TAXATION

CHAPTER 505

SENATE BILL NO. 2058

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

DELINQUENT TELECOMMUNICATIONS TAX COLLECTION

AN ACT to amend and reenact section 57-01-13 of the North Dakota Century Code, relating to the collection of delinquent telecommunications carriers tax from nonresident taxpayers and service of payment requests to delinquent nonresident taxpayers before assignment to a collection or credit agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-01-13 of the North Dakota Century Code is amended and reenacted as follows:

57-01-13. (Contingent expiration date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 ~~and~~, 57-39.2, and 57-40.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment~~, the first two~~. The notices must be sent by ~~regular~~ first-class mail to the taxpayer at the taxpayer's last-known mailing address ~~and the~~. The third notice must be sent ~~by certified or registered mail to the taxpayer's last-known mailing address~~ with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege tax, including penalties and interest actually collected.

b. All funds collected by the collection or credit agency must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner. The tax commissioner shall transfer the funds to the state treasurer for deposit in the state general fund. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract authorized by this section is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under the contract.

c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.

3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

(Contingent effective date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunication carriers, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment~~, the first two~~. The notices must be sent by regular mail to the taxpayer at the taxpayer's last-known mailing address ~~and the~~. The third notice must be sent ~~by certified or registered mail to the taxpayer's~~

~~last-known mailing address~~ with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege tax, including penalties and interest actually collected.

   b. All funds collected, less the fees for collection services, as provided in the contract, must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner.

   c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.

3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 506

SENATE BILL NO. 2064

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

TAX COMMISSIONER INFORMATION DISCLOSURE

AN ACT to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to the disclosure of information by the state tax commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Disclosure of name and address by state tax commissioner. Notwithstanding the secrecy and confidential information provisions of this title, for the purpose of properly administering the tax laws of this state, name and address information filed on returns by or on behalf of a person with the tax commissioner pursuant to a tax law of this state, obtained by the tax commissioner pursuant to that tax law, or furnished to the tax commissioner under section 6103 of the Internal Revenue Code [26 U.S.C. 6103] may be provided by the tax commissioner to the United States postal service or a national change-of-address vendor authorized by the United States postal service, for the sole purpose of obtaining proper and correct address information on that person.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 507

HOUSE BILL NO. 1059

(Representatives Koppang, Gulleson, M. Klein)
(Senators Thane, Wardner)

MEDICAL CARE TRANSPORTATION EXPENSE DETERMINATION

AN ACT to amend and reenact subsection 4 of section 57-02-08.1 of the North Dakota Century Code, relating to determination of medical care transportation expenses for purposes of the homestead property tax credit for senior citizens; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 508

HOUSE BILL NO. 1222

(Representatives Brandenburg, Huether, Severson, Wikenheiser)
(Senators Erbele, Wanzek)

WIND TURBINE TAXABLE VALUATION

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to reduction in taxable valuation of wind turbine electric generators that are centrally assessed property; to amend and reenact section 57-02-27 of the North Dakota Century Code, relating to determination of taxable valuation of property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27. Property to be valued at a percentage of assessed value - Classification of property - Limitation on valuation of annexed agricultural lands. All property subject to taxation based on the value thereof must be valued as follows:

1. All residential property to be valued at nine percent of assessed value. If any property is used for both residential and nonresidential purposes, the valuation must be prorated accordingly.

2. All agricultural property to be valued at ten percent of assessed value as determined pursuant to section 57-02-27.2.

3. All commercial~~, air carrier transportation, and railroad~~ property to be valued at ten percent of assessed value.

4. All centrally assessed property~~, except air carrier transportation and railroad property,~~ to be valued at ~~fourteen percent of assessed value for the 1981 property tax year, thirteen percent of assessed value for the 1982 property tax year, twelve percent of assessed value for the 1983 property tax year, eleven percent of assessed value for the 1984 property tax year, and~~ ten percent of assessed value ~~for all property tax years beginning on or after January 1, 1985~~ except as provided in section 2 of this Act.

The resulting amounts must be known as the taxable valuation. In determining the assessed value of real and personal property, except agricultural property, the assessor may not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor may the assessor adopt as a criterion of value the price at which said property would sell at auction, or at forced sale, or in the aggregate with all the property in the town or district, but the assessor shall value each article or description by itself, and at such sum or price as the assessor believes the same to be fairly worth in money. In assessing any tract, or lot of real property, there must be determined the value of the land, exclusive of improvements, and the value of all taxable improvements and structures thereon, and the aggregate

value of the property, including all taxable structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine, or stone or other quarry, the same must be valued at such a price as such property, including the mine or quarry, would sell for at a fair voluntary sale for cash. Agricultural lands within the corporate limits of a city which are not platted constitute agricultural property and must be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Agricultural lands, whether within the corporate limits of a city or not, which were platted and assessed as agricultural property prior to March 30, 1981, must be assessed as agricultural property for ad valorem property tax purposes until put to another use. Such valuation must be uniform with the valuation of adjoining unannexed agricultural land.

SECTION 2. A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

Taxable valuation of centrally assessed wind turbine electric generators. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed before January 1, 2011, must be valued at three percent of assessed value to determine taxable valuation of the property.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 509

SENATE BILL NO. 2068

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

ASSESSMENT OF INUNDATED AGRICULTURAL LAND

AN ACT to amend and reenact subsection 6 of 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; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

6. For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing a minimum of ten contiguous acres if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for ~~a full~~ two consecutive growing ~~season~~ seasons or more, and which produced revenue from any source in the most recent prior year which is less than the county average revenue per acre for noncropland calculated by the agricultural economics department of the North Dakota state university. Application for classification as inundated agricultural land must be made in writing to the township assessor or county director of tax equalization by March thirty-first of each year, except that for the year 2001, the written application must be made within ninety days from March 16, 2001. 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.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

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

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 510

HOUSE BILL NO. 1031

(Legislative Council)
(Advisory Commission on Intergovernmental Relations)

PARK DISTRICT TAX LEVY CONSOLIDATION

AN ACT to amend and reenact subsection 1 of section 4-33-11, section 32-12.1-08, subsection 13 of section 40-49-12, section 40-55-09, subdivision a of subsection 2 of section 57-15-01.1, and sections 57-15-12, 57-15-12.1, 57-15-12.2, 57-15-12.3, 57-15-28.1, 57-15-36, and 57-15-60 of the North Dakota Century Code, relating to consolidation of property tax levy authority of park districts; to repeal section 57-15-37 of the North Dakota Century Code, relating to a tax levy for airport purposes in park districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-33-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body of any political subdivision ~~of this state~~ may appropriate money for the control of pests ~~pursuant to~~ under this chapter or section 63-01.1-04.2. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs that should be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in this event the governing body ~~may~~, except the governing body of a park district, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, may levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that the levy may not exceed the limitation in subsection 1 of section 57-15-28.1.

SECTION 2. AMENDMENT. Section 32-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

32-12.1-08. Political subdivision insurance reserve fund - Tax levy.

1. A political subdivision, other than a school district or park district, may establish and maintain an insurance reserve fund for insurance purposes, and all political subdivisions including school districts and park districts may include in the annual tax levy of the political subdivision such amounts as are determined by the governing body to be necessary for the purposes and uses of the insurance reserve fund. ~~Except in the case of a school district, the~~ The tax levy authorized by this section ~~shall~~ may not exceed the limitation in section 57-15-28.1,

except a levy by a school district or park district must be within the general fund levy authority of the school district or park district. If a political subdivision has no annual tax levy, the political subdivision may appropriate from any unexpended balance in its general fund such amounts as the governing body of the political subdivision ~~shall deem~~ determines necessary for the purposes and uses of the insurance reserve fund.

2. Except in the case of a school district or park district, the fund established pursuant to this section ~~shall~~ must be kept separate and apart from all other funds and ~~shall~~ may be used only for the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter, or costs incurred in the defense of claims. Payments by a school district or park district for the same purposes ~~shall~~ must be made out of the ~~district's~~ political subdivision's general fund ~~as established in section 57-15-14.2~~.

SECTION 3. AMENDMENT. Subsection 13 of section 40-49-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. Levy taxes upon all the property within the district, ~~subject to the limitations of section 57-15-12.2~~ within the general fund levy authority of section 57-15-12, for the purpose of funding a comprehensive health care program for district employees.

SECTION 4. AMENDMENT. Section 40-55-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-55-09. Favorable vote at election - Procedure. Except in the case of a school district or park district, upon adoption of the public recreation system proposition at an election by a majority of the votes cast upon the proposition, the governing body of the municipality ~~or park district~~, by resolution or ordinance, shall provide for the establishment, maintenance, and conduct of a public recreation system, and thereafter levy and collect annually a tax of not more than two and five-tenths mills, or not more than eight and five-tenths mills if ~~the same is~~ authorized as ~~herein~~ provided by this section, on each dollar of the taxable valuation of all taxable property within the corporate limits or boundaries of the municipality ~~or park district~~. This tax is ~~to be~~ in addition to the maximum of taxes permitted to be levied in such municipality ~~or park district~~. The mill levy ~~herein~~ authorized by this section may be raised to not more than eight and five-tenths mills when the increase is approved by the citizens of the municipality ~~or park district~~ after submission of the question in the same manner as provided in section 40-55-08 for the establishment of the public recreation system. The governing body of the municipality ~~or park district~~ shall continue to levy the tax annually for public recreation purposes until the qualified voters, at a regular or special election, by a majority vote on the proposition, decide to discontinue the levy. The governing body of the municipality~~, school district, or park district, in its discretion,~~ may appropriate additional funds for the operation of the public recreation system if in the opinion of the governing body additional funds are needed for the efficient operation thereof. This chapter does not limit the power of any municipality, school district, or park district to appropriate on its own initiative general municipal, school district, or park district tax funds for the operation of a public recreation system, a community center, or character building facility. A school district may levy a tax annually for the conduct and maintenance of a public recreation system pursuant to subdivision q of subsection 1 of section 57-15-14.2. A

park district may levy a tax annually within the general fund levy authority of section 57-15-12 for the conduct and maintenance of a public recreation system.

SECTION 5. AMENDMENT. Subdivision a of subsection 2 of section 57-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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. For a park district general fund the "amount levied in dollars in property taxes" is the sum of amounts levied in dollars in property taxes for the general fund under section 57-15-12 including any additional levy approved by the electors, the insurance reserve fund under section 32-12.1-08, the employee health care program under section 40-49-12, the public recreation system under section 40-55-09 including any additional levy approved by the electors, forestry purposes under section 57-15-12.1 except any additional levy approved by the electors, pest control under section 4-33-11, and handicapped person programs and activities under section 57-15-60;

SECTION 6. AMENDMENT. Section 57-15-12 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12. ~~Tax~~ General fund levy limitations in park districts. ~~In park districts tax levies have the following limitations:~~

~~1.~~ The aggregate amount levied for park district general fund purposes, exclusive of levies to pay interest on bonded debt and levies to pay and discharge the principal thereof, and levies to pay the principal and interest on special assessments assessed and levied against park board properties by other municipalities, may not exceed ~~an amount produced by a levy~~ the sum of the number of mills levied by the park district in taxable year 2000 for the general fund under section 57-15-12 including any additional levy approved by the electors, the insurance reserve fund under section 32-12.1-08, the employee health care program under section 40-49-12, the public recreation system under section 40-55-09 including any additional levy approved by the electors, forestry purposes under section 57-15-12.1 except any additional levy approved by the electors, pest control under section 4-33-11, and handicapped person programs and activities under section 57-15-60. A park district may increase its general fund levy under this section to any number of mills approved by a majority of the electors of the park district voting on the question at a regular or special park district election, up to a maximum levy under this section of ~~four~~ thirty-five mills on the dollar of the taxable valuation of the district for the current year.

~~2.~~ ~~Any park district, owning and operating an airport for which no city levy is made, may levy an additional tax of not to exceed four mills on the dollar of the taxable valuation of the district for the current year, such additional tax to be used solely for the purpose of purchasing or acquiring lands necessary for said airport, paying for land previously acquired for said airport, and for operating and maintaining the same.~~

~~3.~~ ~~Whenever the board of park commissioners deems it advisable to raise moneys by taxes in excess of the levy herein provided, for any purpose~~

~~for which the park district is authorized to expend moneys raised by taxes, the board of park commissioners shall submit to the voters of the district the question of increasing the levy by a certain number of mills, but not to exceed fifteen mills, on the dollar of the taxable valuation of the district. When authorized by a majority of the qualified electors of the park district voting on the question at an election in which the question has been submitted, the board may increase the levy in the amount so authorized. This excess levy may be continued from year to year by action of the park board except that if a petition containing the signatures of not less than ten percent of the qualified electors of the park district, as determined by the city auditor of the municipality in which the park district is situated, is presented to the park board requesting an election on the question of continuing the excess levy, that question must be submitted to the qualified electors of the park district at the next regular park district election. If the majority of the qualified electors voting on the question at that election determine not to continue the excess levy, no further excess levy may be made except that the election does not affect the tax levy in the calendar year in which the election is held.~~

SECTION 7. AMENDMENT. Section 57-15-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.1. City or park district tax levy or service charge for forestry purposes.

1. The governing body of a city or park district may ~~annually~~ levy annually a tax ~~not in excess of two mills on the taxable valuation of property within the city or park district for the purpose of providing~~ to provide funds for the establishment, operation, and maintenance of forestry activities within the city or park district. A tax levied by a city governing body under this section may not exceed two mills per dollar of taxable valuation of property within the city. A tax levied by a park district under this section must be within the general fund levy authority of the park district. The governing board of a city or park district, upon approval by a majority vote of the qualified electors voting on the question at any citywide or districtwide election, may also ~~annually~~ levy annually an additional tax not in excess of three mills on the taxable valuation of property within the city or park district for the purpose of providing funds for forestry activities within the city or park district. Any ~~such tax~~ park district levy approved by the electors and any city levy under this section is in addition to and not restricted by any mill levy limit prescribed by law. The proceeds of any ~~such~~ levy under this section may be used for forestry activities, including ~~the following:~~ prevention or control of Dutch elm disease or other diseases which may affect trees, shrubs, and other vegetation; purchasing, planting, or removal of trees, shrubs, and other vegetation; pruning and maintenance of trees, shrubs, and other vegetation; purchasing of necessary equipment; hiring of personnel; contracting for services; public information and technical assistance; and other items related to forestry activities which may be necessary to provide for proper care, maintenance, propagation, and improvement of forestry resources within the city or park district.

2. In lieu of a ~~mill~~ levy as specified in subsection 1, a city or park district may propose a service charge as an alternative form of financing. Such alternative form of financing must be approved by a majority vote of the

qualified electors voting on the question at any general or special citywide or districtwide election. The proceeds of any service charge may be used for forestry activities, as specified in subsection 1.

SECTION 8. AMENDMENT. Section 57-15-12.2 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.2. Exceptions to tax levy limitations ~~in~~ for park districts. The ~~tax~~ general fund levy limitations specified in section 57-15-12 do not apply to the following ~~mill~~ levies~~, expressed in mills per dollar of taxable valuation of property~~ in a park district:

1. ~~A park district levying~~ Levying a tax for an employees' pension fund according to sections 40-49-21 and 40-49-22 and a park district may levy a tax not exceeding the amount necessary for the district's annual contribution to the employees' pension fund.

2. ~~A park district levying a tax to establish a public recreation system in accordance with section 40-55-09 may levy a tax not exceeding two and five-tenths mills, or not more than eight and five-tenths mills if authorized as provided in section 40-55-09.~~

~~3.~~ ~~A park district may levy a~~ Levying an additional tax approved by the electors providing for forestry activities in accordance with section 57-15-12.1 in an amount not exceeding ~~five~~ three mills.

~~4. A park district levying a tax for airport purposes in accordance with section 57-15-37 may levy a tax not exceeding four mills.~~

~~5.~~ 3. ~~A park district levying~~ Levying a tax for parks and recreational facilities in accordance with section 57-15-12.3 ~~may levy a tax~~ in an amount not exceeding five mills.

