

# TAXATION

## CHAPTER 312

H. B. No. 705

(Rhode, Ettestad, Erickson, Lindberg of Burke-Divide, Mollet,  
Hageman, Langseth of Eddy-Foster)

### EXEMPTION OF PARTIAL VALUE OF FARM MACHINERY

#### AN ACT

To amend and reenact section 57-0220 of the North Dakota Revised Code of 1943, relating to taxation; providing for the exemption of that part of the value of farm machinery upon which the sales or use tax has been paid; and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-0220 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-0220. EXEMPTION OF FARM MACHINERY FOR ONE YEAR.) That part of the value of farm machinery on which sales or use tax is paid, purchased after August first, to be used by the buyer in his farming operations, shall be exempt to the buyer from the personal property tax which would be assessed and levied against it in the first year after its purchase were this section not in force. Any dealer in farm machinery may not claim the exemptions provided for in this section even though farm machinery owned by him is used in farming operations.

§ 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 1, 1951.

## CHAPTER 313

H. B. No. 542  
(Legislative Research Committee)

## ASSESSORS IN TOWNSHIPS AND UNORGANIZED TERRITORIES

## AN ACT

To amend and reenact section 57-0233 of the 1949 Supplement to the North Dakota Revised Code of 1943, and section 58-0902 of the North Dakota Revised Code of 1943, relating to assessors in townships and unorganized territories; and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-0233 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-0233. ASSESSOR DISTRICTS FOR UNORGANIZED TERRITORY.) All counties or parts of counties in this state not organized into civil townships shall be divided into assessor districts, which shall comprise the same territory as the commissioner districts of said county, excluding organized civil townships and organized cities and villages, and the district assessor thereof shall be elected at the same time that state officers are elected, and his term of office shall be two years from and after the first day of January following. In case of vacancy in the office of district assessor in any of such districts, such vacancies shall be filled by the board of county commissioners. All assessors of territory not organized into civil townships shall be paid seven dollars per day each and no more, for the time actually spent by them in making and completing the assessment, to be paid from the treasury of the county in which such district is located only upon an itemized statement setting forth the actual time spent, approved by the board of county commissioners. No person shall be eligible to be a district assessor unless he is a voter and owner of real estate or personal property in this district.

§ 2. AMENDMENT.) Section 58-0902 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

58-0902. COMPENSATION OF ASSESSOR.) The township assessor shall receive as compensation for his services seven dollars per day for each day actually and necessarily employed in making

and completing the assessment of his township. The compensation shall be paid out of the township treasury upon an itemized statement setting forth the actual time spent in the work of assessor, approved by the board of township supervisors.

§ 3. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 15, 1951.

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## CHAPTER 314

H. B. No. 654  
(Beede and McInnes)

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### MAILING ASSESSORS PROPERTY STATEMENTS TO NON-RESIDENTS

#### AN ACT

To amend and reenact section 57-0237 of the North Dakota Revised Code of 1943, relating to assessors; providing that assessor shall mail copy of statement of property listed to non-residents.

*Re It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-0237 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-0237. DUTY OF ASSESSOR UPON FAILURE TO OBTAIN ASSESSMENT; COPY OF ASSESSMENT LIST TO NONRESIDENT.) In all cases of failure to obtain a statement of personal property, the assessor shall ascertain the amount and value of such property and shall assess the same at such amount as he believes to be the true value thereof. Upon request, he shall deliver to the person assessed a copy of the statement of property so listed, which copy shall be signed by the assessor. Where property of a nonresident is assessed under the provisions of this section, the assessor shall mail a copy of the statement of property so listed, to such non-resident at his last known postoffice address.

Approved February 20, 1951.

## CHAPTER 315

H. B. No. 631

(Levin, Lillehaugen, Hofstrand, Leier)

COUNTY TAX LEVY LIMITATION FOR AGRICULTURAL  
AND TRAINING SCHOOLS

## AN ACT

To amend and reenact subdivision f of subsection 3 of section 57-1506 of the 1949 Supplement to the North Dakota Revised Code of 1943, relating to county levies for agricultural and training schools.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Subdivision f of subsection 3 of section 57-1506 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

- f. To the tax levied pursuant to the provisions of chapter 42 of the title Education, for support and maintenance of county agricultural and training schools, up to a maximum of two and one half mills on the assessed value in the county for such purpose. Nothing herein contained shall be construed to prevent the appropriation of money from the county general fund for the support and maintenance of county agricultural and training schools.

Approved March 7, 1951.

## CHAPTER 316

H. B. No. 584  
(Link and Rolfsrud)

COUNTY FARM TO MARKET AND FEDERAL AID ROAD  
PROGRAM; TAX LEVY

## AN ACT

Relating to county roads, providing for the adoption of farm-to-market,  
and federal aid road program, and authorizing a levy for match-  
ing aid for such program upon approval by the electors.

*Be It Enacted by the Legislative Assembly of the State of*

*North Dakota:*

§ 1.) The board of county commissioners of any county in this state may prepare a proposed county construction program of farm-to-market and federal aid roads, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction. After approval of such program by the state highway department and the bureau of public roads, the board may submit such program to the electors of the county with the question of levying a tax of not to exceed five mills upon the net taxable assessed valuation of all property in the county for the completion of such program by matching, from the proceeds of such tax, federal funds available for federal aid, secondary and feeder roads, farm-to-market roads, and all roads as provided for under Public Law 769, 81st Congress or future Federal Aid Highway Acts of a similar character. If the majority of the electors voting on the question approve such program and levy, annually thereafter until such program is completed the board shall levy a tax not in excess of five mills, which levy shall not be subject to the county mill levy limitations, and the proceeds of such tax shall be used only for matching federal aid available for such program which shall be the official county road program.

Approved March 7, 1951.

## CHAPTER 317

S. B. No. 109  
(Schrock, Geeland, Baeverstad and Fetton)

FIRE DEPARTMENT RESERVE FUND LEVY, CITIES AND  
VILLAGES

## AN ACT

Relating to city or village levies of not to exceed two mills for fire department reserve fund, and providing for approval of such levy by the electors.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) The governing body of any city or village, when authorized to do so by sixty percent of the electors voting on the question in a regular or special election called by the governing body, may levy taxes annually, not in excess of two mills on the net taxable assessed valuation, for a fire department building or equipment reserve fund. Such levy shall be in addition to and not restricted by the levy limitations prescribed by law. The proceeds of such levy shall be placed in a separate fund known as the fire department reserve fund and shall be used solely and exclusively for the purchase of necessary fire fighting equipment or building therefor. No levy shall be made under this section during any period in which the moneys in the fund equal or exceed an amount equal to the sum that would be produced by a levy of ten mills upon the net taxable assessed valuation of the city or village making such levy.

Approved February 27, 1951.

