The refund must be paid ~~to the special fuel dealer~~ from undistributed funds received from the tax imposed by this chapter and any such refund may not be approved or paid unless it is in an amount which is in excess of ~~ten five~~ ten dollars. ~~The commissioner is not required to retain the canceled checks by which any refund has been paid for more than six years from July first of the fiscal year in which the refund check is issued.~~

³⁵³ **SECTION 54. AMENDMENT.** Section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-21. Inventory gains - Losses- Deductions allowed to dealer - Remedies.

1. ~~Each dealer of special fuel other than liquefied petroleum gas is allowed to deduct the actual shrinkage of the total gallonage of special fuel received during each calendar month from the statement submitted as required in section 57-43.2-12, but such allowance may not exceed one percent of the total received during the month. Each wholesale dealer of liquefied petroleum gas may deduct the actual shrinkage of the total gallonage received during each calendar month from the statement submitted as required in section 57-43.2-12, but this allowance may not exceed two percent of the total received during the month. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.~~

³⁵³ Section 57-43.2-21 was also amended by section 5 of House Bill No. 1462, chapter 528.

2. When sold or used by a supplier or distributor, a gain in special fuel inventories is subject to the tax imposed by this chapter in the same manner as special fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any loss in excess of two percent of liquefied petroleum gases and one percent of all other special fuel received during the period covered by the inventory reconciliation.
2. 4. For the purposes of this chapter, it is presumed that all special fuel received by each dealer over and above the one percent allowance, or the two percent allowance for liquefied petroleum gas, not otherwise accounted for, but not above these allowances, except that gallonage shown as actual inventory based on physical inventory readings at the end of every calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used. The dealer, and the supplier or distributor is liable for the amount of the special fuel tax on each gallon [3.79 liters] of special fuel not accounted for. For purposes of this chapter, special fuel refined at a refinery in this state and placed in storage at the refinery, and special fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

SECTION 55. AMENDMENT. Section 57-43.2-22 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-22. ~~Rules - Administration - Assistance authorized - Rules.~~ The commissioner shall enforce the provisions of this chapter. The commissioner may employ assistance and conduct investigations as may be necessary for the administration and enforcement of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter for special fuel wholesalers or dealers and special fuel users. The commissioner may audit and examine the records of special fuel wholesalers or dealers and special fuel users and make other investigations as the commissioner deems necessary in the administration and enforcement of this chapter. If upon audit, examination, or investigation the commissioner finds additional taxes are due, the commissioner may assess the additional taxes, and the penalty and interest must be added as provided in section 57-43.2-15.

SECTION 56. Section 57-43.2-38 of the North Dakota Century Code is created and enacted as follows:

57-43.2-38. Special fuel tax for interstate motor carriers - Computation - Credits - Refunds.

1. An interstate motor carrier importing special fuel into this state is subject to the special fuel tax imposed by section 57-43.2-02 on the number of

gallons [liters] of fuel used in the state to propel licensed motor vehicles upon the public roads or highways in the state.

2. The amount of fuel used in interstate fleet operations by a motor carrier is determined by using a factor, the numerator of which is the total miles [kilometers] operated in this state and the denominator of which is the total miles [kilometers] operated both within and without this state applied to the total of that fuel used both within and without this state.
3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.2-37.

SECTION 57. Section 57-43.2-39 of the North Dakota Century Code is created and enacted as follows:

57-43.2-39. Interstate motor carrier required to obtain license - Display - Revocation or cancellation of license - Occasional trip permits in lieu of license.

1. An interstate motor carrier shall apply to the director for a license subject to the requirements of a cooperative agreement authorized by section 57-43.2-37 and is required to display the license in a manner prescribed under the terms of the agreement.
2. The license issued to an interstate motor carrier is not a franchise or irrevocable and it may not be assigned or transferred.
3. The director shall issue a license to an interstate motor carrier based on the terms of the cooperative agreement authorized by section 57-43.2-37 and the license shall be in force until it is suspended, revoked, surrendered, or expires pursuant to the terms of the agreement.
4. An interstate motor carrier who makes only occasional trips into or through this state may elect to secure occasional trip permits in lieu of the license required by this section. The term "occasional" means no more than one trip into or through the state in any seventy-two-hour period. The commissioner, director, or an agent of the commissioner or director shall issue an occasional trip permit for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner or director.