~~6. A park district levying a tax for a comprehensive health care program for district employees in accordance with section 40-49-12 may levy a tax not exceeding one mill.~~

~~Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.~~

SECTION 9. AMENDMENT. Section 57-15-12.3 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.3. Tax levy for parks and recreational facilities. A board of park commissioners established pursuant to chapter 40-49 may levy taxes annually not exceeding the limitation in subsection ~~5~~ 3 of section 57-15-12.2 for a fund for the purpose of acquiring real estate as a site for public parks, construction of recreational facilities, renovation and repair of recreational facilities, and the furnishing of recreational facilities. The tax is to be levied, spread, and collected in the same manner as are other taxes in the park district. The question of whether the levy is to be discontinued must be submitted to the qualified electors at the next regular election upon petition of twenty-five percent or more of the qualified electors voting in the last regular park district election, if the petition is filed not less than sixty days before the election. If the majority of the qualified electors voting on the question vote to discontinue the levy, it may not again be levied without a majority vote of the

qualified electors voting on the question at a later regular election on the question of relevying the tax, which question may be submitted upon petition as above provided or by decision of the governing board.

[252] **SECTION 10. AMENDMENT.** Section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-28.1. Exceptions to tax levy limitations in political subdivisions. The tax levy limitations specified by law do not apply to the following mill levies, expressed in mills per dollar of taxable valuation of property in the political subdivision. For purposes of this section, "political subdivision" has the same meaning as in section 32-12.1-02.

1. A political subdivision, except a park district, levying a tax for the control of pests in accordance with section 4-33-11 may levy a tax not exceeding one mill.

2. A political subdivision, except a school district or park district, levying a tax for an insurance reserve fund according to section 32-12.1-08 may levy a tax not exceeding five mills.

3. A political subdivision, except a school district, levying a tax for the payment of a judgment in accordance with section 32-12.1-11 may levy a tax not exceeding five mills.

4. A political subdivision levying a tax for railroad purposes in accordance with section 49-17.2-21 may levy a tax not exceeding four mills.

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.

6. A county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding four mills.

~~Additionally, tax levy limitations do not apply to taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein are not subject to mill levy limitations provided by law.~~

SECTION 11. AMENDMENT. Section 57-15-36 of the North Dakota Century Code is amended and reenacted as follows:

57-15-36. Tax levy for airport purposes. In cities supporting airports for which no levy has been made by a ~~park board or other~~ taxing district within the corporate limits of such city, a levy not exceeding the limitation in subsection 18 of section 57-15-10 may be made for such purposes.

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[252] Section 57-15-28.1 was also amended by section 3 of House Bill No. 1135, chapter 458.

SECTION 12. AMENDMENT. Section 57-15-60 of the North Dakota Century Code is amended and reenacted as follows:

57-15-60. Authorization of tax levy for programs and activities for handicapped persons - Elections to authorize or remove the levy - Handicapped person programs and activities.

1. The board of county commissioners of any county ~~is hereby authorized to~~ may levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city ~~or park district~~ in the county ~~is authorized to~~ may levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city ~~or park district~~ in the county is void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax may not exceed the limitation in subsection 33 of section 57-15-06.7 and subsection 29 of section 57-15-10. The proceeds of the tax must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy is in addition to any moneys expended by the board of county commissioners pursuant to section 11-11-65 or by the governing body of any city or park district pursuant to section 40-05-20.

2. The levy authorized by this section may be used to fund an intergovernmental program under a joint powers agreement pursuant to chapter 54-40 but may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board of county commissioners or the governing body of the city or park district in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives funds under this section must be reviewed or approved annually by the board of county commissioners or the governing body of the city or park district to determine its eligibility to receive funds under this section.

3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors voting on the question in an election in the county, city, or park district. 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 that governing body. A park district may levy a tax annually within the general fund levy authority of section 57-15-12 for the purpose of establishing or maintaining programs and activities for handicapped persons.

SECTION 13. REPEAL. Section 57-15-37 of the North Dakota Century Code is repealed.

SECTION 14. EFFECTIVE DATE. Except as otherwise provided in this Act, this Act is effective for taxable years beginning after December 31, 2000.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 511

HOUSE BILL NO. 1405

(Representatives Severson, Pollert)
(Senator Tallackson)

AMBULANCE SERVICE TAX LEVY LIMITATION

AN ACT to amend and reenact subsection 23 of section 57-15-06.7, subsection 7 of section 57-15-20.2, sections 57-15-26.5, and 57-15-51 of the North Dakota Century Code, relating to the county, city, township, and rural ambulance service district tax levy limitation for ambulance services; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[253] **SECTION 1. AMENDMENT.** Subsection 23 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

23. A county levying a tax for county ambulance service according to section 57-15-50 may levy a tax not exceeding ~~five~~ ten mills.

[254] **SECTION 2. AMENDMENT.** Subsection 7 of section 57-15-20.2 of the North Dakota Century Code is amended and reenacted as follows:

7. A township levying a tax for ambulance service in accordance with section 57-15-51.1 may levy a tax not exceeding ~~five~~ ten mills.

SECTION 3. AMENDMENT. Section 57-15-26.5 of the North Dakota Century Code is amended and reenacted as follows:

57-15-26.5. General tax levy of rural ambulance service districts. A rural ambulance service district may levy, in accordance with chapter 11-28.3, a tax not exceeding ~~five~~ ten mills on the taxable value of property within the district.

[255] **SECTION 4. AMENDMENT.** Section 57-15-51 of the North Dakota Century Code is amended and reenacted as follows:

57-15-51. Levy authorized for city ambulance service. Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of ~~each~~ a city ~~in this state~~ shall levy annually a tax of not to exceed ~~five~~ ten mills upon its taxable valuation, for the

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[253] Section 57-15-06.7 was also amended by section 2 of House Bill No. 1135, chapter 458, and section 15 of House Bill No. 1202, chapter 246.

[254] Section 57-15-20.2 was amended by section 16 of House Bill No. 1202, chapter 246, section 1 of Senate Bill No. 2328, chapter 553, and section 2 of Senate Bill No. 2334, chapter 513.

[255] Section 57-15-51 was also amended by section 18 of House Bill No. 1202, chapter 246.

purpose of subsidizing city ambulance services; provided, that such tax must be approved by a majority of the qualified electors of the city voting on the question at a regular or special city election. Whenever a tax for county ambulance services is levied by a county, any city levying a tax for, or subsidizing city ambulance services, shall upon written application to the county board of such county be exempted from such county tax levy. The city may set aside, as a depreciation expense, up to ten percent of its annual ambulance service operating or subsidization budget in a dedicated ambulance sinking fund, deposited with the auditor for replacement of equipment and ambulances. The ten percent ambulance sinking fund may be in addition to the actual annual ambulance budget but the total of the annual ambulance budget and the annual ten percent ambulance fund may not exceed the approved mill levy.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 512

SENATE BILL NO. 2086

(Education Committee)
(At the request of the Municipal Bond Bank)

ASBESTOS ABATEMENT AND LEAD PAINT REMOVAL

AN ACT to amend and reenact section 57-15-17.1 of the North Dakota Century Code, relating to multiyear asbestos abatement and lead paint removal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. School board levies - Multiyear asbestos abatement~~, required~~ - Lead paint removal - Required remodeling~~, and alternative~~ - Alternative education ~~program levy by school district~~ programs.

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:

   a. Providing funds for the removal of asbestos or lead paint substances from school buildings or the abatement of asbestos or lead paint substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from removal or abatement of asbestos substances;

   b. Any remodeling required to meet specifications set by the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to 28 CFR 36;

   c. Any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school; and

   d. Providing alternative education programs.

2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3 and 4, must be placed in a separate fund known as the asbestos and lead paint 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 or lead paint abatement.

3. All revenue accruing from up to five mills of the fifteen mill levy under this section must be placed in a separate fund known as the required remodeling 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 required remodeling, as set forth in subsection 1.

4. 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.

5. Any moneys remaining in the asbestos and lead paint abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos or lead paint abatement project, any funds remaining in the required remodeling fund after completion of the remodeling projects, 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.

Approved April 24, 2001
Filed April 24, 2001

CHAPTER 513

SENATE BILL NO. 2334

(Senators O'Connell, Flakoll, Tollefson)
(Representatives Hunskor, M. Klein, Koppelman)

TOWNSHIP MOWING AND SNOW REMOVAL LEVY USE

AN ACT to amend and reenact section 57-15-19.6 and subsection 5 of section 57-15-20.2 of the North Dakota Century Code, relating to use of funds under the township levy for mowing and snow removal equipment for expenses of mowing and snow removal; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-19.6 of the North Dakota Century Code is amended and reenacted as follows:

57-15-19.6. Township levy for mowing or snow removal ~~equipment~~. The electors of each township at the annual meeting may levy not exceeding the limitation in subsection 5 of section 57-15-20.2 for the purpose of ~~buying and operating~~ mowing or snow removal ~~equipment~~. This tax levy may be made only if notice of the question of the approval of such levy has been included with or upon the notice of the annual meeting provided for in section 58-04-01.

[256] **SECTION 2. AMENDMENT.** Subsection 5 of section 57-15-20.2 of the North Dakota Century Code is amended and reenacted as follows:

5. A township levying a tax for mowing or snow removal ~~equipment~~ in accordance with section 57-15-19.6 may levy a tax not exceeding three mills.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 21, 2001
Filed March 21, 2001

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[256] Section 57-15-20.2 was also amended by section 16 of House Bill No. 1202, chapter 246, section 2 of House Bill No. 1405, chapter 511, and section 1 of Senate Bill No. 2328, chapter 553.

CHAPTER 514

SENATE BILL NO. 2062

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

TAX LIEN NOTICE INFORMATION

AN ACT to amend and reenact section 57-20-26 of the North Dakota Century Code, relating to notice of tax lien information requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-20-26 of the North Dakota Century Code is amended and reenacted as follows:

57-20-26. 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, simple interest at the rate of twelve percent per annum from and after January first following the year in which the taxes become due and payable, and costs established under subsection 5 of section 57-28-04 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 2. EFFECTIVE DATE. This Act is effective for taxes that become due after December 31, 1999.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 515

SENATE BILL NO. 2059

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

REAL ESTATE TAX COLLECTION AND TAX DEEDS

AN ACT to create and enact a new section to chapter 57-20 and section 57-28-09.1 of the North Dakota Century Code, relating to collection of real estate taxes and the form of a tax deed; to amend and reenact sections 23-35-07, 57-23-05, 57-28-07, and 57-45-11 of the North Dakota Century Code, relating to the proration of health district funds, filing of an application for abatement, notice of foreclosure of tax lien, and limitation of action against a tax deed; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-35-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-35-07. Health district funds.

1. A district board of health shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit this budget to the joint board of county commissioners for approval. The amount budgeted and approved must be prorated in health districts composed of more than one county among the various counties in the health district according to the ~~assessed~~ taxable valuation of the respective counties in the health district. For the purpose of this section, "prorated" means that each member county's contribution must be based on an equalized mill levy throughout the district. Within ten days after approval by the joint board of county commissioners, the district board of health shall certify the budget to the respective county auditors and the budget must be included in the levies of the counties. The budget may not exceed the amount that can be raised by a levy of five mills on the taxable valuation, subject to public hearing in each county in the health district at least fifteen days before an action taken by the joint board of county commissioners. Action taken by the joint board of county commissioners must be based on the record, including comments received at the public hearing. A levy under this section is not subject to the limitation on the county tax levy for general and special county purposes. The amount derived by a levy under this section must be placed in the health district fund. The health district fund must be deposited with and disbursed by the treasurer of the district board of health. Each county in a health district quarterly shall remit and make settlements with the treasurer. Any funds remaining in the fund at the end of any fiscal year may be carried over to the next fiscal year.

2. The district board of health, or the president and secretary of the board when authorized or delegated by the board, shall audit all claims against the health district fund. The treasurer shall pay all claims from

the health district fund. The district board of health shall approve or ratify all claims at the board's quarterly meetings.

SECTION 2. A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

Collection of real estate taxes on leasehold or other possessory interest.

1. If any holder of a leasehold or other possessory interest in exempt real property neglects or refuses to pay any real estate taxes legally assessed and levied on that property at the time required by law for the payment of real property taxes, the taxes shall constitute a personal charge against the holder of the lease or other possessory interest from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes are applicable.

2. For property subject to assessment under the provisions of subsection 2 of section 57-02-26, taxes upon the property constitute a personal charge against the lease or easement holder from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes are applicable.

SECTION 3. AMENDMENT. Section 57-23-05 of the North Dakota Century Code is amended and reenacted as follows:

57-23-05. Application for abatement or refund - Who may make. An application for an abatement or refund must be in writing and must be filed in duplicate with the county auditor. It must state the grounds relied upon for such abatement or refund and give the post-office address of the applicant. The county auditor shall note the date of filing, shall file the same, and, within five business days of the filing date, shall present a copy to the city auditor or the township clerk if the applicant's assessed property is within a city or an organized township. The county auditor shall present the application to the board of county commissioners at its next regular meeting. The county auditor shall give the applicant notice by mail of the time and place of hearing on any abatement or refund not less than ten days prior to such hearing.

Any person having any estate, right, title, or interest in or lien upon any real property who claims that the assessment made or the tax levied against the same is excessive or illegal, in whole or in part, is entitled to make an application for abatement, refund, or compromise, as the case may be, and have such application granted if the facts upon which the application is based bring it within the provisions of this chapter for abatement, refund, or compromise. In addition, if an abatement is based upon any of the grounds specified in section 57-23-04 and if the application for abatement will not result in a refund of tax or a compromise of a tax, the abatement application may be signed and submitted by either the county auditor or the assessor who made the assessment resulting in the tax specified in the abatement application.

SECTION 4. 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~~ foreclosure of tax lien to be served by publication must be substantially in the following form:

I, _____, county auditor, of _____ County, North Dakota, give notice that the real estate hereinafter described has a lien for delinquent taxes against it for the year _____, and unless ~~such~~ the tax 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~~ real estate 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 persons therein will be forever foreclosed and barred from asserting any further rights to the real estate ~~whatsoever~~. The following is a list of the real estate on which the tax lien will be foreclosed on October first. Opposite each description of the 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 satisfy the tax lien. (List descriptions, names of owners, and amount necessary to satisfy the tax lien.)

Given pursuant to authority of law on _____, _____.

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

SECTION 5. Section 57-28-09.1 of the North Dakota Century Code is created and enacted as follows:

57-28-09.1. Form of tax deed. A tax deed must be substantially in the following form:

TAX DEED

This deed is made by _____ (name of county auditor), county auditor of _____ County, North Dakota, in the name of the state to _____ (name of county) County, as provided by the laws of the state of North Dakota:

Whereas, there was assessed for _____ (year) the following real property: _____ (legal description of the property); and

Whereas, the taxes for _____ (year) levied against the property amounted to $_____; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached; and

Whereas, notice was given to interested parties under chapter 57-28 of foreclosure of the tax lien and that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been satisfied by _____ (name of former owner) or any other person entitled to satisfy it.

Now, therefore, I _____ (auditor's name), county auditor of _____ County, North Dakota, in the name of the state, hereby grant to _____ (name of

county) County, all the property situated in _____ County, North Dakota, described in this document.

Witness my hand on this date _____ (date, including year).
_____, County Auditor
_____ County, North Dakota

SECTION 6. 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 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~~ the land, or a lien upon the ~~same~~ land, adversely to the person by or through any tax deed, to test the validity of the ~~tax sale, tax certificate, or~~ tax deed, or to quiet the title to ~~said~~ the land as against the claims of ~~such~~ the adverse claimant, or to remove the cloud from the title arising from ~~such~~ the tax deed. ~~No~~ An action ~~nor~~ or defense based upon the invalidity of ~~any such~~ a tax deed may not be commenced or interposed after three years from the issuance of a tax deed unless ~~such~~ the tax deed is void by reason of jurisdictional defects. The holder of a tax deed may maintain an action to establish the validity ~~thereof~~ of the tax deed or to quiet title to ~~said lands,~~ the land and ~~the holder of a tax deed~~ may demand the possession of ~~such lands~~ the land.