## CHAPTER 318

H. B. No. 799  
(Fitch)

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CITY TAX LEVY FOR ACQUIRING REAL ESTATE FOR PUBLIC  
BUILDINGS; LIMITATION

AN ACT

Authorizing cities to levy taxes for the purpose of acquiring real estate to be used as a site for public buildings.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) The governing body of any city having a population of twenty-five hundred or more may levy taxes annually, not in excess of two mills in each year, for a period not to exceed eight successive years, for a fund which shall be used for the purpose of acquiring real estate as a site for public buildings. This levy shall be in addition to and not restricted by the levy limitations prescribed by law.

Approved March 8, 1951.

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## CHAPTER 319

S. B. No. 234  
(Bridston)

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DEPOSIT AND INVESTMENT OF SCHOOL DISTRICT BUILDING  
AND SPECIAL RESERVE FUNDS

AN ACT

To amend and reenact sections 57-1517 of the 1949 Supplement to the North Dakota Revised Code of 1943 and 57-1902 of the North Dakota Revised Code of 1943, relating to deposit and investment of school district building and special reserve funds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-1517 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-1517. DISPOSITION OF BUILDING FUND TAX.) Revenue raised for building purposes shall be disposed of as follows:

1. All revenue accruing from appropriations or tax levies for a school building fund, together with such amounts

as may be realized for building purposes from all other sources, shall be placed in a separate fund known as a school building fund, and shall be deposited, held, or invested in the same manner as the sinking funds of such school district or in the purchase of shares or securities of federal savings and loan associations or state chartered building and loan associations within the limits of federal insurance. Such funds shall be used solely and exclusively for the purpose of erecting new school buildings, or additions to old school buildings, or major repairs of existing buildings, and shall be paid out by the custodian thereof only upon order of the school board, signed by the president and the clerk of said school district, such order must recite upon its face the purpose for which such payment is made;

2. Any moneys remaining in a school building fund after the completion of the payments for any school building project which has cost seventy-five percent or more of the amount in such building fund at the time of letting the contracts therefor, shall be returned to the general fund of the school district upon the order of the school board;
3. The governing body of any school district may pay into the general fund of the school district any moneys which have remained in the school building fund for a period of ten years or more, and such district may include the same as a part of its cash on hand in making up its budget for the ensuing year. In determining what amounts have remained in said fund for ten years or more, all payments which have been paid from the school building fund for building purposes shall be considered as having been paid from the funds first acquired.

§ 2. AMENDMENT.) Section 57-1902 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-1902. FUND DEPOSITED WITH COUNTY TREASURER.) Such special reserve fund shall be deposited with the county treasurer of the county in which the school district, or the greater part of its territory, is situated, for the use and benefit of the school district, to be drawn upon as provided in this chapter, and kept by such county treasurer as a separate trust fund. Moneys in such fund may be deposited, held, or invested in the same manner as the sinking fund of the district or in the purchase of shares or securities of federal savings and loan association or state chartered building and loan associations, within the limits of federal insurance.

Approved March 5, 1951.



## CHAPTER 320

S. B. No. 237  
(Anderson and Nordhougen)

REPEAL TAX LEVIES FOR COUNTY IMPROVEMENT  
AN ACT

To repeal chapter 57-18 of the North Dakota Revised Code of 1943,  
relating to levies for county improvement.

*Be It Enacted by the Legislative Assembly of the State of  
North Dakota:*

§ 1. REPEAL.) Chapter 57-18 of the North Dakota Revised  
Code of 1943 is hereby repealed.

Approved March 7, 1951.

## CHAPTER 321

S. B. No. 54  
(Legislative Research Committee)

NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION  
FROM TAX SALES

## AN ACT

To amend and reenact subsection 3 of section 57-2702 of the North  
Dakota Revised Code of 1943, relating to notice of expiration  
of period of redemption from tax sales.

*Be It Enacted by the Legislative Assembly of the State of  
North Dakota:*

§ 1. AMENDMENT.) Subsection 3 of section 57-2702 of the  
North Dakota Revised Code of 1943 is hereby amended and re-  
enacted to read as follows:

3. The notice shall be served personally upon any person  
actually residing upon the property covered by a tax sale  
certificate and upon any tenant or other person entitled  
to the possession of said property as may appear from  
the records of the register of deeds; and

Approved February 7, 1951.

## CHAPTER 322

H. B. No. 783  
(Bourgois, Fleck and Jansonius)

RURAL ELECTRICAL COOPERATIVES TAX IN LIEU OF  
PERSONAL PROPERTY TAX

## AN ACT

To amend and reenact section 57-3304 relating to taxation of rural electric cooperatives and providing that the tax imposed shall be in lieu of personal property tax.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) That section 57-3304 of the 1943 Revised Code of the state of North Dakota, be amended and reenacted to read as follows:

Section 57-3304. TAX IMPOSED IN LIEU OF PERSONAL PROPERTY TAX.) The tax commissioner shall levy on each cooperative a tax upon its gross receipts for the preceding calendar year. Each year for the first five years during which such cooperative is engaged in business the tax shall be one per cent and thereafter the tax shall be two per cent of its gross receipts. Provided however, that for the purpose of determining when the two per cent rate shall be applied, that the first year during which such cooperative is engaged in business, within the meaning of this section, shall be the first year during which such cooperative is engaged in business on or before April first of that year. The tax hereby imposed shall be in lieu of any other taxes levied on the personal property of such cooperatives. All of the provisions of law with respect to the due date, the date of delinquency, interest rate, penalty, and enforcement of collection of personal property taxes, generally shall be equally applicable to the tax provided for in this chapter.

Approved March 1, 1951.

## CHAPTER 323

S. B. No. 251

(Dahl, Shure, Fetton, Morgan, Rue, Day, Geelan, Duffy, Schrock,  
Sandness and Pyle)

## SEPARATE AND ADDITIONAL CIGARETTE TAX

## AN ACT

To provide public revenue to be used for the maintenance of city and village governments by imposing a separate and additional tax of one-half mill on each cigarette sold within this state, and to provide for the collection of such tax and the distribution and use of the revenue derived therefrom, and fixing penalties for violation.

§. 1. SEPARATE AND ADDITIONAL TAX ON THE SALE OF CIGARETTES; COLLECTION.) There is hereby levied and assessed and there shall be collected by the proper officer and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of one-half mill on each such cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures.

§ 2. ALLOCATION OF REVENUE.) All moneys received by the state treasurer from the proceeds of the tax provided in section 1 hereof are hereby appropriated and shall be, and on or before the thirtieth day of June and the thirty-first day of December of each year, distributed on a per capita basis to the incorporated cities and villages, of the state, to be used by such incorporated cities and villages for such purposes as are now or may be hereafter authorized by law, the allocation to be based upon the population of each incorporated city and village according to the last official decennial federal or official state census, and warrants shall be drawn payable to the treasurers of such cities and villages.

§ 3. TAX AVOIDANCE PROHIBITED.) No person, firm or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying such tax thereon to the state treasurer.

§ 4. PENALTY.) Any person, firm or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor.

Approved March 7, 1951.