SECTION 58. Section 57-43.2-40 of the North Dakota Century Code is created and enacted as follows:

57-43.2-40. Interstate motor carrier tax reports - Payments - Audits - Assessments.

1. An interstate motor carrier shall file a tax report with the director and remit to the director any taxes, penalties, and interest due at the time and in the manner prescribed by the terms of a cooperative agreement authorized by section 57-43.2-37. All moneys collected and received under this section must be transmitted monthly by the director to the state treasurer to be transferred and credited in the same manner as provided in section 57-43.2-19.

2. An interstate motor carrier shall obtain, create, maintain, and retain records as required by the terms of a cooperative agreement authorized by section 57-43.2-37 and make those records available to the director or the commissioner for examination.
3. The director or commissioner shall audit the records of an interstate motor carrier at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.2-37.

SECTION 59. AMENDMENT. Section 57-43.3-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-01. Definitions. As used in this chapter unless the context otherwise requires:

1. "Aviation fuel" means aviation gasoline, kerosene, jet ~~motor~~ fuel, and other motor fuel used by aircraft.
2. "Commission" means the North Dakota aeronautics commission.
3. "Commissioner" means the North Dakota tax commissioner.
4. ~~"Dealer" means aviation fuel dealer.~~ "Common carrier" or "contract carrier" means a person involved in the movement of aviation fuel from a terminal or movement of aviation fuel imported into this state, who is not an owner of the aviation fuel.
5. ~~"User" means aviation fuel user.~~ "Consumer" means a user of aviation fuel. It does not include a supplier, distributor, importer, exporter, or retailer acquiring the fuel for resale.
6. "Distributor" means a person, other than a retailer, who acquires aviation fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
7. "Export" means the delivery of aviation fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
8. "Exporter" means a refiner, supplier, or distributor who exports aviation fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
10. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
11. "Import" means the delivery of aviation fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.

12. "Importer" means a refiner, supplier, or distributor who imports aviation fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
13. "Person" means every individual, partnership, firm, joint venture, corporation, limited liability company, estate, business trust, receiver, or any group or combination acting as a unit.
14. "Physical inventory reading" means a measurement of aviation fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
15. "Position holder" means a person holding an inventory position of aviation fuel in a terminal as reflected on the records of the terminal operator; a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal; and a terminal operator who owns aviation fuel in a terminal.
16. "Rack" means a mechanism used to dispense aviation fuel from a terminal.
17. "Refiner" means a person who produces, manufactures, or refines aviation fuel in this state for resale to a consumer.
18. "Retail location" means a site at which aviation fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of an aircraft.
19. "Retailer" means a person who acquires aviation fuel from a supplier or distributor for resale to a consumer at a retail location, and does not include a consumer selling aviation fuel to another consumer.
20. "Sale" means, with respect to aviation fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
21. "Supplier" means a refiner who distributes aviation fuel from a terminal in this state, or any person who acquires aviation fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires aviation fuel by truck or railcar for storage at and distribution from a terminal in this state.
22. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
23. "Terminal" means an aviation fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the aviation fuel may be removed from the rack.
24. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers,

"terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

25. "Wholesale distribution" means the sale of aviation fuel by a supplier or distributor.

SECTION 60. AMENDMENT. Section 57-43.3-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-02. ~~Imposition and collection of tax~~ Tax imposed on aviation fuel. ~~An excise tax of eight cents per gallon [3.79 liters] is hereby imposed on the sale or delivery of aviation fuel by a dealer to a user. The dealer shall collect the tax from the user and pay the tax to the commissioner.~~

1. Except as otherwise provided in this chapter, a tax of eight cents per gallon [3.79 liters] is imposed on all aviation fuel sold or used in this state.
2. A supplier or distributor shall remit the tax imposed by this section on aviation fuel used, on the wholesale distribution of aviation fuel to a retailer, and on direct sales of aviation fuel to a customer.
3. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, an export, or a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the customer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the aviation fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 61. AMENDMENT. Section 57-43.3-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-03. Refund of tax. ~~Any user must be reimbursed the tax levied by section 57-43.3-02 pursuant to the provisions of chapter 57-43.1.~~

1. A consumer who paid the tax imposed by section 57-43.3-02 may file a claim for a refund with the commissioner pursuant to the refund provisions in chapter 57-43.1. The tax imposed by section 57-43.3-04 must be deducted from the refund.