SECTION 7. EFFECTIVE DATE. Sections 2 and 5 of this Act are effective for taxes that become due after December 31, 1999. The remainder of this Act is effective for taxable years beginning after December 31, 2000.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 516

HOUSE BILL NO. 1206
(Representative Klemin)

ABATEMENT HEARINGS

AN ACT to amend and reenact subsection 2 of section 57-23-06 of the North Dakota Century Code, relating to the hearing on an application for the abatement or refund of taxes upon real property; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-23-06 of the North Dakota Century Code is amended and reenacted as follows:

2. At the next regular meeting of the board of county commissioners following the filing of an application for abatement or, if forthcoming, at the next regular meeting of the board of county commissioners following transmittal of the recommendations of the governing body of the municipality, the applicant may appear, in person or by a representative or attorney, and may present such evidence as may bear on the application. The applicant shall furnish any additional information or evidence requested by the board of county commissioners. The recommendations of the governing body of the municipality in which such assessed property is located must be endorsed upon or attached to every application for an abatement or refund, and the board of county commissioners shall give consideration to such recommendations. The board of county commissioners, by a majority vote, either shall approve or reject the application, in whole or in part. If rejected, ~~a statement of the reasons for such rejection~~ in whole or in part, a written explanation of the rationale for the decision, signed by the chairman of the board, must be attached to the application, and a copy thereof must be mailed by the county auditor to the applicant at the post-office address specified in the application.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying all aspects of improvements by special assessment and property tax assessment and abatements, to include a determination of the true and full value of subsidized housing for property tax assessments, and the homestead tax valuation for senior citizens. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 517

SENATE BILL NO. 2151

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

FIXED ASSET MINIMUM REPORTING VALUE

AN ACT to amend and reenact section 54-27-21 of the North Dakota Century Code, relating to the minimum value for reporting fixed assets; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-27-21. Fixed asset minimum reporting value. All state departments, agencies, boards, bureaus, commissions, industries, and institutions shall include all fixed assets under their control in their financial statements, except those having a value of ~~seven hundred and fifty~~ five thousand dollars or less. The state auditor is authorized to provide for the written exemption of specific fixed assets having a value of more than ~~seven hundred and fifty~~ five thousand dollars when ~~such~~ an exemption is justified upon generally accepted accounting principles.

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

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 518

SENATE BILL NO. 2286

(Senators Fischer, Cook, Lee)
(Representatives Aarsvold, Delmore, Hawken)

TAX DEEDS AND TAX LIENS

AN ACT to create and enact a new section to chapter 57-28 of the North Dakota Century Code, relating to liens against other property for costs incurred by a county in tax foreclosures; to amend and reenact section 57-28-09 of the North Dakota Century Code, relating to issuance of tax deeds to political subdivisions on property forfeited in tax foreclosures; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the date of foreclosure for property 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 or, if the property was sold by another political subdivision of this state within the ten years preceding the foreclosure, the county auditor shall issue a tax deed to that political subdivision. The tax deed passes the property in fee to the county ~~or~~, the state, or political subdivision, 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 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, or political subdivision 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, or political subdivision 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 2. A new section to chapter 57-28 of the North Dakota Century Code is created and enacted as follows:

County lien for costs of improvement to distressed property forfeited in tax foreclosure.

1. If property sold by the county under this chapter is sold for less than the total amount of the taxes due and the costs to improve salability of the property which were incurred by the county in cleanup, repairs, demolition, or other action necessary because of damage, neglect, or waste by the prior owner, those costs incurred by the county to improve salability which were not recovered by the county from the sale constitute a lien on any real property owned, or later acquired, in the county by that prior owner.

2. The county auditor shall extend and enter upon the tax list of real estate then in the hands of the county treasurer, opposite the description of real estate designated by the board of county commissioners which belongs to the prior owner, the year for which an obligation to the county exists under this section and the amount of that obligation. The entry must be made without regard to any prior payment of real estate taxes on those properties and the treasurer may not thereafter issue any receipt in full for real estate taxes on those properties without making collection at the same time of the obligation under this section. A taxpayer holding a specific superior lien on those properties ahead of a lien under this section is entitled to tax receipts without regard to nonpayment of obligations under this section.

SECTION 3. EFFECTIVE DATE. This Act is effective for property for which a tax deed is issued after December 31, 2000.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 519

HOUSE BILL NO. 1479

(Representative R. Kelsch)
(Approved by the Delayed Bills Committee)

MOBILE TELECOMMUNICATIONS TAXATION

AN ACT to create and enact chapter 57-34.1 of the North Dakota Century Code, relating to the taxation of mobile telecommunications; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-34.1 of the North Dakota Century Code is created and enacted as follows:

57-34.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Charges for mobile telecommunications services" means any charge for or associated with the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for or associated with a service provided as an adjunct to a commercial mobile radio service which is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

2. "Customer" means the person that contracts with the home service provider for mobile telecommunications services or for the purpose of determining the place of primary use, if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service. The term does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

3. "Enhanced zip code" means a United States postal zip code of nine or more digits.

4. "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

5. "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

6. "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

7. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.

8. "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance which enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

9. "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service and does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

10. "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

11. "Taxing jurisdiction" means this state or any political subdivision within this state, including those operating under a home rule charter, with the authority to impose a tax, charge, or fee.

57-34.1-02. Application.

1. This chapter applies to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether the tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.

2. This chapter does not apply to:

   a. Any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service.

   b. Any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis.

   c. Any tax, charge, or fee that represents compensation for a mobile telecommunications service provider's use of public rights of way or other public property, provided that the tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services.

   d. Any generally applicable business and occupation tax that is imposed by this state, is applied to gross receipts or gross

proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect to use the sourcing method required in this chapter.

e. Any fee related to obligations under section 254 of the Communications Act of 1934.

f. Any tax, charge, or fee imposed by the federal communications commission.

3. The provisions of this chapter:

a. Do not apply to the determination of the taxing situs of prepaid telephone calling services.

b. Do not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale of the services, whether as sales of the services alone or as a part of a bundled product, if the Internet Tax Freedom Act [Pub. L. 105-277; 112 Stat. 2681 et seq.] precludes a taxing jurisdiction from subjecting the charges of the sale of the services to a tax, charge, or fee.

c. Do not apply to the determination of the taxing situs of air-ground radio-telephone service as defined in section 22.99 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

57-34.1-03. Sourcing rules for mobile telecommunications services. Notwithstanding any other provision of law or any ordinance or resolution of a political subdivision, including a political subdivision operating under a home rule charter, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, are deemed to be provided by the customer's home service provider. All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under this chapter are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for the mobile telecommunications services.

57-34.1-04. Electronic data base.

1. A home service provider is to be held harmless from any tax, charge, or fee liability in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to subsection 4, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within the enhanced zip code for use in taxing the activity for the enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with subsection 4 is in compliance with this subsection. For purposes of this subsection, there is a

rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

a. Expended reasonable resources to implement and maintain an appropriately detailed electronic data base of street address assignments to taxing jurisdictions;

b. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

c. Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the data base.

2. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to subsection 4 and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer and not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.

3. Except as provided in subsection 4, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on or before July 28, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

4. A taxing jurisdiction or the state on behalf of any taxing jurisdiction may:

a. Determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if the taxing jurisdiction making the determination is not the state, the taxing jurisdiction obtains the consent of all affected taxing jurisdictions within this state before giving the notice of determination, and before the taxing jurisdiction gives the notice of determination, the customer is given an opportunity to demonstrate in accordance with applicable state or local tax, charge, or fee administrative procedures that the address is the customer's place of primary use.

b. Determine that the assignment of a taxing jurisdiction by a home service provider under subsection 1 does not reflect the correct

taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if the taxing jurisdiction making the determination is not the state, the taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the state before giving the notice of determination and the home service provider is given an opportunity to demonstrate in accordance with applicable state or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

5. Nothing in this chapter modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

6. If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

7. If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

57-34.1-05. Customer's procedures and remedies for correcting taxes and fees.

1. If a customer believes that an amount of tax, assignment of place of primary use, or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer, and any other information the home service provider reasonably requires to process the request. Within sixty days of receiving a notice, the home service provider shall review its records and the electronic data base or enhanced zip code to determine the customer's taxing jurisdiction. If as a result of this review the home service provider finds that the amount of tax, assignment of place of primary use, or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.

2. If the customer is dissatisfied with the response of the home service provider under this section, the customer may seek correction or refund from the taxing jurisdiction affected.

3. The procedure in this section is the sole and exclusive remedy available to customers seeking correction of assignment of place of primary use, taxing jurisdiction, a refund, or other compensation for taxes or fees erroneously collected by the home service provider.

57-34.1-06. Nonseverability. If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of the Mobile Telecommunications Sourcing Act [Pub. L. 106-252; 114 Stat. 626], then the provisions of this chapter are invalid and have no legal effect as of the date of entry of the judgment.

SECTION 2. EFFECTIVE DATE. This Act becomes effective for customer bills issued on or after August 1, 2002.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 520

SENATE BILL NO. 2408

(Senators Stenehjem, Tomac, Wardner)
(Representatives Carlson, Renner, Wald)

TOBACCO PRODUCTS TAX

AN ACT to amend and reenact sections 57-36-01, 57-36-09, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the North Dakota Century Code, relating to the tobacco products tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

57-36-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.

2. "Cigar" means any roll of tobacco wrapped in tobacco.

~~2.~~ 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco and encased in any material except tobacco.

~~3.~~ 4. "Consumer" means any person who has title to or possession of cigarettes, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption in this state.

~~4.~~ 5. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, ~~snuff,~~ or other tobacco products.

~~5.~~ 6. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, ~~snuff,~~ or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, ~~snuff,~~ or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.

~~6.~~ 7. "Licensed dealer" means a dealer licensed under the provisions of this chapter.

~~7.~~ 8. "Licensed distributor" means a distributor licensed under the provisions of this chapter.

~~8.~~ 9. "Other tobacco products" means ~~any product except cigarettes, cigarette papers, cigars, or~~ snuff ~~which is made up or composed of tobacco, in whole or in part~~ and chewing tobacco.

~~9.~~ 10. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.

11. "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

~~10.~~ 12. "Sale" or "sell" applies to gifts, exchanges, and barter.

13. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.

~~11.~~ 14. "Storage" means any keeping or retention of cigarettes, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products for use or consumption in this state.

~~12.~~ 15. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products.

SECTION 2. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty. Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.

2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

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

SECTION 3. AMENDMENT. Section 57-36-25 of the North Dakota Century Code is amended and reenacted as follows:

57-36-25. Cigars~~, snuff, and other tobacco products~~ and pipe tobacco - Excise tax on wholesale purchase price - Other tobacco products - Excise tax on weight - Penalty - Reports - Collection - Allocation of revenue.

1. There is hereby levied and assessed upon all cigars~~, snuff, and other tobacco products~~ and pipe tobacco 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~~ and pipe tobacco 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~~ or pipe tobacco to a distributor exclusive of any discount or other reduction.

2. There is levied and assessed upon all other tobacco products sold in this state an excise tax at the following rates:

   a. Upon each can or package of snuff, sixty cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

   b. On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

   For purposes of this subsection, the tax on other tobacco products is computed based on the net weight as listed by the manufacturer.

3. The proceeds of ~~such tax~~ the taxes imposed under this section, 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 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 fifteenth day of the month following the month for which the returns are filed.

~~2.~~ 4. 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 be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

~~3.~~ 5. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

~~4. Repealed by S.L. 1975, ch. 106, § 673.~~

SECTION 4. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars~~, snuff~~, pipe tobacco, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is ~~hereby~~ levied and assessed upon all cigars~~, snuff, and other tobacco products,~~ and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price, and upon all other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars~~, snuff, or other tobacco products~~ or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars ~~or snuff~~, pipe tobacco, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars~~, snuff, and~~, pipe tobacco, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction

thereof excepting the month within which the return was required to be filed 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 be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

~~5. Repealed by S.L. 1975, ch. 106, § 673.~~

SECTION 5. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars~~, snuff~~, pipe tobacco, and other tobacco products - Reports - Remittances.

1. A tax is hereby imposed upon the use or storage by consumers of cigars~~, snuff~~, pipe tobacco, and other tobacco products in this state, and upon those consumers, at the ~~rate of twenty-eight percent of the cost to the consumer of those products~~ rates indicated in section 57-36-25.

2. This tax shall not apply if the tax imposed by section 57-36-25 or section 57-36-26 has been paid nor shall it apply to cigars~~, snuff~~, pipe tobacco, or other tobacco products exempt pursuant to section 57-36-24.

3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars~~, snuff~~, pipe tobacco, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or section 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return shall be made upon a form furnished and prescribed by the tax commissioner and shall contain such other information as the tax commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.

5. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner shall have authority to make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.

6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes shall be applicable to consumers under this section in like manner as though set out in full herein.

SECTION 6. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.

2. Whenever a distributor destroys cigarettes, cigars, ~~snuff, and~~ pipe tobacco, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 7. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter, any person who violates any provision of this chapter is guilty of a class A misdemeanor. All cigarettes, cigarette papers, ~~snuff,~~ cigars, pipe tobacco, or other tobacco products in the possession of the person or in the place of business of the person must be confiscated and forfeited to the state.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 521

HOUSE BILL NO. 1063

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

LLC MEMBER PERSONAL LIABILITY FOR UNPAID TAXES

AN ACT to amend and reenact sections 57-36-09.4, 57-38-60.2, 57-39.2-15.2, 57-40.2-15.1, 57-40.2-15.2, 57-43.1-17.3, 57-43.2-16.2, and 57-43.3-21 of the North Dakota Century Code, relating to the personal liability of members in a member-controlled limited liability company for unpaid tobacco products, income withholding, sales or use, motor vehicle fuel, importer for use, special fuels, and aviation fuel taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 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 governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments, are personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member'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, or members 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 2. AMENDMENT. Section 57-38-60.2 of 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 governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of the preparation of

~~such~~ the returns and payments are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member'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, or members 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.

SECTION 3. 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 required to hold a permit under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member'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, or members 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.

SECTION 4. 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 liability.

1. If a corporation fails for any reason to file the required returns or to pay the tax due under this chapter, the president, vice president, secretary, or treasurer of the corporation, jointly or severally, having control or supervision of, or charged with the responsibility for making the returns and payments are 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 the 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, or members of a member-controlled limited liability company 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 5. AMENDMENT. Section 57-40.2-15.2 of the North Dakota Century Code is amended and reenacted 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, or member of a member-controlled limited liability company, 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, or member'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.

SECTION 6. AMENDMENT. Section 57-43.1-17.3 of 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 governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member'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, or members 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 7. AMENDMENT. Section 57-43.2-16.2 of 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 governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member'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, or members 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.

SECTION 8. AMENDMENT. Section 57-43.3-21 of the North Dakota Century Code is amended and reenacted 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, or member of a member-controlled limited liability company, 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, or member'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 9. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 2000.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 522

SENATE BILL NO. 2252

(Senators Krauter, T. Mathern, Kringstad)
(Representatives Thorpe, Nottestad, Gulleson)

ADOPTION EXPENSE DEDUCTIONS

AN ACT to amend and reenact paragraph 5 of subdivision d of subsection 1 of section 57-38-01.2 and subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to income tax deductions or credits for adoption expenses; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 5 of subdivision d of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

(5) Reduced by one thousand seven hundred fifty dollars for each child under the age of twenty-one years adopted by the taxpayer. The reduction under this paragraph may be claimed only by an adoptive parent of an adopted child and the child must qualify as a dependent of the adoptive parent for federal income tax purposes. The reduction may be claimed by only one spouse, for spouses filing separately under this chapter. The reduction provided by this paragraph may be claimed ~~only~~ for the taxable year in which the adoption becomes final and ~~the~~ any unused portion of the reduction may be carried forward by the taxpayer for up to five taxable years. The reduction does not apply to the adoption of children of the taxpayer's spouse.

[257] **SECTION 2. AMENDMENT.** Subsection 5 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

5. For purposes of this section, "federal income tax liability" means the individual's, estate's, or trust's federal income tax 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;

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[257] Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 1 of House Bill No. 1413, chapter 528, section 53 of Senate Bill No. 2032, chapter 488, and section 1 of Senate Bill No. 2386, chapter 527.

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; and

k. Subtract the credit for qualified adoption expenses computed under Internal Revenue Code section 23, but not in an amount exceeding one thousand seven hundred fifty dollars.

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.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 523

SENATE BILL NO. 2189

(Senators Krebsbach, Espegard, Robinson)
(Representatives Berg, Mahoney, Price)

FUND DIVIDEND TAX DEDUCTION

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to a corporate income tax deduction for dividends paid to shareholders by a regulated investment company or a fund of a regulated investment company; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as amended, by a regulated investment company or a fund of a regulated investment company as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, as amended, except that the deduction for dividends paid is not allowed with respect to dividends attributable to any income that is not subject to taxation under this chapter when earned by the regulated investment company. Sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as amended, apply for computing the deduction for dividends paid. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as amended.