## CHAPTER 324

H. B. No. 648  
(McLellan, Beede, Holand)

GROSS ESTATE OF NON-RESIDENT DECEDENT; EXCEPTION;  
RECIPROCITY WITH OTHER STATES

## AN ACT

To amend and reenact section 57-3703 of the North Dakota Revised Code of 1943, relating to estate taxation; providing for the determination of the gross estates of nonresident decedents and for reciprocity in the taxation of intangible personal property.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-3703 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3703. GROSS ESTATE OF NONRESIDENT DECEDENT; EXCEPTION, RECIPROCITY WITH OTHER STATES.) The value of the gross estate of a nonresident decedent shall be determined by including the following property:

1. All real property located within this state;
2. All tangible personal property having an actual situs within this state;
3. Sheriff's certificate of sale of real estate situated in this state;
4. Decedent's equitable interest in real estate within this state; and
5. The full value of shares of stock in domestic corporations.

However, no intangible personal property shall be included in determining the value of such gross estate if the nonresident decedent at the time of the transfer is a resident of a state or territory of the United States, or of a foreign country, which at the time of the transfer did not impose a transfer tax or death tax of any character in respect to intangible personal property of residents of this state, or if the laws of such state or territory of the United States or foreign country at the time of the transfer contained a reciprocal provision under which the intangible personal property of residents of this state was exempt from transfer taxes or death taxes of any character provided this state allowed a similar exemption to the residents of such state or territory of the United States or foreign country. The tax commissioner may enter into agreements with the authorized tax officials of other states to carry out the reciprocal provisions of this section.

Approved March 5, 1951.

## CHAPTER 325

H. B. No. 729  
(McLellan and Holand)

## DETERMINATION OF NET ESTATE

## AN ACT

To amend and reenact section 57-3711 of the North Dakota Revised Code of 1943 relating to the determination of net estate for North Dakota estate tax purposes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-3711 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3711. DETERMINATION OF NET ESTATE.) For the purposes of this chapter, the value of the net estate of the decedent shall be determined by deducting from the value of the gross estate the following:

1. An exemption, not exceeding the amount specified in each case, of the value of the property passing to each of the following beneficiaries:
  - a. Lineal ancestor or descendant, adopted child, step child or lineal descendant of an adopted child or step child, not exceeding two thousand dollars, and if a minor, not exceeding five thousand dollars;
2. An exemption to a surviving spouse determined as follows:
  - a. An amount equal to the value of any interest in property which passes or has passed from the decedent to his or her surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate, subject, however, to the limitation provided in subdivision H.
  - b. Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, such interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed with respect to such interest
    - (1) if an interest in such property passes or has passed, for less than an adequate and full consideration in money or money's worth, from the decedent to any

person other than such surviving spouse, or the estate of such spouse, and

(2) if by reason of such passing such person, or his or her heirs or assigns, may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse; and no deduction shall be allowed with respect to such interest, even though such deduction is not disallowed under clauses (1) and (2) of this subdivision, if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust. For the purposes of this subdivision, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

- c. Where the assets, included in the decedent's gross estate, out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied, include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for the purposes of subdivision (a) of this subsection, be reduced by the aggregate value of such particular assets.
- d. For the purposes of subdivision (b) of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail upon the death of such spouse if (1) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding six months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such events, and (2) such termination or failure does not in fact occur.
- e. In determining, for the purposes of subdivision (a) of this subsection, the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this subsection, (1) there shall be taken into account the effect which a tax imposed by this article, or any estate, succession, legacy, or inheritance tax, has upon the net value of the surviving spouse of such interest, and (2) where such interest or property is encumbered in any manner, or

where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account.

- f. In the case of an interest in property passing from the decedent in trust, if under the terms of the trust the surviving spouse is entitled for life to all the net income from the corpus of the trust, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire corpus free of the trust, exercisable in favor of such surviving spouse, or of the estate of surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others, and with no power in any other person to appoint any part of the corpus to any person other than the surviving spouse, (1) the interest so passing shall, for the purposes of subdivision (a) of this subsection, be considered as passing to the surviving spouse, and (2) no part of the interest so passing shall, for the purposes of clause (1) of subdivision (b) of this subsection, be considered as passing to any person other than the surviving spouse. This subdivision shall be applicable only if, under the terms of the trust, such power in the surviving spouse to appoint the corpus, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.
- g. In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon, whether the proceeds, upon the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments, and such installments or interest payments are payable annually or at more frequent intervals, commencing not later than thirteen months after the decedent's death, and all amounts payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts payable under such contract, exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others, with no power in any other person to appoint to any person other than the surviving

spouse any part of the amounts payable under such contract. (1) such proceeds shall, for the purpose of subdivision (a) of this subsection be considered as passing to the surviving spouse, and (2) no part of such proceeds shall, for the purpose of clause (1) of subdivision (b) of this subsection, be considered as passing to any person other than the surviving spouse. This subdivision shall be applicable only if, under the terms of the contract, such power in the surviving spouse to appoint, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

- h. The aggregate amount of the deductions allowed under this subsection, computed without regard to this subdivision, shall not exceed fifty per centum of the value of the adjusted gross estate or twenty thousand dollars, whichever is the larger. The adjusted gross estate shall, for the purpose of this subdivision, be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by subsections three, four, five, six, ten, eleven, twelve, thirteen and fourteen of this section.
- i. For the purpose of this subsection, an interest in property shall be considered as passing from the decedent to any person if and only if (1) such interest is bequeathed or devised to such person by the decedent, or (2) such interest is inherited by such person from the decedent, or (3), such interest has been transferred to such person by the decedent at any time, or (4) such interest was, at the time of the decedent's death, held by such person and the decedent, or by them and any other person, in joint ownership with right of survivorship, or (5) the decedent had a power, either alone or in conjunction with any person, to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default upon the release or non-exercise of such power, or (6) such interest consists of proceeds of insurance upon the life of the decedent receivable by such person. Except as provided in subdivision (f) or in subdivision (g) of this subsection, where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for the purposes of clauses (1) and (2) of subdivision (b) of this subsection, be considered as passing from the decedent to a person other than the surviving spouse.