2. Any person to whom aviation fuel is sold on which the tax imposed by this chapter has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.
3. When a person purchasing aviation fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

SECTION 62. AMENDMENT. Section 57-43.3-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-04. Separate and additional tax imposed Special excise tax levied. ~~In addition to any other tax imposed in this chapter, there is hereby imposed a special excise tax of four percent on the sale of aviation fuel on which a tax is levied by section 57-43.3-02 and which is refunded under the provisions of section 57-43.3-03.~~ Except as otherwise provided in this chapter, a special excise tax of four percent of the cost of the fuel, exclusive of state or federal taxes levied, is imposed on each consumer who claims and receives a refund of the tax imposed by section 57-43.3-02.

SECTION 63. Section 57-43.3-08 of the North Dakota Century Code is created and enacted as follows:

57-43.3-08. Refiner, supplier, distributor, importer, exporter, and terminal operator required to secure license - License fees.

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, or terminal operator of aviation fuel unless that person holds an unrevoked license issued by the commissioner.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.

- d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
- e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
- g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.

SECTION 64. Section 57-43.3-09 of the North Dakota Century Code is created and enacted as follows:

57-43.3-09. Bond or letter of credit required. As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of aviation fuel tax. A refiner, terminal operator, or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than five hundred dollars.
2. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.
3. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.
4. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner,

without notice to the principal, if it becomes necessary to cover the aviation fuel tax, penalties, and interest due.

5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

SECTION 65. Section 57-43.3-10 of the North Dakota Century Code is created and enacted as follows:

57-43.3-10. Qualification for exporter license. As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

SECTION 66. Section 57-43.3-11 of the North Dakota Century Code is created and enacted as follows:

57-43.3-11. Qualification for importer license. As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license in this state as a refiner, supplier, or distributor.

SECTION 67. Section 57-43.3-12 of the North Dakota Century Code is created and enacted as follows:

57-43.3-12. Application for license - Issuance of license - Denial of license.

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which is valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance

with the provisions of chapter 28-32. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

SECTION 68. Section 57-43.3-13 of the North Dakota Century Code is created and enacted as follows:

57-43.3-13. Revocation of license - Hearing to show cause - Reinstatement.

1. The commissioner may revoke a license for reasonable cause. Before revoking a license, the commissioner shall grant a hearing in accordance with the provisions of chapter 28-32 to allow the person to show cause why the license should not be revoked. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.
2. Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the commissioner a surety bond upon which the person is the principal. The bond must be in an amount determined by the commissioner but not less than one thousand dollars. The bond must be payable to the commissioner and be conditioned upon the timely filing of required reports and the timely payment of the full amount of the tax due as required under this chapter. If the person fails to file the required report or to timely pay the full amount of the tax due, the commissioner may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the state under this chapter.

SECTION 69. Section 57-43.3-14 of the North Dakota Century Code is created and enacted as follows:

57-43.3-14. Monthly report by refiner, supplier, distributor, importer, or exporter required.

1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering aviation fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to file the report using an electronic format. The report must contain such information as required by the commissioner including:
 - a. A detailed schedule of aviation fuel refined, purchased, imported, and exported.

- b. A detailed schedule of aviation fuel sold to a person eligible to purchase the aviation fuel without the tax imposed by this chapter.
 - c. A detailed schedule of the number of gallons of aviation fuel sold to a person with the tax imposed by this chapter, including a person who purchased the aviation fuel for resale.
 - d. The total number of gallons of aviation fuel sold and used subject to the tax imposed by this chapter.
 - e. The number of gallons of aviation fuel sold tax exempt to a qualified consumer.
 - f. The number of gallons of aviation fuel in inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.
4. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

SECTION 70. Section 57-43.3-15 of the North Dakota Century Code is created and enacted as follows:

57-43.3-15. Report by terminal operator required.

