

# TAXATION

## CHAPTER 315

H. B. No. 827  
(Lindberg and Mueller)

### HOMESTEAD EXEMPTION—DISABLED VETERANS

#### AN ACT

Creating and enacting subsection 20 of section 57-0208 of the North Dakota Revised Code of 1943, relating to property exempt from taxation.

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

§ 1. **Amendment.)** Section 57-0208 of the North Dakota Revised Code of 1943 is hereby amended by creating subsection 20 thereto, which is enacted to read as follows:

20. Fixtures, buildings and improvements upon lots in any city or village up to a valuation of ten thousand dollars used and owned as a homestead, as defined in section 47-1801 of the North Dakota Revised Code of 1943 as amended, by a disabled veteran who was discharged under honorable conditions with a service connected disability, and who shall have a certificate from the United States veterans' administration, or its successors, certifying that the veteran is receiving or has received pecuniary assistance due to disability for specially adapted housing under the provision of Public Law 702 of the 80th Congress and amendments thereto. To obtain said exemption, an affidavit accompanied by said certificate, showing the facts herein required and a description of the property, shall be filed with the county auditor. Such affidavit and accompanying certificate shall be filed in the office of the county auditor and shall be open to inspection. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which such veteran shall have held title to such exempt property.

Approved March 1, 1955.

## CHAPTER 316

H. B. No. 617  
(Poling)

TAX EXEMPTION OF INUNDATED AND HIGHWAY  
EASEMENT LANDS

## AN ACT

To amend and reenact section 57-0210 of the North Dakota Revised Code of 1943, relating to lands exempt from taxation, and declaring an emergency.

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

§ 1. **Amendment.)** Section 57-0210 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-0210. Inundated And Highway Easement Lands Exempt From Taxation.)** The board of county commissioners is authorized and directed to remove from the tax rolls and to declare as exempt from taxation all inundated lands upon which the owner thereof has granted or hereafter shall grant a permanent easement to the United States of America, its instrumentalities, or agencies, for the purpose of constructing, maintaining, and operating water or wildlife conservation projects, and all lands upon which the owner thereof has granted or hereafter shall grant an easement for a highway or road right-of-way to the United States, its instrumentalities or agencies, or to the state or its political subdivisions, and such lands so removed from the tax rolls shall remain exempt until such time as such water or wildlife conservation projects or highway shall have been abandoned. Such lands shall not be removed from the tax rolls and declared exempt from taxation until such time as the construction of such water or wildlife conservation projects or highway thereon shall have been completed.

§ 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, 1955.

## CHAPTER 317

S. B. No. 248  
(Delayed Bills Committee)

## TWENTY MILL LIMITATION ON COUNTY TAX LEVIES

## AN ACT

To amend and reenact section 57-1506 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to limitations on county tax levies.

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

§ 1. **Amendment.)** Section 57-1506 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-1506. Limitations On County Tax Levies.)** County tax levies shall be limited as follows:

1. The board of county commissioners shall not levy any taxes for general or special county purposes which will exceed the amount produced by a levy of twenty mills on the dollar of the net taxable valuation of the county;
2. The board of county commissioners annually shall levy taxes sufficient to meet the obligations of the county for the maintenance of its patients in the charitable institutions of the state, but such taxes shall not exceed the amount produced by a levy rate of one and one quarter mills on the dollar of net taxable valuation. Such levy shall be within the amount produced by the twenty mill rate, and shall be a paramount charge, to the exclusion of all other budget items, upon the necessary part of the total tax levies; provided that any funds now on hand or hereinafter levied for the purpose of this subsection shall not, in the discretion of the board of county commissioners, be included in the budget of the county.
3. The twenty mill limitation shall apply to all tax levies which the county is authorized to levy for general and special county purposes, including taxes levied for road and bridge purposes. Any unexpended balance in the county road fund at the end of the fiscal year may be transferred to a special road fund, except that such special fund, never exceed the amount a ten mill levy on the assessed valuation of the county would yield, and

the balance in said fund shall not be considered in determining the budget or the amount that may be levied. Such mill limitation shall not apply:

- a. To tax levies made for the purpose of paying the principal and interest on any obligations of the county evidenced by the issuance of bonds;
- b. To tax levies made to pay the county tuition provided for by section 57-1524;
- c. To taxes levied for the purpose of combating the grasshopper pest, pursuant to section 4-1501;
- d. To taxes levied for the purpose of combating gophers pursuant to section 4-1602;
- e. To taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein shall not be subject to the twenty mill limitations for general and special county purposes; or
- 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 5, 1955.