- j. If under this subsection an interest would, in the absence of a disclaimer by the surviving spouse, be considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this subsection, be considered as passing to the person or persons entitled to receive such interest as a result of the disclaimer.
  - k. If under this subsection an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for the purposes of this subsection, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.
3. The amount of any bequest, legacy, devise, or transfer, except a bona fide sale for an equivalent monetary consideration in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of any:
- a. Public institution;
  - b. Purposes exclusively public;
  - c. Charitable, educational, or religious purposes; or
  - d. Corporation, institution, society, or association whose sole object and purpose is to carry on charitable, educational, or religious work,

but no deduction shall be made if any officer, member, shareholder, or employee of such corporation, institution, society, or association shall receive or may be lawfully entitled to receive, any pecuniary profit from the operation thereof, except reasonable compensation for services in effecting one or more of such purposes, or as the proper beneficiary of a strictly charitable purpose, or if the organization thereof, for any such avowed purpose, is a guise or pretense for directly or indirectly making any such pecuniary profit from such corporation, institution, society, or association, or for any of its members or employees, or if it is not in good faith organized or conducted exclusively for one or more of such purposes;

4. All debts of the decedent;
5. Taxes on real property within this state which were a lien at the date of decedent's death;
6. Taxes on the decedent's personal property which were the personal obligation of the decedent during his lifetime, or a lien upon such personal property at the date of death;
7. State and federal income taxes on the income of the decedent to the date of his death;
8. Death duties paid to foreign countries on intangible personal property;
9. Inheritance taxes paid or payable to other states on intangible personal property;
10. Federal estate taxes paid and not refunded;
11. Special assessments which are due and which are a lien on taxable property located within this state;
12. Funeral expenses, and all amounts actually expended, not exceeding the sum of five hundred dollars, for a monument;
13. Commissions of executors and administrators actually allowed and paid;
14. Costs of administration, including reasonable attorney's fees; and
15. The family allowance to the extent that it exceeds the income of the estate, except that it in any case shall not exceed two thousand dollars for the widow, plus three hundred dollars for each minor child.

Approved March 6, 1951.

## CHAPTER 326

H. B. No. 763  
(Lynch and McLellan)

TAXATION OF PARTNERSHIPS AND PARTNERS INCOME AND  
TREATMENT OF LOSSES

## AN ACT

To amend and reenact section 57-3808, subsection 3 of section 57-3820, and subsection 4 subdivision c of section 57-3822 of the North Dakota Revised Code of 1943, relating to taxation of partnerships and partners income and treatment of losses

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-3808 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3808. PARTNERSHIPS NOT SUBJECT TO TAX.) Partnerships shall not be subject to tax under this chapter, but the individual members of a partnership shall be taxable on their share of the net profits of such partnership whether the same are distributed or not, and shall be entitled to deduct their share of any net losses suffered by the partnership.

§ 2. AMENDMENT.) Subsection 3 of section 57-3820 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3820. BASIS OF RETURN OF NET INCOME.) The basis upon which a return of net income is made shall be determined as follows:

3. An individual carrying on business in a partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income the distributive share of the net income of the partnership received by him or distributable to him during the income year; and shall be entitled to deduct his share of any net losses suffered by the partnership.

§ 3. AMENDMENT.) Subsection 4 of subdivision c of section 57-3822 of the North Dakota Revised Code of 1943 hereby amended and reenacted to read as follows:

57-3822. DEDUCTIONS ALLOWED.) In computing net losses, there shall be allowed as deductions:

4. Losses computed as follows:

c. Taxpayers entitled to net loss carry-over privileges are:

1. Corporations;
2. Partners;
3. Individuals; and
4. Estates and trusts, if engaged in trade or business;

Approved March 1, 1951.

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CHAPTER 327

H. B. No. 762  
(Lynch and McLellan)

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CAPITAL GAINS AND LOSSES IN INCOME TAX COMPUTATION

AN ACT

To amend and reenact section 57-38151 of the 1949 Supplement to the North Dakota Revised Code of 1943, relating to capital gains and losses in computing income for income tax purposes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-38151 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-38151. CAPITAL GAINS AND LOSSES.) Only fifty percent of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net capital gain, net capital loss, and net income. If in such sale or exchange the initial payments do not exceed thirty percent of the selling price, any taxpayer or partnership may return as income from such sale or exchange that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

Approved March 1, 1951.

## CHAPTER 328

S. B. No. 192  
(Shure and Rue)

## SALES TAX

## AN ACT

To equalize taxation and replace in part the tax on property; to provide the public revenue to be used for such replacement by imposing a tax on the gross receipts from retail sales as defined herein; to provide for the collection of such tax, the distribution and use of the revenue derived therefrom, and the administration of said law; to provide for certain deductions and exemptions; establishing a lien for the payment of such tax; to fix fines and penalties for the violation of the provisions of this Act.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DEFINITIONS.) The following words, terms and phrases, when used in this Act, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number;
2. "Sale" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
3. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property and the sale of steam, gas, electricity, water, and communication service to retail consumers or users, and includes the ordering, selecting or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer. By the term "processing" is meant tangible personal property that is used in manufacturing, producing or processing, which becomes an ingredient or component part of other tangible personal property which latter tangible personal property becomes subject to the retail sales tax. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to other real or personal property otherwise exempt

from the sales tax shall be considered as a sale of tangible personal property for a purpose other than for processing;

4. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect;
5. "Retailer" includes every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, electricity, water and communication services, and tickets or admission to places of amusement and athletic events as provided in this Act, and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided; and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this Act;
6. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purposes allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. Provided, however, that on all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty days from the date of sale thereof that only such portion of the sale amount thereof shall be accounted for the purpose of imposition of tax imposed by this Act, as has actually been received in cash by the retailer during each quarterly period as defined herein;
7. "Relief agency" means the state, any county, city and county, city or district thereof, of an agency engaged in actual relief work;
8. "Commissioner" means the tax commissioner of the state of North Dakota; and

9. "Local governmental unit" means incorporated cities, towns and villages, counties, school districts and townships.

§ 2. TAX IMPOSED.) There is hereby imposed, beginning the first day of July, 1951 and ending the 30th day of June, 1953 a tax of two percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this Act, sold at retail in the state of North Dakota to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of steam, gas, electricity, water and communication service, including the gross receipts from such sales by any municipal corporation furnishing steam, gas, electricity, water and communication service to the public in its proprietary capacity, except as otherwise provided in this Act, when sold at retail in the state of North Dakota to consumers or users; and a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic events and the playing of a record on a vending machine, in response to a coin placed in a slot, except as otherwise provided in this Act. The tax herein levied shall be computed and collected as hereinafter provided.

§ 3. EXEMPTIONS.) There are hereby specifically exempted from the provisions of this Act and from computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state;
2. The gross receipts from the sales, furnishing or service of transportation service;
3. The gross receipts from sales of tangible personal property processed from agricultural products, when such property is sold in exchange for like agricultural products produced by the purchaser and is for the purchaser and his family;
4. The 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, where the entire amount of such receipts is expended for educational, religious or charitable purposes;
5. The gross receipts from the sale by any school board of this state of books and school supplies to regularly enrolled students at costs; and

6. Gross receipts from sales of tangible personal property or from furnishing or service of steam, gas, electricity, water, and communication service to the United States, state of North Dakota, or any of its subdivisions, departments or institutions, any county, city, village, township, school district, park district, or municipal corporations.

§ 4. TAXES PAID ON WORTHLESS ACCOUNTS.) Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off, for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax shall be paid upon the amount so collected. The provisions of this Act shall not apply to sales of gasoline, cigarettes, snuff, insurance premiums, or any other product or article upon which the state of North Dakota may now or hereafter impose a special tax.