SECTION 2. EFFECTIVE DATE. This Act is effective for assessments made after December 31, 2000.

Approved March 15, 2001
Filed March 15, 2001

CHAPTER 524

HOUSE BILL NO. 1223

(Representatives Brandenburg, Devlin, Kretschmar, Severson)
(Senators Klein, Kroeplin)

GEOTHERMAL, SOLAR, AND WIND TAX CREDIT

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to application of the income tax credit for geothermal, solar, or wind energy devices; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to ~~five~~ three percent per year for ~~three~~ five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

2. For the purposes of this section:

   a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

   b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or

otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 525

HOUSE BILL NO. 1065

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

INDIVIDUAL AND PARTNERSHIP INCOME ALLOCATION

AN ACT to create and enact section 57-38-08.1 of the North Dakota Century Code, relating to the allocation and apportionment of partnership income for income tax purposes; to amend and reenact subsections 4, 5, and 6 of section 57-38-04 and section 57-38-08 of the North Dakota Century Code, relating to the allocation and apportionment of an individual's gross income and the distribution of partnership income for income tax purposes; to repeal section 57-38-10 of the North Dakota Century Code, relating to allocation and apportionment of partnership income for income tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4, 5, and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

4. Income derived from ~~carrying on a trade or~~ business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity must be assigned to this state without regard to the residence of the individual if the ~~trade or~~ business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.

5. Whenever ~~a trade or~~ business activity is carried on partly within and partly without this state by a nonresident of this state~~,~~ as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.

6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if ~~such~~ the business consists principally of the holding of ~~such~~ the property and the collection of income and gains therefrom, must be assigned to this state without regard to the situs of ~~such~~ the property.

   b. Income derived from ~~carrying on a trade or~~ business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation or other passthrough entity, must be assigned to this state without regard to where ~~such trade or~~ the

business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.

c. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter if written proof of ~~such~~ the payment is furnished to the tax commissioner; provided, that this credit for ~~such~~ the tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended.

SECTION 2. AMENDMENT. Section 57-38-08 of the North Dakota Century Code is amended and reenacted as follows:

57-38-08. Partnerships not subject to tax. Partnerships are not subject to tax under this chapter. Persons carrying on a business as partners are taxable on their ~~share of the net profits of a partnership whether the same are distributed or not and are entitled to deduct their share of any net losses suffered by the partnership~~ respective shares of the partnership's income, gain, loss, and deduction included in the partner's federal taxable income, as provided under section 57-38-08.1.

SECTION 3. Section 57-38-08.1 of the North Dakota Century Code is created and enacted as follows:

57-38-08.1. Allocation and apportionment of partnership income - Taxation of partners.

1. A partnership that carries on its business activity entirely within this state shall report all of its income or loss to this state. A partnership that carries on its business activity within and without this state shall allocate and apportion its income or loss to this state in the same manner as the income or loss of a corporation is allocated and apportioned to the state under chapter 57-38.1.

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision c of subsection 6 of section 57-38-04.

3. a. In determining the gross income of a nonresident partner, limited to individuals, estates, and trusts, there must be included only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss and deduction, or item thereof, entering into the federal taxable income of the partner, as determined under section 57-38-04. Except as otherwise provided in this subdivision,

guaranteed payments paid to nonresident partners of a partnership that has business activity in this state are treated as a distributive share of partnership income for state tax purposes. In the case of a professional service partnership, the portion of a guaranteed payment paid to a nonresident partner attributable to a reasonable salary may not be treated as a distributive share. The portion of the guaranteed payment not treated as a distributive share that is for services performed in this state must be assigned as provided under subsection 1 of section 57-38-04. For purposes of this subdivision, "professional service partnership" means a partnership that engages in the practice of law, accounting, medicine, and any other profession in which neither capital nor the services of employees are a material income producing factor.

b. In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(1) Characterizes payments to the partners as being for services or for the use of capital or allocates to the partner, as income or gain from sources outside this state, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subdivision d; or

(2) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than the proportionate share of the partner, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subdivision d.

c. Any modification to federal taxable income described in this chapter that relates to an item of partnership income, gain, loss, or deduction, or item thereof, must be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates, but limited to the partner's portion of the item derived from or connected with sources in this state.

d. On application, the commissioner may authorize the use of other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the related modifications, as may be appropriate and equitable, on the terms and conditions as it may require.

SECTION 4. REPEAL. Section 57-38-10 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 526

HOUSE BILL NO. 1399

(Representatives Carlson, Kasper, Koppelman, Wald)
(Senators Christmann, G. Nelson)

SHORT-FORM TAX LIABILITY DETERMINATION

AN ACT to amend and reenact sections 57-38-30.3 and 57-38-31.1 of the North Dakota Century Code, relating to determination of income tax liability on the short-form state income tax return and the filing of composite returns; to repeal section 57-38-34.1 of the North Dakota Century Code, relating to an optional card income tax return; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[258] **SECTION 1. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.3. Simplified optional method of computing tax.

1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. Any taxpayer electing to determine the taxpayer's income tax liability pursuant to this section is only eligible for those adjustments or credits which are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return pursuant to the provisions of this chapter, but who has not computed a federal taxable income ~~or federal income tax liability~~ figure shall compute such a federal taxable income figure using a pro forma return pursuant to the provisions of this section in order to determine a federal taxable income ~~tax liability~~ figure to be used as a starting point in computing state income tax.

2. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. ~~This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year~~ The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection. For a nonresident individual, estate, or trust, the tax is equal to the tax

[258] Section 57-38-30.3 was also amended by section 1 of House Bill No. 1413, chapter 528, section 53 of Senate Bill No. 2032, chapter 488, section 2 of Senate Bill No. 2252, chapter 522, and section 1 of Senate Bill No. 2386, chapter 527.

determined in accordance with the applicable schedule in subdivisions a through e multiplied by the fraction under subdivision f.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over $27,050	2.10%
Over $27,050 but not over $65,550	$568.05 plus 3.92% of amount over $27,050
Over $65,550 but not over $136,750	$2,077.25 plus 4.34% of amount over $65,550
Over $136,750 but not over $297,350	$5,167.33 plus 5.04% of amount over $136,750
Over $297,350	$13,261.57 plus 5.54% of amount over $297,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over $45,200	2.10%
Over $45,200 but not over $109,250	$949.20 plus 3.92% of amount over $45,200
Over $109,250 but not over $166,500	$3,459.96 plus 4.34% of amount over $109,250
Over $166,500 but not over $297,350	$5,944.61 plus 5.04% of amount over $166,500
Over $297,350	$12,539.45 plus 5.54% of amount over $297,350

If North Dakota taxable income is:	The tax is equal to:
Not over $22,600	2.10%
Over $22,600 but not over $54,625	$474.60 plus 3.92% of amount over $22,600
Over $54,625 but not over $83,250	$1,729.98 plus 4.34% of amount over $54,625
Over $83,250 but not over $148,675	$2,972.31 plus 5.04% of amount over $83,250
Over $148,675	$6,269.73 plus 5.54% of amount over $148,675

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over $36,250	2.10%
Over $36,250 but not over $93,650	$761.25 plus 3.92% of amount over $36,250
Over $93,650 but not over $151,650	$3,011.33 plus 4.34% of amount over $93,650
Over $151,650 but not over $297,350	$5,528.53 plus 5.04% of amount over $151,650
Over $297,350	$12,871.81 plus 5.54% of amount over $297,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over $1,800	2.10%
Over $1,800 but not over $4,250	$37.80 plus 3.92% of amount over $1,800
Over $4,250 but not over $6,500	$133.84 plus 4.34% of amount over $4,250
Over $6,500 but not over $8,900	$231.49 plus 5.04% of amount over $6,500
Over $8,900	$352.45 plus 5.54% of amount over $8,900

f. For a nonresident individual, estate, or trust, the tax determined under the applicable schedule in subdivisions a through e must be multiplied by a fraction in which:

(1) The numerator is the individual's federal adjusted gross income derived from North Dakota sources; and

(2) The denominator is the individual's federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 3.

g. If married individuals who file a joint federal income tax return are required to file separate state income tax returns under any provision of this chapter, the tax under this subsection for each

spouse must be determined by applying the rates under subdivision b to the spouses' joint North Dakota taxable income and prorating the result between the spouses based on their separate North Dakota taxable incomes.

h. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

3. ~~The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator~~ For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:

a. ~~Interest~~ Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

b. ~~The~~ Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

c. ~~An~~ Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended.

e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum

distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

4. ~~The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:~~

~~a. Interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.~~

~~b. The portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.~~

~~c. An amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.~~

~~5. For purposes of this section, "federal income tax liability" means the individual's, estate's, or trust's federal income tax 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;~~

~~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.~~ Each adjustment in subsection 3 may be allowed only to the extent the adjustment is attributable to income allocated and apportioned to this state.

~~6.~~ 5. ~~A husband and wife~~ Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.

~~7.~~ 6. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.

b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's ~~entire~~ federal adjusted gross income as reported on the taxpayer's federal income tax return.

~~8.~~ 7. ~~a.~~ Individuals, estates, or trusts ~~receiving a refund of~~ that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax ~~returns reducing the federal income tax~~

~~liability for the year for which the federal income tax refund is granted and may not report~~ return to reflect the changes on the federal income tax ~~refund in the year received~~ return.

~~b. Individuals, estates, or trusts assessed additional federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns increasing the federal income tax liability for the year for which the additional federal income tax is assessed and may not report increased federal income tax liability in the year in which the additional federal income tax is paid.~~

~~9.~~ 8. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

~~10.~~ 9. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.

~~11.~~ 10. A taxpayer filing a return under this section is entitled to the exemptions or credits provided under sections 40-63-04, 40-63-06, and 40-63-07.

11. a. A taxpayer is entitled to a credit against the tax imposed by this section for any unused federal credit for prior year minimum tax. "Unused federal credit for prior year minimum tax" means the amount of the federal credit for prior year minimum tax attributable to federal alternative minimum tax included in the taxpayer's federal income tax liability for purposes of this section for taxable years beginning before January 1, 2001, reduced by the total amount of the federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return for all taxable years beginning after December 31, 2000.

b. The credit under this subsection is equal to fourteen percent of the portion of the unused federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return and may not exceed the taxpayer's tax liability under this section for the taxable year. For a nonresident taxpayer, the credit determined under this subsection must be multiplied by the percentage that the nonresident taxpayer's North Dakota adjusted gross income is of the nonresident's federal adjusted gross income.

c. The credit under this subsection is not allowed for taxable years beginning after December 31, 2004.

12. a. At the election of an individual taxpayer engaged in a farming business, the tax imposed by subsection 2 for the taxable year must be equal to the sum of the following:

(1) The tax computed under subsection 2 on North Dakota taxable income reduced by elected farm income.

(2) The increase in tax imposed by subsection 2 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended.

c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.

d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.

13. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 2, if the amounts of the tax tables are based on the tax rates set forth in subsection 2. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

SECTION 2. AMENDMENT. Section 57-38-31.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-31.1. Composite returns. Partnerships and subchapter S corporations may file a composite return on behalf of nonresident individual partners or shareholders in the manner prescribed by the tax commissioner. Any amount of tax paid by the partnership or subchapter S corporation on the composite return on behalf of a nonresident partner or shareholder constitutes a credit on the North Dakota return of the nonresident individual on whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed by a partnership or subchapter S corporation under this section is considered as the return of the nonresident individual partner or shareholder on whose behalf the return is filed. The tax under this section must be computed by multiplying the aggregate of the shares of North Dakota ~~taxable~~ income reportable to North Dakota by the partners or shareholders included in the composite return by ~~the highest federal tax rate for individuals times the tax rate imposed under section 57-38-30.3~~ five and fifty-four hundredths percent.

SECTION 3. REPEAL. Section 57-38-34.1 of the North Dakota Century Code is repealed.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 527

SENATE BILL NO. 2386

(Senators Kroeplin, Erbele)
(Representatives Brandenburg, Kerzman)

AGRICULTURAL COOPERATIVE INVESTMENT INCOME TAX CREDIT

AN ACT to create and enact a new subsection to section 57-38-30.3 and chapter 57-38.6 of the North Dakota Century Code, relating to an agricultural cooperative investment income tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[259] **SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

An individual, estate, or trust is entitled to a credit against the tax determined under this section as calculated under section 57-38.6-03.

SECTION 2. Chapter 57-38.6 of the North Dakota Century Code is created and enacted as follows:

57-38.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.

2. "Director" means the director of the department of economic development and finance.

3. "Qualified business" means a cooperative or limited liability company that:

   a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;

   b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

   c. Has an agricultural commodity processing facility in this state; and

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[259] Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 1 of House Bill No. 1413, chapter 528, section 53 of Senate Bill No. 2032, chapter 488, and section 2 of Senate Bill No. 2252, chapter 522.

d. Has a majority of its ownership interests owned by producers of unprocessed agricultural commodities.

4. "Taxpayer" means an individual, estate, or trust.

57-38.6-02. Certification - Investment reporting by qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not more than twenty thousand dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.

3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to fifteen taxable years after the taxable year in which the investment was made.

4. A partnership that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.

5. The investment must be at risk in the business. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years.

6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer

or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

57-38.6-04. Taxable year for agricultural business investment tax credit. The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which full consideration for the investment in the qualified business was received by the qualified business.

57-38.6-05. Agricultural business investment tax credit - Procedure - Rules. To receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.6-06.

57-38.6-06. Investment reporting forms. Within thirty days after the date on which an investment in a qualified business is purchased, the qualified business shall file with the tax commissioner and the director and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the qualified business the following:

1. The name, address, and social security number of the taxpayer who made the investment.

2. The dollar amount paid for the investment by the taxpayer.

3. The date on which full consideration was received by the qualified business for the investment.

57-38.6-07. Rules and administration. The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers for purposes of this chapter as provided under section 57-38-56. The director is charged with administration of this chapter as it relates to certification of qualified businesses and the director may adopt rules for that purpose.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000, and for investments in qualified businesses made after December 31, 2000.

Approved April 10, 2001
Filed April 10, 2001

CHAPTER 528

HOUSE BILL NO. 1413

(Representatives Berg, B. Thoreson, Wald, Weiler)
(Senators Grindberg, Wardner)

SEED CAPITAL INVESTMENT TAX CREDIT

AN ACT to create and enact a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to credits allowed on the short-form income tax return; to amend and reenact subsection 4 of section 57-38.5-01 and sections 57-38.5-02, 57-38.5-03, and 57-38.5-05 of the North Dakota Century Code, relating to the seed capital investment tax credit; to provide for a report on seed capital investment tax credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[260] **SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.

[261] **SECTION 2. AMENDMENT.** Subsection 4 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Qualified business" means ~~a~~:

   a. A primary sector business that:

   ~~a.~~ (1) Is incorporated or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, or joint venture;

   ~~b.~~ (2) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

   ~~c.~~ (3) Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation; and

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[260] Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 53 of Senate Bill No. 2032, chapter 488, section 2 of Senate Bill No. 2252, chapter 522, and section 1 of Senate Bill No. 2386, chapter 527.

[261] Section 57-38.5-01 was also amended by section 55 of Senate Bill No. 2032, chapter 488.

~~d.~~ (4) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ~~twenty-five~~ ten employees or ~~two~~ one hundred fifty thousand dollars of sales annually; ~~and~~

~~e. Has a majority of its ownership interests owned by one or more individuals for whom operation of the business is their full-time professional activity~~ or

b. An organization that:

(1) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state; and

(2) Attracts investments to build and own a value-added agricultural processing facility that it leases with an option to purchase to a primary sector business that qualifies under subdivision a.

SECTION 3. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-02. Certification - Investment reporting by qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 4 of section 57-38.5-01 and the certification must include the period of time the certification covers. The director shall establish the necessary forms and procedures for certifying qualified businesses.

SECTION 4. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not less than five thousand dollars and not more than fifty thousand dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to investments in a single taxable year. ~~The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under this chapter.~~

3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to ~~fifteen~~ four taxable years after the taxable year in which the investment was made.

4. A partnership that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.

5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years.

6. Tax credits for investments in one qualified business may not exceed ~~the least of the following amounts:~~

   ~~a. Thirty percent of the total amount of investments in the qualified business during the taxable year.~~

   ~~b. Gross receipts from out-of-state sales of the business during the taxable year.~~

   ~~c. Two~~ two hundred fifty thousand dollars.