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering aviation fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner, or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the terminal operator is able to file the report in an electronic format. The report must contain such information as required by the commissioner and may include:
 - a. A detailed schedule of aviation fuel received into the terminal for or on behalf of the position holder.
 - b. A detailed schedule of aviation fuel removed from the terminal by or on behalf of a position holder.

- c. The number of gallons of aviation fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
 3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

SECTION 71. Section 57-43.3-16 of the North Dakota Century Code is created and enacted as follows:

57-43.3-16. Common or contract carrier - License required - Records required - Diverted loads - Commissioner to audit records.

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for license must be made on a form prescribed by the commissioner and shall contain the information required by the commissioner.
2. A common or contract carrier transporting aviation fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting aviation fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of aviation fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the aviation fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill

of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.

6. A diversion ticket must include the following information:
 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The diversion ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination as stated on the original bill of lading.
 - f. The original bill of lading number.
 - g. The location diverted to, including the address to which the fuel was diverted and the destination state.
 - h. The number of gallons of fuel being diverted.
 - i. The type of fuel being diverted.
 - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The partial load ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination on the original bill of lading or as shown on the diversion ticket, if issued.
 - f. The original bill of lading number and, if available, the diversion ticket number.
 - g. The number of gallons off-loaded at each location.
 - h. The type of fuel off-loaded at each location.
 - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

SECTION 72. Section 57-43.3-17 of the North Dakota Century Code is created and enacted as follows:

57-43.3-17. Credit for taxes paid on worthless accounts and refunds. Taxes paid on aviation fuel represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the account collected. If in any case the credit, or any part of it, cannot be utilized by the supplier or distributor because of a discontinuance of a business or other valid reason, the amount may be refunded.

SECTION 73. Section 57-43.3-18 of the North Dakota Century Code is created and enacted as follows:

57-43.3-18. Commissioner to audit reports and assess tax.

1. The commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the report, or six years after the report was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, and use of the fuel.
4. If a person gives false or fraudulent information in a report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.
5. If before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon.

The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

6. A determination of additional tax due issued to a person fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 74. Section 57-43.3-19 of the North Dakota Century Code is created and enacted as follows:

57-43.3-19. Determination if no report filed. If a person fails, neglects, or refuses to file an aviation fuel tax report when due, the commissioner shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.3-23. An assessment made by the commissioner under this section or section 57-43.3-18 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of the evidence that it is erroneous or excessive.

SECTION 75. Section 57-43.3-20 of the North Dakota Century Code is created and enacted as follows:

57-43.3-20. Corporate officer liability. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

SECTION 76. Section 57-43.3-21 of the North Dakota Century Code is created and enacted as follows:

57-43.3-21. Governor and manager liability. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 77. Section 57-43.3-22 of the North Dakota Century Code is created and enacted as follows:

57-43.3-22. Lien of tax - Collection - Action authorized.

1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, with the costs that may accrue in addition to the tax, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
2. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.
3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central index system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central index system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "state of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central index system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the filing of a lien or the satisfaction of a lien.
6. Upon payment of the tax as to which the commissioner has indexed notice in the central index system, the commissioner shall index a satisfaction of the lien in the central index system.
7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond to

enforce payment of any taxes and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property, and in the action the attorney general shall have the assistance of the state's attorney of the county in which the action is pending.

8. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

SECTION 78. Section 57-43.3-23 of the North Dakota Century Code is created and enacted as follows:

57-43.3-23. Penalty and interest - Violations.

1. If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the report was required to be filed or the tax became due. If a person files a false or fraudulent report with the intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this subsection.
2. A person is guilty of a class A misdemeanor if:
 - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
 - b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

SECTION 79. Section 57-43.3-24 of the North Dakota Century Code is created and enacted as follows:

57-43.3-24. Tax collection allowance. The person required to remit the tax imposed by this chapter shall deduct one percent of the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and transmitting it to the commissioner.