§ 5. (CREDIT TO RELIEF AGENCY AND LOCAL GOVERNMENTAL UNITS.) A relief agency may apply to the commissioner for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, or merchandise used for free distribution to the poor and needy. Such refunds may be obtained only in the following amount and in the manner and only under the following conditions:

1. On forms furnished by the commissioner, and during the time herein provided for the filing of quarterly tax returns by retailers, the relief agency shall report to the commissioner the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, or merchandise used for free distribution to the poor and needy;
2. On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency; and
3. The relief agency must prove to the satisfaction of the commissioner that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this Act, based upon such computation of gross receipts.

If the commissioner is satisfied that the foregoing conditions and requirements have been complied with, he shall refund the amount claimed by the relief agency.



§ 6. TAX TO BE ADDED TO PURCHASE PRICE AND BE A DEBT.)

Retailers shall add the tax imposed under this Act, or the average equivalent thereof, to the sales price or charge and when added such taxes shall constitute a part of such price or charge, shall be a debt from the consumer or user to retailer until paid, and shall be recoverable at law in the same manner as other debts.

In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:

\$0.01 to \$ 0.24	no tax
.25 to .74	1 c tax
.75 to 1.24	2 c tax
1.25 to 1.74	3 c tax
1.75 to 2.24	4 c tax
2.25 to 2.74	5 c tax
2.75 to 3.24	6 c tax
3.25 to 3.74	7 c tax
3.75 to 4.24	8 c tax
4.25 to 4.74	9 c tax
4.75 to 5.24	10 c tax
5.25 to 5.74	11 c tax
5.75 to 6.24	12 c tax
6.25 to 6.74	13 c tax
6.75 to 7.24	14 c tax
7.25 to 7.74	15 c tax
7.75 to 8.24	16 c tax
8.25 to 8.74	17 c tax
8.75 to 9.24	18 c tax
9.25 to 9.74	19 c tax
9.75 to 10.24	20 c tax
Each additional 50 c	1 c additional tax

§ 7. UNLAWFUL ACT.) No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this Act shall be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer, or if added, that it or any part thereof will be refunded.

§ 8. RECORDS REQUIRED.) Every retailer required to make a report and pay any tax under this Act, shall preserve such records of the gross proceeds of sale as the commissioner may require and every retailer shall preserve for a period of two years all invoices and other records of goods, wares, or merchandise purchased for resale. All such books, invoices, and other records shall be open to examination at any time by the commissioner or any of his duly authorized agents.

§ 9. RETURN OF GROSS RECEIPTS.)

1. On or before the twentieth day of the month following the close of the first quarterly period as defined in the following section, and on or before the twentieth day of the month following each subsequent quarterly period of three months, the retailer shall make out a return for the preceding quarterly period in such form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by such return, and such further information as the commissioner may require to enable him correctly to compute and collect the tax herein levied. The commissioner upon request by any retailer and a proper showing of the necessity therefor, may grant unto such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any such retailer, the time in which he is required to make payment as provided for in section 10 of this Act shall be extended for the same period;
2. The commissioner, if he deems it necessary or advisable in order to insure the payment of the tax imposed by this Act, may require returns and payment of the tax to be made for other than quarterly periods, the provisions of section 10 or elsewhere to the contrary notwithstanding; and
3. Returns shall be signed by the retailer or his duly authorized agent.

§ 10. PAYMENT OF TAX, BOND, CREATION OF LIEN.)

1. The tax levied under the provisions of this Act shall be due and payable in quarterly installments on or before the twentieth day of the month next succeeding each quarterly period, the first of such periods being the period commencing with July 1, 1951;
2. Every retailer, at the time of making the return required hereunder, shall compute and pay to the commissioner the tax due for the preceding period;
3. The commissioner, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this Act, may require any person subject to such tax to file with him a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the commissioner may fix, to secure the payment of any tax and penalties due or which may become due from such person. In lieu

of such bond, securities approved by the commissioner in such amounts as he may prescribe, may be deposited with him, which securities shall be kept in the custody of the commissioner and may be sold by him at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax and penalties due. Upon any such sale, the surplus, if any, above the amounts due under this provision shall be returned to the person who deposited the securities.

§ 11. LIEN OF TAX; COLLECTION; ACTION AUTHORIZED.) Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgages, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the tax commissioner shall file with the register of deeds of the county in which said property is located, a notice of said lien.

The register of deeds of each county shall prepare and keep in his office a book known as "Index of Tax Lieus," so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer;
2. The name "State of North Dakota" as claimant;
3. Time notice of lien was received;
4. Date of notice;
5. Amount of lien then due; and
6. When satisfied.

The register of deeds shall endorse on each notice of lien the day, hour and minute when received and preserve the same, and forthwith shall index said notice in said index book and forthwith shall record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof;

The tax commissioner shall pay a recording fee as provided by law for the recording of such lien, or for the satisfaction thereof.

Upon the payment of a tax as to which the tax commissioner has filed notice with the register of deeds, the tax commissioner forthwith shall file with said register of deeds a satisfaction of said tax and the register of deeds shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

The attorney general, upon the request of the tax commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, and in such action he shall have the assistance of the state's attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the tax commissioner or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to insure payment of the taxes, including penalties, interest and other costs, are self-explanatory.

Remittances on account of tax due under this Act shall not be deemed or considered payment thereof unless or until the commissioner shall have collected or received the amount due for such tax in cash or equivalent credit.

#### § 12. PERMITS; APPLICATION AND FEE FOR.)

1. No person shall engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to him as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority;

2. At the time of making such application, the applicant shall pay to the commissioner a permit fee of fifty cents for each permit, and the applicant shall have a permit for each place of business;
3. Upon the payment of the permit fee, or fees herein required, the commissioner shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated herein. It shall at all times be conspicuously displayed at the place for which issued;
4. Permits issued under the provisions of this section shall be valid and effective without further payment of fees until revoked by the commissioner;
5. Whenever the holder of a permit fails to comply with any of the provisions of this section or any rules or regulations prescribed by the commissioner and adopted under this section, the commissioner upon hearing after giving ten days' notice of the time and place of the hearing to show cause why his permit should not be revoked, may revoke the permit. The commissioner also shall have the power to restore licenses after such revocation;
6. The commissioner shall charge a fee of one dollar for the issuance of a permit to a retailer whose permit has been previously revoked; and
7. All permits in effect at the time this Act takes effect are hereby continued and shall remain in full force and effect unless revoked as herein provided.

§ 13. FAILURE TO FILE RETURN; INCORRECT RETURN.) If a return required by this Act is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the commissioner, such commissioner shall determine the amount of tax due from such information as he may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and other factors. The commissioner shall give notice of such determination to the person liable for the tax. Such determination shall fix the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of such determination, shall apply to the commissioner for a hearing or unless the commissioner of his own motion shall

reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the commissioner shall give notice of his decision to the person liable for the tax.

§ 14. APPEALS.)