7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

8. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.

9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

SECTION 5. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-05. Seed capital investment tax credit limits. The aggregate amount of seed capital investment tax credit allowed for investments under this chapter ~~in any taxable~~ through calendar year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million five hundred ~~fifty~~ thousand dollars. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this

section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

SECTION 6. SEED CAPITAL INVESTMENT TAX CREDIT REPORT. The department or division of economic development and finance shall report on usage of the credit under chapter 57-38.5, to the finance and taxation committees of the house of representatives and the senate of the fifty-eighth legislative assembly. The report must be filed at a public hearing of each committee between the first and tenth legislative day of the fifty-eighth legislative assembly and must include information identifying each business that has been certified as a qualifying business under chapter 57-38.5. The aggregate amount of investments in each qualified business as shown by investment reporting forms filed with the director, and any available indicia of success of each qualified business including growth in employment and sales or revenues.

SECTION 7. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2001.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 529

HOUSE BILL NO. 1077

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

EXEMPT ORGANIZATION TAX RETURNS

AN ACT to amend and reenact section 57-38-34 and subsection 8 of section 57-38-38 of the North Dakota Century Code, relating to the filing date of exempt organization income tax returns regarding unrelated business taxable income and tax assessment extension agreements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-34 of the North Dakota Century Code is amended and reenacted as follows:

57-38-34. Time and place of filing returns - Interest on tax when time for filing is extended.

1. Returns must be in such form as the tax commissioner from time to time may prescribe and may include the requirement that a copy of the taxpayer's federal income tax return or a portion thereof or information reflected thereon be attached to, furnished with, or included in the taxpayer's state income tax return. The taxpayer's state income tax return must contain a method for the taxpayer to identify the school district in which the taxpayer resides and must be filed with the tax commissioner's office in Bismarck, North Dakota. The tax commissioner shall prepare blank forms for use in making returns and shall cause them to be distributed throughout this state, but failure to receive or secure a form does not relieve a taxpayer from making a return.

2. Returns made on the basis of the calendar year must be filed on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.

3. Returns for cooperatives, domestic international sales corporations, and foreign sales corporations, however, made on the basis of the calendar year must be filed on or before the fifteenth day of September following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.

4. Returns for exempt organizations required to report unrelated business taxable income under subsection 2 of section 57-38-09 made on the basis of the calendar year must be filed on or before the fifteenth day of May following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fifth month following the close of the fiscal year.

5. A taxpayer actively serving in the armed forces or merchant marine, outside the boundaries of the United States, may defer the filing of an income tax return and the payment of the income tax until such time as the federal income tax return is required to be filed at which time the state income tax return, with payment of tax, will also be due. No interest or penalty accrues to the date of such filing.

~~5.~~ 6. The tax commissioner may grant a reasonable extension of time for filing a return when, in the judgment of the tax commissioner, good cause exists.

SECTION 2. AMENDMENT. Subsection 8 of section 57-38-38 of the North Dakota Century Code is amended and reenacted as follows:

8. If before the expiration of the time periods prescribed in subsections 1 ~~and~~, 2, and 3 the tax commissioner and a person consent in writing to an extension of time for the assessment of the tax, an assessment of additional state income tax may be made at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If a person refuses to consent to an extension of time or a renewal thereof, the tax commissioner may make an assessment based on the best information available. The period agreed upon in this subsection, including extensions, expires upon issuance of an assessment by the tax commissioner.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 530

SENATE BILL NO. 2060

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

INCOME AND SALES TAX PENALTIES

AN ACT to amend and reenact subsection 2 of section 57-38-45, subsection 1 of section 57-39.2-18, and subsection 1 of section 57-40.2-15 of the North Dakota Century Code, relating to penalties for income tax and sales or use tax purposes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-38-45 of the North Dakota Century Code is amended and reenacted as follows:

2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to ~~additions to tax and penalty~~ penalties 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 2. AMENDMENT. Subsection 1 of section 57-39.2-18 of the North Dakota Century Code is amended and reenacted as follows:

1. a. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, the person is subject to ~~a penalty of five percent of the amount of tax due or of 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. ~~Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-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. Any person on a monthly filing schedule with fifteen or more delinquent original returns or payments, and any person other than a monthly filer 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, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or the tax became due.~~

   b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:

      (1) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added 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 of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

      (2) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.

      (3) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.

      (4) The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the commissioner and disposed of in the same manner as other

receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

SECTION 3. AMENDMENT. Subsection 1 of section 57-40.2-15 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Any person failing to file a return or corrected return or to pay any tax imposed ~~pursuant to~~ under this chapter, within the time required by this chapter, is subject to ~~a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, plus~~ interest of one percent of the tax for each month or fraction of a month except the first month after the return or the tax became due. ~~Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-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 tax became due. Any person on a monthly filing schedule with fifteen or more delinquent returns or payments, and any person other than a monthly filer 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, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or tax became due.~~

b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:

(1) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added 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 of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

(2) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.

(3) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.

(4) The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the commissioner and disposed of in the same manner as the tax with respect to which it is attached. Unpaid penalties and interest may be enforced in the same manner as is the tax.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 531

HOUSE BILL NO. 1076

(Finance and Taxation Committee)
(At the request of the Board of University and School Lands)

TAXPAYER INFORMATION DISCLOSURE TO LAND BOARD

AN ACT to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to disclosure of identifying information to the board of university and school lands; and to amend and reenact section 57-39.2-23 of the North Dakota Century Code, relating to disclosure of identifying information to the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, a taxpayer's name, address, and federal identification number for the sole purpose of identifying the taxpayer as the owner of an unclaimed voucher authorized by the tax commissioner.

[262] **SECTION 2. AMENDMENT.** Section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential - Certain releases of information authorized. Except as provided by law, it is unlawful for the commissioner or any person having an administrative duty under this chapter to divulge or to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of any person, corporation, or limited liability company in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person. The commissioner may authorize examination of those returns by other state officers and at the commissioner's discretion furnish to the tax officials of other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed under this chapter, and in the report of an audit or investigation made with respect thereto, if the information is furnished solely for tax purposes. The multistate tax commission may make the information available to the tax officials of any other state and the United States for tax purposes.

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[262] Section 57-39.2-23 was also amended by section 2 of Senate Bill No. 2063, chapter 540.

The commissioner may furnish to the workers compensation bureau, the job insurance division of job service North Dakota, and the secretary of state upon request of the respective agency a list or lists of holders of permits issued under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of those permitholders. The agency may use the list or lists only for the purpose of administering the duties of the agency. The commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, the name, address, and the permitholder's federal identification number for the sole purpose of identifying the owner of an unclaimed voucher authorized by the commissioner. The commissioner may furnish to any state agency or to a private entity a list of names and addresses of holders of permits issued pursuant to this chapter or chapter 57-40.2 for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. The commissioner or any person having an administrative duty under this chapter may announce that a permit has been revoked.

Approved March 6, 2001
Filed March 6, 2001

CHAPTER 532

HOUSE BILL NO. 1072

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

EMPLOYER TAX WITHHOLDING RETURNS

AN ACT to amend and reenact subsection 1 of section 57-38-60 of the North Dakota Century Code, relating to the requirements to file annual income tax withholding returns by employers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all employees during the preceding calendar quarter under section 57-38-59. If the amount required to be deducted and withheld from wages paid to all of an employer's employees during the previous calendar year was less than ~~two~~ five hundred ~~fifty~~ dollars, the employer may file an annual return. The tax commissioner may alter the time or period for making reports and payment when in the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 2000.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 533

HOUSE BILL NO. 1078

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

ESTIMATED INCOME TAX PAYMENT REQUIREMENTS

AN ACT to amend and reenact subsections 1 and 3 of section 57-38-62 of the North Dakota Century Code, relating to estimated income tax payment requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 57-38-62 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue Code relating to a failure to pay federal estimated income tax shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year. Notwithstanding any other provision of this section, an individual, estate, or trust whose net tax liability for the preceding taxable year was less than ~~two~~ five hundred dollars is not required to pay estimated tax for the current taxable year. Married individuals who file a joint federal income tax return and are subject to section 6654 of the Internal Revenue Code must each be deemed to be subject to the federal provision. If payment of estimated tax is required, the individual, estate, or trust shall, at the time prescribed in this chapter, pay the lesser of the following:

   a. An amount which, when added to the taxpayer's withholding, equals ninety percent of the taxpayer's current taxable year's net tax liability.

   b. An amount which, when added to the taxpayer's withholding, equals one hundred percent of the taxpayer's net tax liability for the immediately preceding taxable year.

      (1) This subdivision does not apply to any taxpayer who was not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a if this part applies.

      (2) In order to satisfy the requirements of this subdivision, married individuals who are required to file separate state returns for the current taxable year but who were required to file a joint state return for the immediately preceding taxable year must each be required to pay estimated tax in an

amount which, when added to the individual's withholding, equals the net tax liability which would have been computed for the immediately preceding taxable year if separate state returns had been required to be filed.

(3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year must be required to pay estimated tax in an amount which, when added to their withholding, equals the sum of their separate net tax liabilities for the immediately preceding taxable year.

3. The provisions of section 57-38-45, except those provisions relating to the imposition of a penalty, apply in case of nonpayment, late payment, or underpayment of estimated tax. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions of this section, no interest is due if the estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code. Notwithstanding the other provisions of this section, no interest is due if the estimated tax of an individual, estate, or trust is less than ~~two~~ five hundred dollars per income tax return filed.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 534

HOUSE BILL NO. 1052

(Legislative Council)
(Taxation Committee)

USED FARM MACHINERY SALES TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for sales and use of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes; to amend and reenact subsection 3 of section 57-39.2-01 and sections 57-39.2-02.1 and 57-40.2-02.1 of the North Dakota Century Code, relating to imposition of sales tax on sales of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise. Provided, discounts for any purposes allowed and taken on sales are not included, nor is the sale price of property returned by customers when the full sale price is refunded either in cash or by credit. Provided, further, when tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to the sales tax imposed by this chapter when sold ~~or~~, will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer are not gross receipts. Provided, further, on all sales of retailers, valued in money, when the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is to be extended over a period longer than sixty days from the date of sale that only the portion of the sale amount shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from an insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine is a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed. "Gross receipts" also means, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only tangible personal property the transfer of title to which has not been subjected to

a retail sales tax in this state. For the purpose of this chapter, gross receipts shall also include the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.

[263] **SECTION 2. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. (Effective through June 30, ~~2001~~ 2002) Sales tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and for sales of coal, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

   a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.

   b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.

   c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

   d. Magazines and other periodicals.

   e. The leasing or renting of a hotel or motel room or tourist court accommodations.

   f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

   g. 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.

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[263] Section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2299, chapter 535.

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 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.

3. There is imposed a tax of 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.

4. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

(Effective after June 30, ~~2001~~ 2002) Sales tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile homes used for residential or business purposes~~; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and~~, for sales of coal, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

   a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and new farm machinery~~, farm machinery repair parts,~~ and new irrigation equipment used exclusively for agricultural purposes.

   b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.

c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

d. Magazines and other periodicals.

e. The leasing or renting of a hotel or motel room or tourist court accommodations.

f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

g. 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.

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.

3. There is imposed a tax of 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.

4. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

[264] **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale or lease of used farm machinery, farm machinery repair parts, or used irrigation equipment used exclusively for agricultural purposes. For purposes of this subsection, "used" means:

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[264] Section 57-39.2-04 was also amended by section 1 of House Bill No. 1392, chapter 537, section 2 of Senate Bill No. 2181, chapter 536, and section 3 of Senate Bill No. 2299, chapter 535.

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.

[265] **SECTION 4. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. (Effective through June 30, ~~2001~~ 2002) Use tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

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 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 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 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

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[265] Section 57-40.2-02.1 was also amended by section 6 of Senate Bill No. 2299, chapter 535.

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.

3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of 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.

4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.

5. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

(Effective after June 30, ~~2001~~ 2002) Use tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of mobile homes used for residential or business purposes~~, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes,~~ and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

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.

3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of 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.

4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.

5. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 5. EFFECTIVE DATE. Sections 2 and 4 of this Act are effective for taxable events occurring after June 30, 2001. Sections 1 and 3 of this Act are effective for taxable events occurring after June 30, 2002.

Approved May 4, 2001
Filed May 7, 2001

CHAPTER 535

SENATE BILL NO. 2299

(Senators G. Nelson, Krauter)
(Representatives Belter, Boucher)

COAL TAX REVISION

AN ACT to create and enact a new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code, relating to coal conversion facility gross receipts; to amend and reenact sections 49-06-02 and 57-39.2-02.1, subsection 44 of section 57-39.2-04, section 57-39.2-26.1, subsection 9 of section 57-40.2-01, section 57-40.2-02.1, subdivision b of subsection 3 of section 57-60-01, and sections 57-60-02, 57-60-14, 57-61-01, 57-61-01.7, and 57-62-02 of the North Dakota Century Code, relating to sales and use taxes on coal, the coal severance tax, allocation of coal development funds, the privilege tax on coal conversion facilities, allocation of the privilege tax on coal conversion facilities, and the expiration date for certain severance tax reductions; to repeal section 57-61-01.8 of the North Dakota Century Code, relating to a coal severance tax reduction for coal burned in small boilers; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-06-02 of the North Dakota Century Code is amended and reenacted as follows:

49-06-02. Value of property for ratemaking purposes - Determination. The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including a reasonable rate of return on capital expenditures; ~~and~~

2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates~~.~~; and

3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61 and all costs resulting from a coal conversion tax pursuant to chapter 57-60. The commission shall allow the inclusion of these costs in the base rates and the inclusion in the automatic adjustment clause of any of these costs not in base rates.

[266] **SECTION 2. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. (Effective through June 30, 2001) Sales tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and for sales of coal, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

   a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.

   b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.

   c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

   d. Magazines and other periodicals.

   e. The leasing or renting of a hotel or motel room or tourist court accommodations.

   f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

   g. 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.

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 and new irrigation equipment used exclusively for agricultural purposes, including the leasing or

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[266] Section 57-39.2-02.1 was also amended by section 2 of House Bill No. 1052, chapter 534.

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.

3. There is imposed a tax of 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.

4. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

(Effective after June 30, 2001) Sales tax imposed.

1. Except as otherwise expressly provided in ~~subsections~~ subsection 2 ~~and 3~~ for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; ~~and for sales of coal,~~ and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.

b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.

c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The

tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

d. Magazines and other periodicals.

e. The leasing or renting of a hotel or motel room or tourist court accommodations.

f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

g. Coal mined in this state and used for heating buildings ~~in this state and~~, except for coal used in agricultural processing or sugar beet refining plants ~~located within this state or adjacent states~~.

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 farm machinery, farm machinery repair parts, and 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.

3. ~~There is imposed a tax of 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.~~

~~4.~~ In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

[267] **SECTION 3. AMENDMENT.** Subsection 44 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

44. Gross receipts from all sales of coal used in agricultural processing or sugar beet refining plants located within this state ~~or adjacent states which are exempted from the tax imposed by chapter 57-61~~.

[268] **SECTION 4. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

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[267] Section 57-39.2-04 was also amended by section 3 of House Bill No. 1052, chapter 534, section 1 of House Bill No. 1392, chapter 537, and section 2 of Senate Bill No. 2181, chapter 536.

[268] Section 57-39.2-26.1 was also amended by section 1 of House Bill No. 1211, chapter 541.

57-39.2-26.1. Allocation of revenues among political subdivisions ~~and coal development fund~~. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, ~~excluding collections allocated under subsection 3,~~ equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

   a. Ten and four-tenths percent of the amount must be allocated among counties with a population of one hundred thousand or more, based upon the proportion each such county's population bears to the total population of all such counties.

   b. Eighteen percent of the amount must be allocated among counties with a population of forty thousand or more but fewer than one hundred thousand, based upon the proportion each such county's population bears to the total population of all such counties.

   c. Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.

   d. Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.

   e. Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.

   f. Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.

   g. Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.

   a. Fifty-three and nine-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more, based upon the proportion each such city's population bears to the total population of all such cities.

   b. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.

   c. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.

   d. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.

   e. Six and four-tenths percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.

   f. Three and five-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.

   g. Two and two-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

   A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf

of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

~~3. Notwithstanding any other provision of law, the sales and use tax collections on coal imposed by subsection 3 of section 57-39.2-02.1 and subsection 3 of section 57-40.2-02.1 must be deposited in the coal development fund established under section 57-61-10 and distributed under section 57-62-02.~~

SECTION 5. AMENDMENT. Subsection 9 of section 57-40.2-01 of 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.