SECTION 80. Section 57-43.3-25 of the North Dakota Century Code is created and enacted as follows:

57-43.3-25. Retention of records - Subject to inspection. A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all aviation fuel refined, purchased, imported, or otherwise acquired; all aviation fuel exported, sold, distributed, and used; and all inventory records, for a period of not less than three years. Inventory records include physical

readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection during business hours by the commissioner or by any agent or employee authorized by the commissioner.

SECTION 81. Section 57-43.3-26 of the North Dakota Century Code is created and enacted as follows:

57-43.3-26. Inventory gains - Losses.

1. A supplier or distributor shall take a physical inventory reading of all aviation fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis, and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include aviation fuel at retail locations and aviation fuel stored in a barrel, drum, or other receptacle. The supplier or distributor with retail locations is exempt from the provisions of subsection 2.
2. When sold or used by a supplier or distributor, a gain in aviation fuel inventories is subject to the tax imposed by this chapter in the same manner as aviation fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor is not responsible for the tax imposed by section 57-43.3-02 on any actual loss due to shrinkage or evaporation.
4. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss, subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

SECTION 82. Section 57-43.3-27 of the North Dakota Century Code is created and enacted as follows:

57-43.3-27. Administration - Assistance authorized - Rules. The commissioner shall enforce the provisions of this chapter. The commissioner may employ assistance and conduct investigations as may be necessary for the administration and enforcement of this chapter and may make and enforce reasonable rules relating to the administration and enforcement of this chapter.

SECTION 83. Section 57-43.3-28 of the North Dakota Century Code is created and enacted as follows:

57-43.3-28. Erroneously or illegally collected taxes. If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from any person, the commissioner may permit that person to take credit against the tax on a subsequent report for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that person. The refund must be paid from undistributed funds received from the tax imposed by this chapter and any such refund may not be approved or paid unless it is in an amount that is in excess of five dollars.

SECTION 84. REPEAL. Sections 57-43.1-18, 57-43.1-22, 57-43.1-23, 57-43.1-31, 57-43.1-33, 57-43.1-34, 57-43.1-35, 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40, 57-43.1-42, 57-43.1-42.1, 57-43.1-43, 57-43.2-06, 57-43.2-13, 57-43.2-16, 57-43.2-17, 57-43.2-18, 57-43.2-23, 57-43.2-24, 57-43.2-25, 57-43.2-26, 57-43.2-27, 57-43.2-28, 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-35.1, 57-43.2-36, and 57-43.3-05 of the North Dakota Century Code and sections 57-43.1-20, 57-43.2-04, 57-43.2-12, and 57-43.2-35 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 527

HOUSE BILL NO. 1130

(Finance and Taxation Committee)

(At the request of the Department of Transportation)

FUEL TAX RATE

AN ACT to amend and reenact sections 57-43.1-02 and 57-43.2-02 of the North Dakota Century Code, relating to the tax imposed on motor vehicle fuels and special fuels.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵⁴ **SECTION 1. AMENDMENT.** Section 57-43.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. (~~Effective through December 31, 1999~~) Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of twenty cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. The dealer shall collect the tax imposed by this section from the consumer on all sales.
3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.

~~(Effective after December 31, 1999) Tax imposed on motor vehicle fuels:~~

- ~~1. Except as otherwise provided in this section, a tax of seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.~~
- ~~2. The dealer shall collect the tax imposed by this section from the consumer on all sales.~~
- ~~3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~

³⁵⁴ Section 57-43.1-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 2 of Senate Bill No. 2177, chapter 526.

³⁵⁵ **SECTION 2. AMENDMENT.** Section 57-43.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. ~~(Effective through December 31, 1999)~~ Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. The dealer shall remit the tax imposed by this section on all sales to consumers.
3. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.

~~(Effective after December 31, 1999)~~ Tax imposed:

- ~~1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.~~
- ~~2. The dealer shall remit the tax imposed by this section on all sales to consumers.~~
- ~~3. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~

Approved March 19, 1999
Filed March 22, 1999

³⁵⁵ Section 57-43.2-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 32 of Senate Bill No. 2177, chapter 526.