1. An appeal may be taken by the taxpayer to the district court of the county in which he resides, or in which his principal place of business is located, within sixty days after he shall have received notice from the commissioner of his determination as provided for in the preceding section;
2. The appeal shall be taken by a written notice to the commissioner and served as an original notice. When said notice is so served it shall be filed with the return thereon in the office of the clerk of said district court, and docketed as other cases, with the taxpayer as plaintiff and the commissioner as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the plaintiff shall perform the orders of the court; and
3. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commissioner. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the commissioner to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved.

§ 15. SERVICE OF NOTICE.)

1. Any notice, except notice of appeals, authorized or required under the provisions of this Act may be given by mailing the same to the person for whom it is intended by registered mail addressed to such person at the address given in the last return filed by him pursuant to the provisions of this Act, or if no return has been filed, then such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this Act by giving of notice shall commence

to run from the date of registration and posting of such notice;

2. The provisions of the laws of this state relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this Act.

§ 16. PENALTIES, OFFENSES.)

1. Any person failing to file a return or corrected return or to pay any tax within the time required by this Act, shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due. The commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commissioner and disposed of in the same manner as other receipts under this Act. Unpaid penalties may be enforced in the same manner as the tax imposed by this Act.
2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement and athletic events, or steam, gas, water, electricity and communication service at retail in this state after his license shall have been revoked, or without procuring a license within sixty days after the effective date of this Act, as provided in section 12 of this Act, or who shall violate the provisions of section 7 of this Act, and the officers of any corporation who shall so act, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment, in the discretion of the court;
3. Any person required to make, render, sign or verify any return or supplementary return, who makes any false or fraudulent return, with intent to defeat or evade the assessment required by law to be made, shall be guilty of a misdemeanor and, for each such offense, shall be fined not to exceed five hundred dollars or shall be imprisoned in the county jail not exceeding one year, or shall be subject to both a fine and imprisonment, in the discretion of the court;
4. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this Act, shall be prima facie evidence thereof;

5. Any person failing to comply with any of the provisions of this Act, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to said sales tax, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months or by a fine of not exceeding five hundred dollars, or by both such fine and imprisonment, in the discretion of the court. This criminal liability shall be cumulative and in addition to the civil liability for penalties hereinbefore provided.

§ 17. TAX COMMISSIONER TO ADMINISTER ACT.) The tax commissioner is hereby charged with the administration of this Act and the taxes imposed thereby. Such commissioner may prescribe all rules and regulations not inconsistent with the provisions of this Act, necessary and advisable for its detailed administration and to effectuate the purposes, including the right to provide for the issuance and sale by the state of coupons covering the amount of tax or taxes to be paid under this Act, if such method is deemed advisable by said commissioner.

§ 18. TAX AND PENALTIES PAID TO COMMISSIONER; RETAIL SALES TAX FUND.) All fees, taxes, interest, and penalties imposed and collected under this Act shall be paid to the commissioner in the form of remittance payable to the treasurer of the state of North Dakota, and said commissioner shall transmit each payment monthly to the state treasurer to be deposited in the state treasury to the credit of a fund to be known as the retail sales tax fund, which fund is hereby created and established.

§ 19. GENERAL POWERS.)

1. The commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income and receipts of any taxpayer, shall have power to examine or cause to be examined by any agent or representative designated by him, books, papers, records, or memoranda; to require by subpoena the attendance and testimony of witnesses; to issue and sign subpoenas; to administer oaths, to examine witnesses and receive evidence; to compel witnesses to produce for examination books, papers, records, and documents relating to any matter which he shall have the authority to investigate or determine;
2. Where the commissioner finds the taxpayer has made a fraudulent return, the costs of said hearing shall be taxed the taxpayer. In all other cases the cost shall be paid by the state;



3. The fees and mileage to be paid witnesses and taxed as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be taxed in the manner provided by law in proceedings in civil cases. Where the costs are taxed to the taxpayer, they shall be added to the taxes assessed against said taxpayer and shall be collected in the same manner. Costs taxed to the state shall be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of said costs, to be paid out of the proceeds of the taxes collected under this Act;
4. In cases of disobedience to a subpoena the commissioner may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the commissioner and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as contempt thereof;
5. Testimony on hearings before the commissioner may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

§ 20. COMMISSIONER MAY APPOINT AGENTS AND EMPLOYEES: COMPENSATION; BOND; DUTY OF COUNTY TREASURER.)

1. The commissioner may appoint such agents, auditors, clerks, and employees as he may deem necessary to fix their salaries and compensation and prescribe their duties and powers, and said commissioner may remove such agents, auditors, clerks and employees so appointed by him. The number of inspectors appointed shall not exceed ten, each of whom shall have had at least three years experience in the auditing and checking of books of account;
2. All such agents and employees shall be allowed such reasonable and other necessary traveling expenses as may be incurred in the performance of their duties not to exceed, however, such amounts as are now or may hereafter be fixed by law;
3. The commissioner may require such of the officers, agents, and employees as it may designate to give bond for the faithful performance of the duties in such sum and with such sureties as it may determine and the state shall pay, out of the proceeds of the taxes collected under the provisions of this Act, the premiums on such bonds;

4. The commissioner may utilize the office of the treasurer of the various counties in order to administer this Act and effectuate its purposes and may appoint the treasurers of the various counties its agents to collect any or all of the taxes imposed by this Act. No additional compensation shall be paid to said treasurer by reason thereof.

§ 21. INFORMATION DEEMED CONFIDENTIAL.) It shall be unlawful for the commissioner, or any person having an administrative duty under this Act, to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular 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 except as provided by law. The commissioner may authorize examination of such returns by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state, or the federal government. Any person violating the provisions of this section shall be guilty of a misdemeanor and punishable by a fine of not to exceed one thousand dollars.

§ 22. CORRECTION OF ERRORS.) If it shall appear 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 Act, then such amount shall be credited against any tax due, or to become due, under this Act from the person who made the erroneous payment, or such amount shall be refunded to such person by the commissioner.

§ 23. PAYMENT OF REFUND.) Wherever by any provisions of this Act a refund is authorized, the commissioner shall certify the amount of the refund, the reason therefor and the name of the payee to the state auditor, who shall thereupon draw his warrant on the retail sales tax fund in the amount specified payable to the named payee.

§ 24. ALLOCATION OF REVENUE.) All moneys collected and received under this Act shall be paid into the state treasury and shall be credited by the state treasurer into a special fund to be known as "the retail sales tax fund." Out of this fund the state treasurer shall first provide for the payment of refunds allowed under this Act. The net amount of moneys remaining in said "retail sales tax fund" shall be a special trust fund to be used and disbursed solely for the following purposes:

1. Seven-twelfths of said trust fund shall be used and disbursed only for the payment of appropriations made pursuant to and for the purposes set forth in the state equalization fund law. The remaining five-twelfths of

said trust fund shall be used and disbursed only for the payment of appropriations to be expended by the public welfare board for the purpose authorized by law; provided, that appropriations made from the general fund to be expended by said public welfare board shall constitute and include appropriations from said five-twelfths share of said trust fund;

2. The state treasurer and state auditor shall make monthly transfers of all the amounts available in said trust fund, in the proportions provided herein to the state equalization fund and to be expended by said public welfare board as provided by law.