[269] **SECTION 6. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. (Effective through June 30, 2001) Use tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

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 and new irrigation equipment used exclusively for agricultural

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[269] Section 57-40.2-02.1 was also amended by section 4 of House Bill No. 1052, chapter 534.

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 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 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.

3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of 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.

4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.

5. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

(Effective after June 30, 2001) Use tax imposed.

1. Except as otherwise expressly provided in ~~subsections~~ subsection 2 ~~and 3~~ for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts,

and irrigation equipment used exclusively for agricultural purposes, ~~and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states,~~ an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

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 farm machinery, farm machinery repair parts, and 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 farm machinery, farm machinery repair parts, and 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 farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.

3. ~~An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of 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.~~

~~4.~~ An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.

~~5.~~ 4. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 7. AMENDMENT. Subdivision b of subsection 3 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

b. An electrical generating plant, with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy

generation unit with a capacity of ~~one hundred twenty thousand~~ ten thousand kilowatts or more; or

SECTION 8. A new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

Prior to January 1, 2010, any revenue received by the operator of a coal gasification plant to the extent the quotient of the gross receipts realized by the operator divided by the synthetic natural gas produced and sold during a month, in units of one thousand cubic feet [28316.85 units] of synthetic gas, exceeds the ceiling price. For calendar years 2001 and 2002, ceiling price means $4.25 for each thousand cubic feet [28316.85 liters] of synthetic natural gas produced and sold; and the ceiling price for 2003 is $4.35; for 2004, $4.45; for 2005, $4.55; for 2006, $4.65; for 2007, $4.75; for 2008, $4.86; and for 2009, $4.97;

SECTION 9. AMENDMENT. Section 57-60-02 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax must be computed as follows:

1. For all coal conversion facilities, except as otherwise provided in this section, the tax is measured by the gross receipts derived from such facility for the preceding month and is in the amount of ~~two and one-half~~ four and one-tenth percent of such gross receipts. For purposes of this subsection, "gross receipts" of a coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.

2. For electrical generating plants, the tax is at a rate of ~~twenty-five~~ sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction after June 30, 1991, are exempt from ~~sixty-five~~ eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 1991, partial or complete exemption from the remaining ~~thirty-five~~ fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production from the plant. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.

3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction after June 30, 1991, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production from the plant.

4. For coal gasification plants, the tax is the greater of either the amount provided in subsection 1 or ~~seven~~ thirteen and one-half cents on each one thousand cubic feet [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day.

5. a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from ~~sixty-five~~ eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility or for a period of five years from April 20, 1987, whichever is later. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.

   b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining ~~thirty-five~~ fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15.

6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess of eighty percent of the design capacity of the coal beneficiation plant is exempt from such tax.

SECTION 10. AMENDMENT. Section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

57-60-14. Allocation of revenue - Continuing appropriation.

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, ~~thirty-five~~ fifteen percent to the county and ~~sixty-five~~ eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first $41,666.67

each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.

2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year, except that through December 31, 2009, the portion of the revenue allocation to each county which is attributable to a coal gasification coal conversion facility must exclude consideration of calendar year 2001, and be based on calendar year 2000 or the appropriate year after 2001, whichever is greater. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.

3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before the effective date of section 7 of this Act, that county must receive for calendar year 2002 at least as much under this section as was received by that county and taxing districts in that county in property taxes for that facility for taxable year 2001. For years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.

SECTION 11. AMENDMENT. Section 57-61-01 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01. Severance tax upon coal - Imposition - In lieu of sales and use taxes - Payment to the tax commissioner. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax of ~~seventy-five~~ thirty-seven and one-half cents per ton of two thousand pounds [907.18 kilograms]. Such severance tax is in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit such tax for each month, within twenty-five days after the end of each month, to the state tax commissioner upon such reports and forms as the tax commissioner deems necessary.

SECTION 12. AMENDMENT. Section 57-61-01.7 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01.7. Severance tax reduction for coal mined for out-of-state shipment. For coal subject to taxes under this chapter which is shipped out of state after June 30, ~~1995, and before July 1, 2000~~ 2001:

1. ~~The coal is exempt from fifty percent of the taxes imposed under section 57-61-01.~~

~~2.~~ The coal is subject to ~~fifteen~~ thirty percent of the taxes imposed under section 57-61-01 and the entire revenue under this subsection must be deposited in the coal development trust fund for use as provided in subsection 1 of section 57-62-02 and allocation to the lignite research fund as provided in subsection 2 of section 57-61-01.5.

~~3.~~ 2. In addition to the taxes under subsection ~~2~~ 1, the coal may be subject to up to ~~thirty-five~~ seventy percent of the severance taxes imposed under section 57-61-01 at the option of the county in which the coal is mined. The board of county commissioners, by resolution, may grant to the operator of a mine from which the coal is shipped out of state a partial or complete exemption from this portion of the severance tax. Any tax revenue from full or partial taxation under this subsection must be allocated to the county under subsection 2 of section 57-62-02.

~~4.~~ 3. Taxes imposed under section 57-61-01.5 apply to coal subject to this section and must be allocated as provided in section 57-61-01.5.

[270] **SECTION 13. AMENDMENT.** Section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

57-62-02. Allocation of moneys in coal development fund. Moneys deposited in the coal development fund shall be apportioned monthly by the state treasurer as follows:

1. ~~Fifteen~~ Thirty percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15-60. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the state's general fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15-60.

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[270] Section 57-62-02 was also amended by section 36 of House Bill No. 1046, chapter 161.

2. ~~Thirty-five~~ Seventy percent must be allocated to the coal-producing counties and must be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such monthly period. Allocations under subdivisions a and b must be apportioned by the state treasurer as follows:

   a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision must be allocated as follows:

      (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.

      (2) Forty percent must be paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.

      (3) Thirty percent must be apportioned by the state treasurer to school districts within the county on the average daily membership basis, as certified to the state treasurer by the county superintendent of schools.

   b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:

      (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance

with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.

(2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.

(3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.

(4) For the purposes of this subsection:

(a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.

(b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.

(c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.

(d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.

(e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.

~~3. Fifty percent shall be deposited in the state's general fund, except that after June 30, 1997, the revenue allocated to the state general fund under this subsection which is attributable to severance taxes on new coal production from clean coal demonstration projects must be deposited in the lignite research fund for partial funding of the state share of the clean coal demonstration project generating the new coal production.~~

SECTION 14. REPEAL. Section 57-61-01.8 of the North Dakota Century Code is repealed.

SECTION 15. EFFECTIVE DATE. Section 7 of this Act is effective for taxable events occurring after December 31, 2001, and the remainder of this Act is effective for taxable events occurring after June 30, 2001.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 536

SENATE BILL NO. 2181

(Senators Traynor, Krebsbach, Stenehjem)
(Representatives Glassheim, Hawken)

MOTOR VEHICLE RENTAL SURCHARGE

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a surcharge on motor vehicle rentals; to amend and reenact subsection 13 of section 57-39.2-04 of the North Dakota Century Code, relating to limitations on the sales tax exemption for rentals of motor vehicles; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Surcharge on rental motor vehicles. A company engaged in the business of renting motor vehicles for periods of fewer than thirty days shall collect a three percent surcharge on each rental contract at the time a vehicle of a gross vehicle weight of ten thousand pounds [4535.92 kilograms] or less is rented from the company in this state. A vehicle is considered rented in this state if possession is obtained by the renter in this state. The surcharge must be computed on the total dollar amount for the rental as stated in the rental contract, excluding taxes, fuel collections, or other ancillary products sold to customers such as collision damage waiver, supplemental liability protection, personal accident insurance, and personal effects coverage.

1. A surcharge under this section must be noted in the rental contract and collected in accordance with the terms of the contract.

2. On February fifteenth of each year, a company that collects surcharges under this section shall file a report with the commissioner stating the total amount of excise taxes paid under chapter 57-40.3 on its rental vehicles for the preceding calendar year and the total amount of rental motor vehicle revenues earned on rentals in this state for the preceding calendar year. All surcharge revenues collected during the calendar year by the company in excess of the total amount of excise taxes paid under chapter 57-40.3 during the calendar year by the company on rental motor vehicles must be remitted to the commissioner with the report and considered sales tax collections under this chapter.

3. For three years after filing the report under this section the company shall retain copies of rental contracts and the commissioner may require the company to furnish copies of rental contracts for purposes of ensuring compliance with this section.

[271] **SECTION 2. AMENDMENT.** Subsection 13 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

13. Gross receipts from the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota. However, gross receipts from the rental of any motor vehicle for fewer than thirty days are not exempt but taxes imposed under home rule authority do not apply to such rentals.

SECTION 3. EFFECTIVE DATE. This Act is effective for rental of motor vehicles for which the rental contract term begins after June 30, 2001.

Approved April 23, 2001
Filed April 23, 2001

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[271] Section 57-39.2-04 was also amended by section 3 of House Bill No. 1052, chapter 534, section 1 of House Bill No. 1392, chapter 537, and section 3 of Senate Bill No. 2299, chapter 535.

CHAPTER 537

HOUSE BILL NO. 1392

(Representatives Monson, Herbel, R. Kelsch, Kingsbury)
(Senators Tallackson, Trenbeath)

EDUCATIONAL, RELIGIOUS, OR CHARITABLE ACTIVITY SALES TAX

AN ACT to amend and reenact subsection 4 of section 57-39.2-04 of the North Dakota Century Code, relating to sales tax application to educational, religious, or charitable activities held in a publicly owned facility; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[272] **SECTION 1. AMENDMENT.** Subsection 4 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, unless the gross receipts from the event exceed five thousand dollars and the activities are held in a publicly owned facility, when the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15.1-07-12. This exemption does not apply to regular retail sales that are in direct competition with retailers. Gross receipts from educational, religious, or charitable activities held in a publicly owned facility are exempt if the sponsoring organization is a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2001.

Approved March 21, 2001
Filed March 21, 2001

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[272] Section 57-39.2-04 was also amended by section 3 of House Bill No. 1052, chapter 534, section 2 of Senate Bill No. 2181, chapter 536, and section 3 of Senate Bill No. 2299, chapter 535.

CHAPTER 538

HOUSE BILL NO. 1221

(Representatives Severson, Brandenburg, Devlin, Disrud)
(Senators Kroeplin, Wanzek)

WIND-POWERED FACILITY SALES TAX EXEMPTION

AN ACT to amend and reenact subdivision b of subsection 1 of section 57-39.2-04.2 and subdivision b of subsection 1 of section 57-40.2-04.2 of the North Dakota Century Code, relating to sales and use tax exemptions for certain wind-powered electrical generating facilities; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

b. "Power plant" means ~~an~~:

(1) An electrical generating plant, ~~together with~~ and all additions ~~thereto~~ to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.

(2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

SECTION 2. AMENDMENT. Subdivision b of subsection 1 of section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

b. "Power plant" means ~~an~~:

(1) An electrical generating plant, ~~together with~~ and all additions ~~thereto~~ to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.

(2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2001.

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

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 539

SENATE BILL NO. 2352

(Senators Grindberg, Robinson, Urlacher)
(Representatives Boucher, Rennerfeldt, Svedjan)

NEW PRIMARY SECTOR BUSINESS SALES TAX EXEMPTION

AN ACT to amend and reenact section 57-39.2-04.3 of the North Dakota Century Code, relating to a sales and use tax exemption for purchases of computer and telecommunications equipment by a new primary sector business; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.3 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.3. (Effective ~~before February 1, 1999, and~~ after July 31, 2002) Sales tax exemption for manufacturing or recycling machinery and equipment and primary sector business computer and telecommunications equipment.

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in a physical or economic expansion of an existing manufacturing plant. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.

2. Gross receipts from sales of machinery or equipment used directly in recycling of tangible personal property are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new recycling facility or in physical or economic expansion of an existing recycling facility. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the facility.

3. Gross receipts from sales of computer and telecommunications equipment that is an integral part of a new primary sector business or a physical or economic expansion of a primary sector business are exempt from taxes under this chapter. Purchase of replacement equipment is not exempt under this subsection.

4. To qualify for exemption at the time of purchase, the manufacturer ~~or~~, recycler, or primary sector business must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer ~~or~~, recycler, or primary sector business must pay the tax and apply to the commissioner for a refund.

~~4.~~ 5. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer ~~or~~, recycler, or primary sector business must apply for a refund of the amount remitted by the contractor.

~~5.~~ 6. For purposes of this section, the following definitions apply:

a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.

b. "Equipment":

(1) For purposes of a manufacturer or recycler, means any tangible personal property other than machinery used directly in the manufacturing or recycling process; and

(2) For purposes of a primary sector business other than manufacturing or recycling, means telecommunications equipment and computer equipment, printers, and software that are an integral part of the operations of the primary sector business.

c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in manufacturing or recycling operations at any time from the initial stage where the raw material is first received at the plant site through the completion of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.

d. "Machinery" and "equipment":

(1) For purposes of a manufacturer or recycler, do not include handtools, buildings, or transportation equipment not used directly in manufacturing or recycling; machines and equipment used primarily in administrative, accounting, sales, or other nonmanufacturing segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly in manufacturing or recycling; and

(2) For purposes of a primary sector business other than manufacturing or recycling, do not include equipment that is not an integral part of the operations of the primary sector business.

e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered

and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.

f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.

g. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has been certified by the department of economic development and finance to be qualified under this subdivision.

h. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.

~~h.~~ i. "Used directly" with respect to manufacturing means used primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:

(1) To effect a direct physical change upon the tangible personal property.

(2) To guide or measure a direct physical change upon the property when the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.

(3) To test or measure the property on the production line or at a site in the location of production.

(4) To transport, convey, or handle the tangible personal property during the manufacturing.

(5) To package the product for sale and shipment.

(6) To conduct research and development and design activities related to the manufacturing process of the plant.

"Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

(Effective ~~from~~ ~~February~~ ~~1,~~ ~~1999,~~ through July 31, 2002) Sales tax exemption for manufacturing or recycling machinery and equipment and primary sector business computer and telecommunications equipment.

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in a physical or economic expansion of an existing manufacturing plant.

Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.

2. Gross receipts from sales of machinery or equipment used directly in recycling of tangible personal property are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new recycling facility or in physical or economic expansion of an existing recycling facility. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the facility.

3. Gross receipts from sales of computer and telecommunications equipment that is an integral part of a new primary sector business or a physical or economic expansion of a primary sector business are exempt from taxes under this chapter. Purchase of replacement equipment is not exempt under this subsection.

4. To qualify for exemption at the time of purchase, the manufacturer ~~or~~, recycler, or primary sector business must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer ~~or~~, recycler, or primary sector business must pay the tax and apply to the commissioner for a refund.

~~4.~~ 5. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer ~~or~~, recycler, or primary sector business must apply for a refund of the amount remitted by the contractor.

~~5.~~ 6. For purposes of this section, the following definitions apply:

a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.

b. "Equipment":

(1) For purposes of a manufacturer or recycler, means any tangible personal property other than machinery used directly in the manufacturing or recycling process; and

(2) For purposes of a primary sector business other than manufacturing or recycling, means telecommunications equipment and computer equipment, printers, and software that are an integral part of the operations of the primary sector business.

c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in manufacturing or recycling operations at any time from the initial stage where the raw material is first received at the plant site through the completion of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to

maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.

d. "Machinery" and "equipment":

(1) For purposes of a manufacturer or recycler, do not include handtools, buildings, or transportation equipment not used directly in manufacturing or recycling; machines and equipment used primarily in administrative, accounting, sales, or other nonmanufacturing segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly in manufacturing or recycling; and

(2) For purposes of a primary sector business other than manufacturing or recycling, do not include equipment that is not an integral part of the operations of the primary sector business.

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.

f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.

g. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has been certified by the department of economic development and finance to be qualified under this subdivision.

h. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.

~~h.~~ i. "Used directly" with respect to manufacturing means used primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:

(1) To effect a direct physical change upon the tangible personal property.

(2) To guide or measure a direct physical change upon the property when the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.

(3) To test or measure the property on the production line or at a site in the location of production.