CHAPTER 528

HOUSE BILL NO. 1462

(Representatives Timm, Dorso)

SPECIAL FUELS DYES, DEFINITIONS, AND INVENTORY

AN ACT to create and enact section 57-43.2-38 of the North Dakota Century Code, relating to use of dyed special fuel in a licensed motor vehicle and penalties; to amend and reenact sections 57-43.1-26, 57-43.1-27, 57-43.2-01, 57-43.2-03, and 57-43.2-21 of the North Dakota Century Code, relating to definitions for special fuels tax purposes and inventory gains and losses for motor vehicle fuels and special fuels tax purposes; to repeal section 57-43.2-02.2 of the North Dakota Century Code, relating to refund of special fuels taxes; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵⁶ **SECTION 1. AMENDMENT.** Section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-26. Inventory gains - Losses - Deductions allowed to dealer - Remedies. ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of motor fuel received during each calendar month from the statement submitted as required in section 57-43.1-16, but the allowance may not exceed one percent of the total received during that month.~~

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.
2. When sold or used by a supplier or distributor, a gain in motor vehicle fuel inventories is subject to the tax imposed by this chapter in the same manner as motor vehicle fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any such loss that is in excess of one-half of one percent of the motor vehicle fuel received during the period covered by the inventory reconciliation.

³⁵⁶ Section 57-43.1-26 was also amended by section 23 of Senate Bill No. 2177, chapter 526.

4. For purposes of this chapter, it is presumed that all motor vehicle fuel received ~~by each dealer~~ above ~~this~~ the one-half of one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of each calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the dealer supplier or distributor is liable for the amount of the motor vehicle fuel tax on each gallon [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor vehicle fuel refined at a refinery in this state and placed in storage at the refinery, and motor vehicle fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the commissioner.

³⁵⁷ **SECTION 2. AMENDMENT.** Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for losses. When a ~~wholesale dealer~~ supplier or distributor in motor vehicle fuels makes a sale to a retail outlet the ~~wholesale dealer~~ supplier or distributor shall credit the retail outlet with one-half of one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the ~~dealer~~ supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

³⁵⁸ **SECTION 3. AMENDMENT.** Section 57-43.2-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

³⁵⁷ Section 57-43.1-27 was also amended by section 24 of Senate Bill No. 2177, chapter 526.

³⁵⁸ Section 57-43.2-01 was also amended by section 31 of Senate Bill No. 2177, chapter 526.

2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing special fuel for resale.
4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.
5. "Director" means the director of the department of transportation.
6. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
- ~~7.~~ 8. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
- ~~7.~~ 8. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
- ~~8.~~ 9. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.
- ~~9.~~ 10. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;

- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

- 10. ~~"Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.~~
- 11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
- 12. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
- 13. "Person" means every natural person, fiduciary, association, corporation, or limited liability company. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.
- 14. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
- 15. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 16. "Sale" means the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of special fuels between special fuel dealers or between a special fuel dealer and a retailer or a consumer.
- 17. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, all gases and liquids which meet the

specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.

18. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
19. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

³⁵⁹ **SECTION 4. AMENDMENT.** Section 57-43.2-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels; which are exempted from the tax imposed under section 57-43.2-02.
2. ~~The special excise tax applies to all special fuels taxed under section 57-43.2-02 for which taxes are later refunded to any consumer.~~
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. 3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. 4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.

³⁵⁹ Section 57-43.2-03 was also amended by section 34 of Senate Bill No. 2177, chapter 526.

6. 5. The dealer shall remit the tax imposed by this section on all sales to a consumer.

³⁶⁰ **SECTION 5. AMENDMENT.** Section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-21. Inventory gains - Losses- Deductions allowed to dealer - Remedies.