§ 25. APPROPRIATION.) All moneys now in the retail sales tax fund created by chapter 341 of the Session Laws of 1949, or collected pursuant to the provisions of said chapter, are hereby appropriated and transferred into the retail sales tax fund created by this Act, and shall be allocated and used as herein provided.

§ 26. SAVINGS CLAUSE.) If any section, subsection, clause, sentence, or phrase of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed this Act, and each section, subsection, clause, sentence or phrase hereof, irrespective of whether any one or more of the sections, subsections, clauses, sentences, or phrases, be declared unconstitutional.

Approved March 9, 1951.

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## CHAPTER 329

S. B. No. 181  
(Day)

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### MOTOR FUEL TAX AN ACT

To amend and reenact sections 57-4106, 57-4107, 57-4108, 57-4110, 57-4111, 57-4112, and 57-4117 of the North Dakota Revised Code of 1943, and sections 57-4809, 57-4810, 57-4811, and 57-4812 of the 1949 Supplement to the North Dakota Revised Code of 1943, relating to motor vehicle fuel taxes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-4106 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4106. TAX IMPOSED ON SALES OF MOTOR VEHICLE FUELS.) There is hereby imposed tax of three cents per gallon on all sales of motor vehicle fuel sold or used in this state. The tax imposed

by this section shall be collected by the dealer from the consumer on all sales other than sales of fuel in the original packages. Where sales are made in the original package the dealer shall have the option of collecting the tax of three cents per gallon imposed on such sales.

§ 2. AMENDMENT.) Section 57-4107 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4107. SALE IN ORIGINAL PACKAGE; INVOICE; DELIVERY OF COPIES.) Whenever a dealer in motor vehicle fuel makes a sale in the original package in which the fuel was imported, he shall deliver to the purchaser thereof an invoice of such fuel, stating the name and address of the purchaser, the quantity and kind of fuel sold, and whether or not the dealer has collected the tax on such fuel. Such dealer shall transmit to the state auditor, at the time that the statement required by section 57-4105 is rendered, duplicate copies of all invoices issued and delivered by him to purchasers during the period covered by the statement.

§ 3. AMENDMENT.) Section 57-4108 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4108. TAX CHARGEABLE TO CONSUMER.) Every dealer who is required to collect the motor vehicle fuel tax imposed by this chapter shall charge and collect the tax of three cents per gallon on all motor vehicle fuel sold by him, except as provided in section 57-4106, as a part of the selling price thereof.

§ 4. AMENDMENT. Section 57-4110 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4110. CONDITIONS PRECEDENT TO REINSTATEMENT OF LICENSE.) If the license of a dealer has been revoked, he, before another license will be issued to him, must pay to the state auditor the amount of the delinquent tax, with penalties and costs remaining unpaid by such dealer, and must file with the state auditor a surety bond upon which such dealer shall be the obligor. Such bond must be in such amount as the state auditor shall determine but not to exceed three times the amount of the state tax on all gasoline sold by such dealer during the preceding month, and not less than five hundred dollars. The bond shall run to the state of North Dakota and shall be conditioned for the prompt filing of true reports and the payment of the full amount of the tax at the times, in the manner, and at the place required under the provisions of this chapter. If any such dealer shall fail to file the monthly report required promptly and to pay the full amount of the tax due after having filed a surety bond as in this section provided, the state auditor may require such dealer to

furnish such other and further bond as shall be deemed necessary, conditioned to secure at all times the payment of any tax due to the state under the provisions of this chapter. Upon the failure to file such additional bond the state auditor forthwith shall revoke the license of such dealer.

§ 5. AMENDMENT.) Section 57-4111 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4111. PAYMENT OF TAX.) The tax collected upon motor vehicle fuel sold or used in any calendar month shall be remitted by the dealer, when the statement provided for in section 57-4105 is rendered, to the state auditor, who shall receipt to the dealer therefor, and forthwith shall pay over all of the money thus received to the state treasurer.

§ 6. AMENDMENT.) Section 57-4112 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4112. ALLOCATION OF TWO-THIRDS OF MOTOR FUEL TAX FOR STATE HIGHWAYS.) The state treasurer shall credit to the state highway department promptly two-thirds of the motor fuel tax collected under the provisions of this chapter. The money so credited is hereby appropriated to be used by such highway department for the construction, reconstruction, maintenance, or repair of highways or roads under the jurisdiction of the state highway department.

§ 7. AMENDMENT.) Section 57-4117 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4117. DUTY OF PURCHASER TO MAKE STATEMENT TO STATE AUDITOR AND PAY TAX.) If any person shall purchase or receive from any fuel dealer in this state motor vehicle fuel in the original package in which the same was imported, and such dealer shall not have collected the tax upon such fuel as provided in this chapter, such purchaser on the 15th day of each month shall render to the state auditor the statement required of the dealer under the provisions of section 57-4105, and at the same time shall remit and pay to the state auditor the tax of three cents a gallon due on such motor vehicle fuel.

§ 8. AMENDMENT.) Section 57-4809 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4809. ONE CENT GAS TAX IMPOSED TO PAY INTEREST AND REDEEM CERTIFICATES.) For the purpose of providing funds for the payment of the semi-annual interest and the redemption of said certificates as the same become payable, there is hereby imposed on all sales of motor vehicle fuels, a special motor vehicle

fuel tax of one cent per gallon on all motor vehicle fuels used and sold in the state of North Dakota, which tax shall be separate and apart from and in addition to any other tax imposed upon or applicable to motor vehicle fuels or dealers therein under the laws of this state, and said additional one cent per gallon tax shall be in addition to and over and above the three cent tax now imposed and assessed by the initiated measure approved June 30, 1926, and amendments thereof and Acts supplementary thereto, known as "motor vehicle fuel tax law" chapter 57-41.

§ 9. AMENDMENT.) Section 57-4810 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4810. MANNER OF PAYMENT AND COLLECTION OF TAX.) Said additional one cent per gallon tax shall be collected and paid by every dealer in motor vehicle fuels as defined and provided in the said initiated measure approved June 30, 1926, and the amendments thereto, chapter 57-41, and said additional one cent per gallon tax shall be paid in the manner, at the times and to the officer specified in said initiated measure and amendments thereto, and all definitions of terms and methods of procedure for assessment and collection and other general provisions by context applicable hereto now contained and provided in said initiated measure and all future amendments thereto shall apply and hereby are made applicable to the special tax imposed under the terms and provisions of this chapter.