(4) To transport, convey, or handle the tangible personal property during the manufacturing.

(5) To package the product for sale and shipment.

(6) To conduct research and development and design activities related to the manufacturing process of the plant.

"Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2001.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 540

SENATE BILL NO. 2063

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

CITY OR COUNTY SALES TAX INFORMATION DISCLOSURE

AN ACT to amend and reenact subsection 2 of section 11-09.1-05 and section 57-39.2-23 of the North Dakota Century Code, relating to sales and use tax levy powers of home rule counties and to confidentiality of city or county sales and use tax information; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law ~~which~~ that determines what property or acts are subject to, or exempt from, ad valorem ~~or sales and use~~ taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede ~~the provisions of~~ section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects.

[273] **SECTION 2. AMENDMENT.** Section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential - Certain releases of information authorized. Except as provided by law~~,~~:

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[273] Section 57-39.2-23 was also amended by section 2 of House Bill No. 1076, chapter 531.

1. ~~it is unlawful for the~~ The commissioner or ~~any~~ a person having an administrative duty under this chapter ~~to~~ may not divulge or ~~to~~ make known in any manner whatever the business affairs, operations, or information obtained by an investigation of any person, corporation, or limited liability company in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars ~~thereof~~ set forth or disclosed in any return, or ~~to~~ permit any return or copy ~~thereof~~ or any book containing any abstract of particulars ~~thereof~~ to be seen or examined by any person.

2. The commissioner may authorize examination of those returns by other state officers and at the commissioner's discretion furnish to the tax officials of other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed under this chapter, and in the related report of an audit or investigation ~~made with respect thereto~~, if the information is furnished solely for tax purposes. The multistate tax commission may make the information available to the tax officials of any other state and the United States for tax purposes.

3. The commissioner may furnish to the workers compensation bureau, ~~the~~ job insurance division of job service North Dakota, and ~~the~~ secretary of state, upon request of the respective agency, a list or lists of holders of permits issued under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of those permitholders. The agency may use the list or lists only for the purpose of administering the duties of the agency.

4. The commissioner may furnish to ~~any~~ a state agency or ~~to a~~ private entity a list of names and addresses of holders of permits issued ~~pursuant to~~ under this chapter or chapter 57-40.2 for the purpose of jointly publishing or distributing publications or other information ~~pursuant to~~ under section 54-06-04.3. Any information ~~so~~ provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

5. The commissioner may make information pertaining to city lodging taxes, city lodging and restaurant taxes, or city or county sales and use taxes, contained in tax returns, reports, related schedules and documents, and reports of an audit or investigation available upon request to no more than two duly elected or appointed members of the governing body of a city or county for which collection and administration of the tax is required by statute or a tax collection agreement administered under section 57-01-02.1. The governing body of the city or county or its members may not divulge or make known in any manner the business affairs, operations, or other information acquired from the commissioner under this subsection concerning any person, corporation, limited liability company, or other entity unless the disclosure is by judicial order and for tax administration purposes only.

6. The commissioner or any person having an administrative duty under this chapter may announce that a permit has been revoked.

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

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 541

HOUSE BILL NO. 1211

(Representatives Froseth, Dosch)
(Senators Every, Lyson)

STATE AID DISTRIBUTION FUND ALLOCATION

AN ACT to create and enact a new subsection to section 57-39.2-26.1 of the North Dakota Century Code, relating to the allocation of revenues among political subdivisions through the state aid distribution fund; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[274] **SECTION 1.** A new subsection to section 57-39.2-26.1 of the North Dakota Century Code is created and enacted as follows:

The population figures used for the allocation of revenues to counties and cities under subsections 1 and 2 must be the population figures determined by the 1990 federal decennial census unless an official special census was conducted between the 1990 federal decennial census and January 1, 1997.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

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

Approved March 16, 2001
Filed March 16, 2001

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[274] Section 57-39.2-26.1 was also amended by section 4 of Senate Bill No. 2299, chapter 535.

CHAPTER 542

SENATE BILL NO. 2455

(Senators Cook, Nething)
(Approved by the Delayed Bills Committee)

SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT

AN ACT to adopt a Simplified Sales and Use Tax Administration Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Agreement" means the streamlined sales and use tax agreement.

2. "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

3. "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

4. "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

5. "Sales tax" means the tax levied under chapter 57-39.2.

6. "Seller" means any person making sales, leases, or rentals of personal property or services.

7. "State" means any state of the United States and the District of Columbia.

8. "Use tax" means the tax levied under chapter 57-40.2.

SECTION 2. Participation in multistate discussions. For reviewing or amending the agreement embodying the provisions contained in section 5 of this Act, the state shall enter into multistate discussions. For purposes of such discussions, the state must be represented by two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative council. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to reviewing or amending the agreement.

SECTION 3. Tax commissioner may enter agreement. Upon prior approval of the agreement by the legislative assembly, the tax commissioner may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially

reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the tax commissioner may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The tax commissioner may take other actions reasonably required to implement this Act. Other actions authorized by this section include the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The tax commissioner or the tax commissioner's designee is authorized to represent this state before the other states that are signatories to the agreement.

SECTION 4. Relationship to state law. A provision of the agreement authorized by this Act does not invalidate or amend, in whole or in part, any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

SECTION 5. Agreement requirements. The streamlined sales and use tax agreement must include provisions relating to a simplified state rate; uniform standards for sourcing of transactions, exempt sales, and returns and remittances; central registration for sellers; monetary allowances for certified service providers and sellers implementing new technological models; consumer privacy; and state administration of local sales and use taxes.

SECTION 6. Cooperating sovereigns. The agreement authorized by this Act is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

SECTION 7. Limited binding and beneficial effect.

1. The agreement authorized by this Act binds and inures only to the benefit of this state and the other member states. A person, other than a member state, is not an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

2. Consistent with subsection 1, a person does not have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. A person may not challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

3. A law of this state, or the application of a law, may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

SECTION 8. Seller and third-party liability.

1. A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

   A seller who contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

2. A person who provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller who uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

3. A seller who has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 543

HOUSE BILL NO. 1201

(Representatives Carlson, Huether)
(Senators Robinson, Wardner)

MOTOR VEHICLE EXCISE AND USE TAXES

AN ACT to create and enact section 57-40.3-02.1 of the North Dakota Century Code, relating to motor vehicle excise tax imposed on motor vehicle leases; and to amend and reenact subsection 5 of section 57-40.3-01, subsection 6 of section 57-40.3-04, and section 57-40.3-12 of the North Dakota Century Code, relating to the definition of purchase price, exemptions from motor vehicle excise taxes, and administration of motor vehicle use taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount not to exceed the total amount the purchaser has been compensated by an insurance company for ~~said~~ the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means

the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

SECTION 2. Section 57-40.3-02.1 of the North Dakota Century Code is created and enacted as follows:

57-40.3-02.1. Tax imposed on motor vehicle lease.

1. With respect to any lease for a term of one year or more of a motor vehicle with an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less, all receipts due or consideration given or contracted to be given at the initiation of the lease and for the entire period of the lease, option to renew, or similar provision, or combination thereof, are deemed to have been paid or given and are subject to tax. Any tax due must be collected as provided in section 57-40.3-12 as of the date of first payment under the lease, option to renew, or similar provision, or combination thereof, or as of the date of registration under chapter 39-05.

2. With respect to any lease for a term of one year or more of a motor vehicle with an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less, originally leased outside this state and subsequently entering this state for use, any remaining receipts due or consideration to be given after the lessee brings the motor vehicle into this state are subject to tax as if the lessee had entered or exercised the lease, option to renew, or similar provision, or combination thereof, for the first time in this state, notwithstanding section 57-40.3-09.

[275] **SECTION 3. AMENDMENT.** Subsection 6 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

6. Motor vehicles transferred between a lessee and lessor; provided, that the lessee has been in continuous possession of such vehicle for a period of one year or longer, and further provided that the lessor has paid either the tax imposed under ~~this chapter~~ section 57-40.3-02 at the time of titling or licensing the vehicle in this state or the use tax imposed by chapter 57-40.2.

SECTION 4. AMENDMENT. Section 57-40.3-12 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-12. Director to act as agent of tax commissioner in administration of motor vehicle use tax. The state tax commissioner is charged with the administration of this chapter. The tax commissioner may prescribe all rules and regulations, not inconsistent with the provisions of this chapter, necessary and advisable for the proper and efficient administration of this chapter. The collection of this motor vehicle excise tax must be carried out by the director of the department of transportation who shall act as the agent of the state tax commissioner and who is

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[275] Section 57-40.3-04 was amended by section 2 of House Bill No. 1325, chapter 334, and section 1 of Senate Bill No. 2209, chapter 544.

subject to all rules and regulations, not inconsistent with the provisions of this chapter, that may be prescribed by the tax commissioner. The provisions of this chapter may not be construed as preventing the collection of motor vehicle excise taxes by the tax commissioner when additional motor vehicle excise taxes are determined by the tax commissioner to be due for a lease, option to renew, or similar provision, or combination thereof, as provided under section 57-40.3-02.1 and in the course of any audit carried on by the tax commissioner. The director of the department of transportation shall furnish sufficient information to the tax commissioner, relating to all license or title applications for mobile homes or housetrailers purchased outside of the state of North Dakota for use in this state, to enable the tax commissioner to collect use tax on such mobile homes or housetrailers.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 544

SENATE BILL NO. 2209

(Senators Lyson, Bercier, Solberg)
(Representatives Aarsvold, Byerly, Pietsch)

PRISONER OF WAR MOTOR VEHICLE EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for a motor vehicle acquired or leased by a resident who was a prisoner of war; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[276] **SECTION 1.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

Any motor vehicle acquired by, or leased and in the possession of, a resident who was a prisoner of war and who registers the vehicle with a distinctive license plate issued by the department of transportation under subdivision o of subsection 2 of section 39-04-18. The owner or lessor of the motor vehicle who qualifies for the exemption under this subsection is entitled to a refund of taxes paid under this chapter on acquisition or leasing of the vehicle if the distinctive license plate was acquired not more than sixty days after acquisition or leasing of the vehicle.

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

Approved March 21, 2001
Filed March 21, 2001

[276] Section 57-40.3-04 was created by section 3 of House Bill No. 1201, chapter 543, and section 2 of House Bill No. 1325, chapter 334.

CHAPTER 545

SENATE BILL NO. 2067
(Senator Krebsbach)

WIRELESS ENHANCED 911 SERVICE FEE

AN ACT to create and enact a new section to chapter 57-40.6 of the North Dakota Century Code, relating to the study of coordination of public safety answering points coverage; to amend and reenact sections 57-40.6-01, 57-40.6-02, 57-40.6-03, 57-40.6-03.1, 57-40.6-04, 57-40.6-05, 57-40.6-06, and 57-40.6-08 of the North Dakota Century Code, relating to a fee on telephone exchange access service and application of that fee to wireless service for support of wireless enhanced 911 service; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[277] **SECTION 1. AMENDMENT.** Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or ~~emergency~~ enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.

2. "FCC order" means federal communications commission order 94-102 (961 Federal Register 40348) and any other FCC order that affects the provision of wireless enhanced 911 service.

3. "Public safety answering point" or "PSAP" means a communications facility operated on a twenty-four hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.

4. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in the Mobile Telecommunications Sourcing Act (Pub. L. 106-252; 4 U.S.C. 124(8)).

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[277] Section 57-40.6-01 was also amended by section 1 of Senate Bill No. 2415, chapter 546.

5. "Telephone access line" means the principal access to the telephone company's switched network including an outward dialed trunk or access register.

6. "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.

7. "Wireless access line" means each active wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.

8. "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.

9. "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:

   a. Services commonly referred to as wireless; and

   b. Services provided by any wireless real time two-way voice communication device, including radio-telephone communications used in:

      (1) Cellular telephone service;

      (2) Personal communications service; or

      (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.

10. "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within the state of North Dakota.

SECTION 2. AMENDMENT. Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The governing body shall adopt a resolution that proposes the adoption of the ~~excise tax~~ fee permitted under this section. The resolution must specify an effective date for the ~~tax~~ fee 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~~ fee. The resolution must include a provision for submitting the proposed ~~excise tax~~ fee to the electors of the county or city before the imposition of the

~~tax~~ fee is effective. The resolution must specify a ~~tax~~ fee that does not exceed one dollar per month per telephone access line and per wireless access line.

2. The question of the adoption of the ~~excise~~ ~~tax~~ fee must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed ~~tax~~ fee authorized under subsection 1. The question of the adoption of the ~~excise~~ ~~tax~~ fee 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~~ fee. The ~~tax~~ fee 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~~ fee for an initial six-year period.

3. Any political subdivision that desires to increase the ~~tax~~ fee, 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~~ fee. 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~~ fee authorized by this section is approved by the electors, the ~~tax~~ fee 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~~ fee and imposition must be based on the subscriber service address.

5. In the interest of public safety, where the ~~customers~~ ~~exchange~~ subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the ~~tax~~ fee do not coincide, and where all of the political subdivisions within the ~~exchange~~ subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the ~~exchange~~ subscriber's telephone exchange access service boundary have voted for the ~~tax~~ fee, ~~an exchange customer residing~~ a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency ~~telecommunications system~~ services communications system. The telephone ~~company~~ exchange access service provider may collect an additional ~~tax~~ fee, equal in amount to the basic ~~tax~~ fee on those subscribers within the exchange boundary. The additional ~~tax~~ fee amounts collected must be remitted as provided in this chapter.

6. A fee imposed under this section before August 1, 2001, may be extended to all wireless service at each subscriber service address within the area in which the fee is imposed only if that extension of the fee has been approved by a majority vote of the governing body of the city or county upon at least thirty days' prior notice in the official newspaper of the city or county that the governing body will consider the issue or by majority vote of the electors of the city or county voting on the question upon placement of the question on the ballot by the

governing body of the city or county at a regular or special city or county election.

SECTION 3. AMENDMENT. Section 57-40.6-03 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-03. Payment of ~~tax~~ fee by telephone ~~company~~ exchange access service and wireless service subscriber. The resolution imposing a ~~tax~~ fee under section 57-40.6-02 must include a requirement that the telephone ~~company~~ exchange access service provider and the wireless service provider collect the ~~tax~~ fee from the subscriber. In its billing statement or invoice to the subscriber, the telephone ~~company~~ exchange access service provider and the wireless service provider shall state the amount of the ~~tax~~ fee separately.

SECTION 4. AMENDMENT. Section 57-40.6-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-03.1. Enhanced 911 data base management charges. Any telephone ~~company~~ exchange access service provider charges for enhanced 911 data base management must be on a per telephone exchange access ~~line~~ service basis.

SECTION 5. AMENDMENT. Section 57-40.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-04. ~~Tax~~ Fee collection procedure. A resolution adopted under section 57-40.6-02 must include adequate procedures for the administration and collection of the ~~tax~~ fee, including a provision for reimbursement to the telephone ~~company~~ exchange access service provider and the wireless service provider for the actual costs of administration in collection of the ~~tax~~ fee, not to exceed five percent of the fee collected. The resolution must also include a provision that the ~~tax~~ fee be paid by the telephone ~~company~~ exchange access service provider and the wireless service provider within thirty days after it is collected from the subscriber.

SECTION 6. AMENDMENT. Section 57-40.6-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-05. Restriction on use of ~~tax~~ fee proceeds. The ~~county~~ governing body may not use the proceeds of the ~~tax~~ fee imposed under section 57-40.6-02 for any purpose other than ~~establishing or operating the emergency services communication system~~ as provided in this section.

1. Within twenty-four months after the extension of the fee to wireless access lines under subsection 6 of section 57-40.6-02, the governing body shall request enhanced 911 service from all wireless carriers providing service as of that date within the governing body's jurisdiction.

2. The governing body shall hold the portion of the revenues from the fee on wireless service unexpended in a separate fund until such time as the governing body makes a request for wireless enhanced 911 service or adopts a statement certifying that it is capable of receiving and utilizing wireless enhanced 911 service, whichever is earlier, provided that those revenues may not be expended until the agreements required under subsection 3 have been executed.

3. The governing body or its designee shall enter into agreements directly with each wireless service provider for only that provider's services necessary to implement, maintain, and operate wireless enhanced 911 service as provided by law. A governing body may not reimburse a wireless service provider for tower construction or for the extension of a wireless service provider's infrastructure which is not directly related to providing wireless enhanced 911 service.