1. ~~Each dealer of special fuel other than liquefied petroleum gas is allowed to deduct the actual shrinkage of the total gallonage of special fuel received during each calendar month from the statement submitted as required in section 57-43.2-12, but such allowance may not exceed one percent of the total received during the month. Each wholesale dealer of liquefied petroleum gas may deduct the actual shrinkage of the total gallonage received during each calendar month from the statement submitted as required in section 57-43.2-12, but this allowance may not exceed two percent of the total received during the month. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.~~
2. When sold or used by a supplier or distributor, a gain in special fuel inventories is subject to the tax imposed by this chapter in the same manner as special fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any loss in excess of two percent of liquefied petroleum gases and one-half of one percent of all other special fuel received during the period covered by the inventory reconciliation.
2. 4. For the purposes of this chapter, it is presumed that all special fuel received by each dealer ~~over and above the one percent allowance, or the two percent allowance for liquefied petroleum gas, not otherwise accounted for, but not above these allowances, except~~ that gallonage shown as actual inventory based on physical inventory readings at the end of every calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used. ~~The dealer, and the supplier or distributor is~~ liable for the amount of the special fuel tax on each gallon [3.79 liters] of special fuel not accounted for. For purposes of this chapter, special fuel refined at a refinery in this state and placed in storage at the refinery, and special fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from

³⁶⁰ Section 57-43.2-21 was also amended by section 54 of Senate Bill No. 2177, chapter 526.

the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.

5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

SECTION 6. Section 57-43.2-38 of the North Dakota Century Code is created and enacted as follows:

57-43.2-38. Dyed special fuel - Administrative fees - Inspections.

1. Special fuel dyed for federal motor fuel tax exemption purposes is subject to the tax imposed by section 57-43.2-03 and, unless otherwise provided in this section, may not be used in the fuel supply tank of a licensed motor vehicle. The owner or operator of a licensed motor vehicle found to contain dyed special fuel in the fuel supply tank of that vehicle is subject to the tax imposed by section 57-43.2-02 to be determined based on the capacity of the fuel supply tank of the licensed vehicle involved and is subject to administrative fees as follows:
 - a. A two hundred fifty dollar fee for the first violation.
 - b. A five hundred dollar fee for a second violation occurring within three years of a previous violation.
 - c. A one thousand dollar fee for a third violation occurring within three years of two previous violations.
 - d. A five thousand dollar fee for the fourth and subsequent violations occurring within three years of three or more previous violations.
2. Special fuel found in the fuel supply tank of a licensed motor vehicle shall be considered dyed if the fuel contains traces of the dye in an amount sufficient to be found in violation of federal laws and rules.
3. For purposes of enforcing the provisions of this section, the highway patrol, by agreement with the commissioner, may:
 - a. Stop, detain, and inspect a licensed motor vehicle and withdraw a sample of fuel from the fuel supply tank of the vehicle in a manner and in a quantity sufficient to determine whether the fuel is a special fuel and to determine the dye content of the fuel.
 - b. Physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel for coloration, markers, and shipping papers.

Any attempt by a person to prevent, stop, or delay an inspection of fuel or shipping papers by the highway patrol is subject to a civil penalty of not more than one thousand dollars per occurrence.

4. The highway patrol may issue a citation covering any violation of this section, and the person receiving a citation has the right to a hearing

before the tax commissioner in the manner provided in chapter 28-32 if, within thirty days after receiving a citation, the person requests a hearing.

5. This section does not apply to:
 - a. A person who purchased dyed special fuel in another state or Canadian province and imported that fuel into the state in the supply tank of a licensed motor vehicle provided the state or Canadian province where the fuel was purchased does not prohibit its use in that vehicle.
 - b. A state or local government using dyed special fuel in licensed vehicles for purposes of construction, reconstruction, repair, or maintenance of public roads or highways.
6. All administrative fees or civil penalties under this section may be completely or partially waived by the tax commissioner for good cause shown, and any fees or penalties not waived must be collected by the tax commissioner and transferred to the state treasurer and deposited in the state highway fund.

³⁶¹ **SECTION 7. REPEAL.** Section 57-43.2-02.2 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 8. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 1999-2000 interim the application, enforcement, and administration under the fuels tax laws.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1999.

Approved April 22, 1999
Filed April 22, 1999

³⁶¹ Section 57-43.2-02.2 was amended by section 33 of Senate Bill No. 2177, chapter 526.