§ 10. AMENDMENT.) Section 57-4811 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4811. DEALER SHALL COLLECT TAX FROM CONSUMER.) Every dealer who is required to collect the additional one cent per gallon special motor vehicle fuel tax herein imposed shall charge and collect the sum of one cent per gallon on such motor vehicle fuels sold by him as a part of the selling price thereof.

§ 11. AMENDMENT.) Section 57-4812 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4812. PENALTY.) Any dealer, person or association, firm or corporation liable to account for and pay said one cent per gallon tax who shall violate any of the provisions of this chapter or who shall make any false statement or report required by this chapter or who shall fail or neglect to collect and pay the one cent per gallon additional special motor vehicle fuel tax herein imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or be imprisoned in the county jail for not more than ninety days, or both such fine and imprisonment.

Approved March 8, 1951.

## CHAPTER 330

S. B. No. 253  
(Committee on Finance and Taxation)

MOTOR FUEL USE TAX  
AN ACT

To amend and reenact section 57-4202 of the North Dakota Revised Code of 1943, providing a motor fuel use tax.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-4802 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4202. LEVY OF TAX.) For the privilege of using the public highways in this state, an excise tax is imposed hereby on the use of fuel by any person within this state, at the rate of five cents per gallon, computed and paid in the manner hereinafter provided.

Approved March 7, 1951.

## CHAPTER 331

Senate Bill No. 104  
(Day, Duffy, Klusmann, Knudson, Morgan, Rue and Shure)

MOTOR VEHICLE FUEL; SPECIAL TAX OF ONE CENT  
PER GALLON

## AN ACT

Assessing and levying upon all sales of motor vehicle fuel, a special tax of one cent per gallon, in addition to all other taxes, and appropriating proceeds of such special tax to the state highway department construction fund for the construction and reconstruction of state highways, and providing a penalty, and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DEFINITIONS.) In this Act, unless the context or subject matter otherwise requires:

1. "Motor vehicles" means all vehicles, engines, or machines, movable or immovable, which are operated in whole or in part by internal combustion of one or more of the motor vehicle fuels defined in this Act;

2. "Motor vehicle fuels" includes all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classification or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naptha, kerosene, and similar petroleum products, American society for testing materials designation D-86, shows not less than ten percent distilled, recovered, below three hundred forty-seven degrees Fahrenheit, one hundred and seventy-five degrees centigrade, and not less than ninety-five percent distilled, recovered, below four hundred sixty-four degrees Fahrenheit, two hundred forty degrees centigrade;
3. "Dealer" means any person, firm, association, or corporation importing or causing to be imported from any other state or country any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the same reaches the state of North Dakota, and any person, firm, association, or corporation producing, refining, manufacturing, or compounding any motor vehicle fuel in this state for use, distribution or sale therein;
4. "Original package" means any tank car, barrel, or other package which is in the form and condition in which the same was imported into the state;
5. "Person" shall include every individual, partnership, society, incorporated association, joint stock company, corporation, trustee, executor, administrator, or guardian; and
6. "Auditor" shall mean the state auditor of this state.

§ 2. TAX IMPOSED ON SALES OF MOTOR VEHICLE FUELS.) There is hereby imposed a tax of one cent per gallon on all sales of motor vehicle fuel sold in this state. The tax imposed by this section shall be separate and apart from and in addition to all other taxes and shall be collected by the dealer from the consumer on all sales other than sales of fuel in the original packages. Where sales are made in the original package the dealer shall have the option of collecting the tax of one cent per gallon imposed on such sales.

§ 3. SALE IN ORIGINAL PACKAGE; INVOICE; DELIVERY OF COPIES.) Whenever a dealer in motor vehicle fuel makes a sale in the original package in which the fuel was imported, he shall deliver to the purchaser thereof an invoice of such fuel, stating the name and address of the purchaser, the quantity and kind of



fuel sold and whether or not the dealer has collected the tax on such fuel. Such dealer shall transmit to the state auditor, duplicate copies of all invoices issued and delivered by him to purchasers.

§ 4. TAX CHARGEABLE TO CONSUMER.) Every dealer who is required to collect the motor vehicle fuel tax imposed by this Act shall charge and collect the tax of one cent per gallon on all motor vehicle fuel sold by him, except as provided in section 2 of this Act, as a part of the selling price thereof.

§ 5. PAYMENT OF TAX.) The tax collected upon motor vehicle fuel sold in any calendar month shall be remitted by the dealer to the state auditor, who shall receipt to the dealer therefor, and forthwith shall pay over all of the money thus received to the state treasurer.

§ 6. DUTY OF PURCHASER TO PAY TAX.) If any person shall purchase or receive from any fuel dealer in this state motor vehicle fuel in the original package in which the same was imported, and such dealer shall not have collected the tax upon such fuel as provided in this Act, such purchaser on the fifteenth day of each month shall remit and pay to the state auditor the tax of one cent a gallon due on such motor vehicle fuel.

§ 7. APPROPRIATION OF PROCEEDS OF TAX.) The proceeds of such special tax of one cent per gallon are hereby appropriated to the state highway department for construction of state and secondary highways under the jurisdiction of the state highway department.

§ 8. REFUND OF TAX WHERE FUEL USED FOR AGRICULTURAL OR INDUSTRIAL PURPOSES.) The provisions of chapter 57-50 of the 1949 Supplement to the North Dakota Revised Code of 1943, providing for the refunding of license taxes paid upon motor vehicle fuels used for agricultural or industrial purposes shall apply to the special tax imposed in section 6 of this Act.

§ 9. PENALTY.) Any dealer, person or association of persons, firm or corporation violating any provisions of this Act, or any person, firm, or corporation making any false statement in any report required by this Act, or failing or neglecting to collect or charge the one cent per gallon additional special motor vehicle fuel tax imposed herein, is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

§ 10. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1951.

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**CHAPTER 332**

**S. B. No. 90  
(Rue)**

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**TAX EXEMPTIONS OF PERSONS SERVING IN U. S.  
ARMED FORCES**

**AN ACT**

To amend and reenact section 57-4601 of the North Dakota Revised Code of 1943, relating to income tax exemptions of persons serving in the armed forces of the United States.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.) Section 57-4601 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-4601. MILITARY INCOME EXEMPT FROM THE INCOME TAX.) Any person actively serving in the armed forces of the United States, shall be exempt from the payment of the income tax on all income received from such services:

1. For a period ending on the fifteenth day of the sixth month after his discharge from active service; or
2. In the case of the death of a person while in such active service, for a period ending on the fifteenth day of the sixth month after an executor or administrator has been appointed for his estate.

Approved February 28, 1951.

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**TOWNSHIPS**

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**CHAPTER 333**

**S. B. No. 134  
(Knudson)**

**WHEN TERM OF TOWNSHIP OFFICERS BEGINS; REPEAL**

**AN ACT**

To repeal section 58-0503 of the North Dakota Revised Code of 1943, relating to township officers.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REPEAL.) Section 58-0503 of the North Dakota Revised Code of 1943 is hereby repealed.

Approved March 3, 1951.