4. Revenues in excess of the obligations incurred under the agreements specified by this section, as determined on a monthly basis, may only be used for implementing, maintaining, or operating the emergency services communication system.

5. The governing body or its designee shall keep records to show expenditures for wireless service providers separately from expenditures for telephone exchange access service providers.

[278] **SECTION 7. AMENDMENT.** Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. ~~In 911 systems that have been approved by the state emergency services communication system advisory committee, any telecommunications company~~ Any telephone exchange access service provider providing emergency 911 service shall provide, on an annual basis, current customer names, addresses, and telephone numbers to each public service answering point within each 911 system ~~and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines~~. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703 (C)(1)(B)(iii).

SECTION 8. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-08. Emergency services communication system or emergency instructions - Liability.

1. A public agency, public safety agency, ~~or local exchange telecommunications company~~ telephone exchange access service provider, or wireless service provider that provides access to an emergency system ~~at or below cost~~, or any officer, agent, or employee of any public agency, public safety agency, ~~or local exchange telecommunications company~~ telephone exchange access service provider, or wireless services provider, is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.

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[278] Section 57-40.6-06 was also amended by section 2 of Senate Bill No. 2415, chapter 546.

2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.

3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

SECTION 9. A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

Reports of coordination of public safety answering points coverage. The governing body of a city or county, which adopted a fee on telephone exchange access service and wireless service under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the state radio division and to the public safety answering points coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the office of management and budget to represent the state radio division. The public safety answering points coordinating committee shall file its report with the legislative council by November first of each even-numbered year.

SECTION 10. EFFECTIVE DATE. This Act becomes effective on August 1, 2001.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 546

SENATE BILL NO. 2415

(Senator Fischer)
(Representative S. Kelsh)

911 SYSTEM DATA BASE INFORMATION USE

AN ACT to create and enact a new subsection to section 57-40.6-01 of the North Dakota Century Code, relating to a definition; and to amend and reenact sections 57-40.6-06 and 57-40.6-07 of the North Dakota Century Code, relating to a 911 system data base.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[279] **SECTION 1.** A new subsection to section 57-40.6-01 of the North Dakota Century Code is created and enacted as follows:

"Unpublished" means information that is not published or available from directory assistance.

[280] **SECTION 2. AMENDMENT.** Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. ~~In 911 systems that have been approved by the state emergency services communication system advisory committee, any~~ A telecommunications company providing emergency 911 service shall provide~~, on an annual basis,~~ current customer names, addresses, and telephone numbers to each 911 coordinator or public ~~service~~ safety answering point within each 911 system ~~and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines~~. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, ~~18 U.S.C. 2703 (C)(1)(B)(iii)~~ 18 U.S.C. 2703(c)(1)(B)(iii), and in a manner that identifies the names and telephone numbers that are unpublished.

SECTION 3. AMENDMENT. Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-07. Use of the furnished information. ~~Names, addresses,~~ Unpublished names and telephone numbers ~~provided to~~ generated by a 911 coordinator or 911 public ~~service~~ safety answering point or provided to a 911 coordinator or public safety answering point under section 57-40.6-06 are ~~private data~~ confidential and may be used only for verifying the location or identity, or both, for response purposes ~~only~~, of a person calling a 911 answering point for emergency help. ~~The information furnished may not be used or disclosed by the public service~~

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[279] Section 57-40.6-01 was also amended by section 1 of Senate Bill No. 2067, chapter 545.

[280] Section 57-40.6-06 was also amended by section 7 of Senate Bill No. 2067, chapter 545.

~~answering point or its agents or employees for any other purpose except under a court order~~ Published names and telephone numbers maintained by a 911 coordinator or public safety answering point are exempt records as defined in section 44-04-17.1 but must be provided upon request to the treasurer and auditor of the county served by the 911 coordinator for the purpose of verifying and correcting names and addresses used for official purposes.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 547

HOUSE BILL NO. 1409

(Representatives Koppelman, Pietsch, Severson)
(Senators Klein, Tallackson)

AMBULANCE DISPATCHING AND 911 STANDARDS

AN ACT to create and enact two new sections to chapter 57-40.6 of the North Dakota Century Code, relating to the dispatching of ambulances and standards and guidelines for 911 telephone systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 57-40.6 of the North Dakota Century Code are created and enacted as follows:

Standards and guidelines.

1. The governing body of the local governmental unit with jurisdiction over an emergency 911 telephone system shall be or shall designate a governing committee of the emergency 911 telephone system which shall:

   a. Designate a 911 coordinator.

   b. Enter written agreements with participating organizations and agencies.

   c. Designate lines of authority.

   d. Provide for a written plan for rural addressing, if applicable, which has been coordinated with the local postal authorities. After January 1, 1993, a rural plan must conform to the modified burkle addressing plan. A plan in use before this date does not have to conform with the modified burkle addressing plan. If implemented, all rural addressing signs must comply with the manual on uniform traffic control devices standards.

   e. Provide for an update of the emergency 911 telephone system's data base annually by obtaining current records from the appropriate telecommunications company.

   f. Define a records retention plan for all printed and recorded records in accordance with jurisdictional requirements.

   g. Encourage that coin-free dialing is available for 911 calls.

   h. Define a mechanism to differentiate between emergency 911 telephone calls from other calls.

   i. Provide for written operating procedures.

j. Require the public safety answering point that initially receives an emergency call to be responsible for handling that call. If a transfer of an emergency call is made to a secondary public safety answering point, the initial public safety answering point may not disconnect from the three-way call unless mutually agreed upon by the two public safety answering point dispatchers. Upon this agreement, the secondary public safety answering point becomes responsible for the call.

k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.

2. The governing committee may:

a. Require appropriate liability protection.

b. Create a user advisory board.

c. Conduct an annual statistical evaluation of services.

d. Publish an annual financial report in the official county newspaper.

3. An emergency 911 telephone system must access and dispatch the following services:

a. Law enforcement.

b. Fire service.

c. Emergency medical service.

4. An emergency 911 telephone system may access and dispatch the following services:

a. Poison control.

b. Suicide prevention.

c. Emergency management.

d. Any other related service in subsection 3 or 4.

5. The governing committee of an emergency 911 telephone system shall provide that that system:

a. Provides twenty-four-hour, seven-day-a-week coverage.

b. Dispatches and communicates with service identified in subsection 3.

c. Records all incoming 911 calls and related radio and telephone communications.

d. Provides alternate measures in the event of an emergency 911 telephone system failure, including an alternate public safety answering point seven-digit number.

e. Ensures an adequate grade of service that is statistically based by population to assure access to an emergency 911 telephone system.

f. Does not accept one-way call-in alarms or devices.

g. Provides access to an emergency 911 telephone system through specialized telecommunications equipment as defined under section 54-44.8-01.

6. An emergency 911 telephone system may:

a. Locate the emergency caller utilizing electronic equipment.

b. Provide a mechanism for investigating false or prank calls.

7. An emergency 911 telephone system must include at least one public safety answering point.

8. A cellular 911 call must be routed to the appropriate 911 public safety answering point.

9. An emergency 911 telephone call must be answered by a dispatcher who has completed training through an association of public safety communications officials course or equivalent course. An emergency 911 dispatch center is required to offer emergency medical dispatch instructions on all emergency medical calls. Prearrival instructions must be offered by a dispatcher who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.

Annual report to legislative council. State radio, in cooperation with entities affected by this Act, shall facilitate the review of emergency 911 telephone system standards and guidelines and shall report annually to the legislative council on the operation of and any recommended changes in the standards and guidelines.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 548

SENATE BILL NO. 2454

(Senators Wanzek, Kroeplin)
(Representatives Brandenburg, Monson, Nicholas)

BIODIESEL FUEL TAX REDUCTION

AN ACT to create and enact a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definition of biodiesel fuel; to amend and reenact section 24-02-01.5, subsection 1 of section 57-43.2-02, and subsection 1 of section 57-43.2-03 of the North Dakota Century Code, relating to a special fuels tax reduction for sales of diesel fuel blended with biodiesel fuel; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-01.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection ~~5~~ 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

SECTION 2. A new subsection to section 57-43.2-01 of the North Dakota Century Code is created and enacted as follows:

"Biodiesel" means a biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines.

SECTION 3. AMENDMENT. Subsection 1 of section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel 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. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.

SECTION 4. AMENDMENT. Subsection 1 of section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

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. The tax under this subsection is reduced to one and nine-tenths percent on all sales of diesel fuel that contains at least two percent biodiesel fuel by weight.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on the first day of the first month after the tax commissioner certifies to the governor and the office of the legislative council that a refining facility is operational in this state which has a production capacity of at least ten million gallons [37854000 liters] of biodiesel per year.

SECTION 6. EXPIRATION DATE. This Act is for taxable events occurring from the effective date of this Act under section 5 of this Act through June 30, 2003, and is thereafter ineffective.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 549

HOUSE BILL NO. 1064

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

OIL AND GAS TAX PAYMENT AND COMPUTATION

AN ACT to amend and reenact section 57-51-02.2, subsection 2 of section 57-51-05, subsection 2 of section 57-51-09, section 57-51-19, subsections 3 and 10 of section 57-51.1-01, and subsection 3 of section 57-51.1-03 of the North Dakota Century Code, relating to publication of the gas base rate adjustment, tax payment, computation of tax on incorrect returns, time for claim of credits or refunds, and date limitations under the oil and gas gross production tax and oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-02.2 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.2. Gross production tax - Gas. A gross production tax is levied upon all gas produced within North Dakota less any part thereof, the ownership or right to which is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. ~~For fiscal year beginning July 1, 1991, the gas tax rate is four cents; for fiscal years beginning July 1, 1992, and subsequent years, the~~ The gas tax rate is four cents times the gas base rate adjustment for ~~the~~ each fiscal year as calculated ~~pursuant to~~ under subsection 2.

2. a. ~~On or before May 15, 1992, and annually thereafter, the~~ The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for ~~the~~ each fiscal year beginning on ~~the following~~ July first.

   b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.

   c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first. ~~In addition, the tax department shall publish the adjustment as a rule in the North Dakota Administrative Code.~~

   d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate

adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.

e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 2. AMENDMENT. Subsection 2 of section 57-51-05 of the North Dakota Century Code is amended and reenacted as follows:

2. On oil or gas produced and sold ~~at the time of production~~, the gross production tax thereon must be paid by the purchaser, and the purchaser ~~shall and~~ is ~~hereby~~ authorized to deduct in making settlement with the producer or royalty owner, the amount of tax paid; provided, that in the event oil ~~on which the gross production tax becomes due~~ produced is not sold ~~at the time of production~~ but is retained by the producer, the tax on the oil not sold must be paid by the producer including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner the producer has the right to deduct the amount of the tax paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time the tax becomes due with the amount of the tax paid.

SECTION 3. AMENDMENT. Subsection 2 of section 57-51-09 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~For taxable periods beginning before January 1, 1991, the tax commissioner has six years after the due date of the original return or six years after the original return is filed, whichever period expires later, to assess additional tax found due. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the time to assess is five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the time to assess is four years. Effective for taxable periods beginning after December 31, 1994, the~~ The time to assess additional tax found due is three years after the due date of the original return or three years after the original return is filed, whichever period expires later. 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, any additional tax determined to be due may be assessed any time within six years after the due date of the return or six years after the return was filed, whichever period expired later.

SECTION 4. 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 office of management and budget, 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~~ three years of the due date of the return or ~~six~~ three 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.

[281] **SECTION 5. AMENDMENT.** Subsections 3 and 10 of section 57-51.1-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well ~~after March 31, 1995~~.

10. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period ~~beginning after December 31, 1972~~. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

[282] **SECTION 6. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed ~~after April 27, 1987~~ as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well ~~after March 31, 1995,~~ is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to

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[281] Section 57-51.1-01 was also amended by section 1 of Senate Bill No. 2205, chapter 550.

[282] Section 57-51.1-03 was also amended by section 3 of Senate Bill No. 2205, chapter 550.

well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 550

SENATE BILL NO. 2205

(Senators Wardner, Krauter, Lyson)
(Representatives Haas, Rennerfeldt, Warner)

OIL EXTRACTION TAX TRIGGER DETERMINATION

AN ACT to amend and reenact sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to determination of the trigger price that determines application of oil extraction tax rates and exemptions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[283] **SECTION 1. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax. For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period; and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

2. "Average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition, minus two dollars and fifty cents. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed.

3. "Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well after March 31, 1995.

4. "Horizontal well" means a well with a horizontal displacement of the wellbore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].

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[283] Section 57-51.1-01 was also amended by section 5 of House Bill No. 1064, chapter 549.

5. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.

6. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

7. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.

8. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

   a. Miscible fluid displacement.

   b. Steam drive injection.

   c. Microemulsion.

   d. In situ combustion.

   e. Polymer augmented water flooding.

   f. Cyclic steam injection.

   g. Alkaline flooding.

   h. Carbonated water flooding.

   i. Immiscible carbon dioxide displacement.

   j. New tertiary recovery methods certified by the industrial commission.

   It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial

commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.

9. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.

10. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period beginning after December 31, 1972. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

11. "Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.

12. "Two-year inactive well" means any well that has not produced oil in more than one month in the two years before the date of application to the industrial commission for certification as a two-year inactive well.

SECTION 2. AMENDMENT. Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil.

The rate of tax is six and one-half percent of the gross value at the well of the oil extracted, except that the rate of tax is four percent of the gross value at the well of the oil extracted in the following situations:

1. For oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03;

2. For oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991;

3. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991;

4. For incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03; or

5. For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03.

However, if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period ~~in any year is thirty-three dollars or more~~, then the rate of tax ~~for the following months~~ on oil extracted from all taxable wells is six and one-half percent of the gross value at the well of the oil extracted~~.~~

~~However, if after the aforementioned trigger provision becomes effective,~~ until the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period ~~in any year~~, in which case the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells ~~drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project~~ subject to a reduced rate under subsections 1 through 5.

[284] **SECTION 3. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.

2. The activity of extracting from the earth any oil from a stripper well property.

3. For a well drilled and completed after April 27, 1987, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from

[284] Section 57-51.1-03 was also amended by section 6 of House Bill No. 1064, chapter 549.

any well drilled and completed as a horizontal well after March 31, 1995, is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period ~~in any year is thirty-three dollars or more~~. However, the exemption is reinstated if, after the ~~aforementioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period ~~in any year~~.

4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period ~~in any year is thirty-three dollars or more~~. However, the exemption is reinstated if, after the ~~aforementioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period ~~in any year~~.

5. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

   b. The incremental production from a tertiary recovery project which has been certified as a qualified project by the industrial commission subsequent to June 30, 1991, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins.

   c. For purposes of this subsection, incremental production is defined in the following manner:

      (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery

project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

(2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.

(3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

(4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production

means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

(5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.

(6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.

d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.

6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a

period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period ~~in any year is thirty-three dollars or more~~. However, the exemption is reinstated if, after the ~~aforementioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period ~~in any year~~.

7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period ~~in any year is thirty-three dollars or more~~. However, the exemption is reinstated if, after the ~~aforementioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period ~~in any year~~.

8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

   a. The well is located within the boundaries of an Indian reservation;

   b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or

   c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.

SECTION 4. EFFECTIVE DATE. This Act is effective for oil production occurring after June 30, 2001.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 551

SENATE BILL NO. 2428

(Senators Tallackson, Trenbeath)
(Representatives Froelich, Maragos, Schmidt, Warner)

TAX STRUCTURE FOR EDUCATION FUNDING STUDY

AN ACT to provide for a legislative council study of the state and local tax structure for funding of elementary and secondary education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the state and local tax structure for funding of elementary and secondary education to determine the feasibility and desirability of enhanced state funding to school districts for delivery of core curriculum instruction, the equity of the existing degree of reliance on property tax revenues for elementary and secondary education funding, and whether improved efficiency is attainable in delivery of elementary and secondary education services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 552

SENATE BILL NO. 2448

(Senators Stenehjem, Christmann, Fischer)
(Representatives Carlson, Nelson)

TOBACCO, ALCOHOL, AND FUELS TAX STUDY

AN ACT to provide for a legislative council study of compliance and jurisdictional issues arising under the tobacco, alcohol, and fuels tax laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying compliance and jurisdictional issues under the tobacco, alcohol, and fuels tax laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved March 16, 2001
Filed March 16, 2001