CHAPTER 529**HOUSE BILL NO. 1203**

(Representatives Wald, Byerly, Grosz)
(Senators Bowman, Urlacher)

GROSS PRODUCTION TAX ALLOCATION

AN ACT to amend and reenact section 57-51-16 of the North Dakota Century Code, relating to the allocation of revenue from oil and gas gross production taxes from unidentified sources; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-16 of the North Dakota Century Code is amended and reenacted as follows:

57-51-16. Distribution of proceeds in certain cases. If gross production tax is paid to the commissioner and the reports accompanying such tax are insufficient to enable the commissioner to determine the source, by county, from which it is produced the state treasurer shall allocate those revenues under this section. In the first distribution to counties under section 57-51-15 which occurs after June gross production tax revenues are received by the state treasurer for allocation, the revenue under this section must be allocated as part of the revenue that is attributable to oil and gas produced in the county that received the least amount of among counties in the same proportions that revenue of the was allocated among counties that received distributions under section 57-51-15 during the year ended June thirtieth. Revenue received by the county under this section must be allocated within the county as provided in subsection 3 of section 57-51-15.

SECTION 2. EFFECTIVE DATE. This Act is effective for allocations of oil and gas gross production tax revenues made after June 30, 1999.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 530

HOUSE BILL NO. 1107

(Natural Resources Committee)
(At the request of the Tax Commissioner)

GROSS PRODUCTION TAX REFUNDS

AN ACT to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the payment and refund of oil and gas gross production tax that is five dollars or less; and to amend and reenact sections 57-51-05 and 57-51-19 of the North Dakota Century Code, relating to when the oil and gas gross production tax on oil is due and payable and the procedure for providing refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Minimum refunds and collections.

1. A refund may not be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. The tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the same manner as other revenue under this chapter.
2. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalties and interest.

SECTION 2. AMENDMENT. Section 57-51-05 of the North Dakota Century Code is amended and reenacted as follows:

57-51-05. Payment of tax on ~~quarterly~~ monthly basis - When tax due - When delinquent - Payment by purchaser - By producer - How casinghead gas taxed.

- The gross production tax on oil or gas, as herein provided, must be paid on a monthly basis. The tax on oil is due and payable on the twenty-fifth day of the month succeeding the month of production. The tax on gas is due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it becomes delinquent and must be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when ~~such a~~ the request is granted the tax is not delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve

percent per annum from the date the tax was due to the date the tax is paid.

2. On oil or gas sold at the time of production, the gross production tax thereon must be paid by the purchaser, and ~~such the~~ purchaser shall and is hereby authorized to deduct in making settlement with the producer or royalty owner, the amount of tax ~~so~~ paid; provided, that in the event oil on which ~~such the~~ gross production tax becomes due is not sold at the time of production but is retained by the producer, the tax on ~~such the~~ oil not ~~so~~ sold must be paid by the producer ~~for himself~~ including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner ~~such the~~ producer has the right to deduct the amount of ~~such the~~ tax ~~so~~ paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time ~~such the~~ tax becomes due with the amount of the tax paid.
3. Gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, must be considered for the purpose of this chapter, as to the amount utilized, as gas actually produced and saved.

SECTION 3. AMENDMENT. Section 57-51-19 of the North Dakota Century Code is amended and reenacted as follows:

57-51-19. Claim for credit or refund. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the ~~state auditor~~ office of management and budget, ~~the state auditor shall issue a warrant shall be issued to the taxpayer~~ for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned gross production tax in the state treasury and a pro rata share thereof must be charged against the county entitled to share in the tax. Interest arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and paid at the rate of ten percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

A taxpayer may file a claim for credit or refund of an overpayment of tax. For taxable periods beginning before January 1, 1991, the claim must be filed within six years of the due date of the return or six years after the return was filed. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the taxpayer must file a claim within five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the taxpayer must file a claim within four years. For taxable periods beginning after December 31, 1994, the taxpayer must file the claim within three years. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, a claim for refund of tax may be filed within six years after the due date of the return or six years after the return was filed, whichever period expires last.

Approved March 8, 1999
Filed March 9, 1999