## CHAPTER 318

H. B. No. 559  
(Fay Brown)

## COUNTY OR CITY TAX LEVY FOR ADVERTISING

## AN ACT

To amend and reenact section 57-15101 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to authorizing counties in which are located cities having a population in excess of three thousand to levy a tax for the purpose of advertising the resources and opportunities in the county or city and promoting the industrial development thereof, and repealing all acts or parts of acts in conflict herewith and declaring an emergency.

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

§ 1. **Amendment.)** Section 57-15101 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-15101. Counties And Cities May Levy For Certain Advertising Purposes.)** The board of county commissioners of any county in which there is located a city having a population in excess of 3,000, according to latest federal census, and the governing body of any city having a population in excess of 3,000 according to latest federal census, may annually levy a tax for the purpose of advertising the resources and opportunities in the county or city as the case may be and promoting the industrial development thereof. Such tax shall not exceed the amount produced by the levy of one-half mill on a dollar of the net taxable valuation of the county or city as the case may be.

When any county or city makes the levy provided for by this Act, the expenditure of the fund shall be under the direction of the governing boards of such county or city. The levy of such one-half mill authorized by this Act shall not be subject to other mill limitations prescribed by law.

§ 2. **Repeal.)** All acts or parts of acts in conflict with this Act are hereby repealed.

§ 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 28, 1955.

## CHAPTER 319

H. B. No. 586  
(Committee on Education)

## SCHOOL DISTRICT BUILDING FUND TAX LEVY

## AN ACT

To amend and reenact section 57-1516 and subsection 1 of section 57-1517 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to tax levies for building funds in school districts and the use thereof.

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

**§ 1. Amendment.)** Section 57-1516 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-1516. Tax Levy For Building Fund In School Districts.)** The governing body of any school district shall levy taxes annually for a school building fund, not in excess of ten mills, which levy shall be in addition to and not restricted by the levy limitations prescribed by law, when authorized to do so by sixty percent of the electors voting upon the question at a regular or special election in any school district. The governing body of such school district may create such building fund by appropriating and setting up in its budget for such an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law. In all cases where a portion or all of the proceeds of such levy have been allocated by contract to the payment of rentals upon contracts with the state school construction board, such levy shall be made annually by the governing body of the school district until the full amount of all such obligations is fully paid. Upon the completion of all payments to the state school construction fund, such levy may be discontinued at the discretion of the governing body of the school district, or, upon petition of one-third of the qualified electors of such district, the question of discontinuance of the levy shall be submitted to the electors of the school district at any regular or special election and, upon a favorable vote of sixty percent of the electors voting, such levy shall be discontinued. Any school district, executing a contract or lease with the state school construction board, which contract or lease requires the maintenance of the ten mill levy provided in this section, shall immediately file a certified copy of such contract or lease with

the county auditor or auditors of the county or counties in which such school district is located. The county auditor or auditors shall register such contract or lease in the bond register in substantially the manner provided in section 21-0323. Upon the filing of such contract or lease with the county auditor or auditors, the school district shall be without power to discontinue such levy and such levy shall automatically be included in the tax levy of such school district from year to year by the county auditor or auditors until a sufficient sum of money has been collected to pay to the state treasurer for the retirement of all obligations of such school district with the state school construction board.

**§ 2. Amendment.)** Subsection 1 of section 57-1517 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read 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, or the payment of rentals upon contracts with the state school construction board, 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, and such order must recite upon its face the purpose for which such payment is made;

Approved March 8, 1955.

## CHAPTER 320

H. B. No. 690  
(Link and Rolfsrud)

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## TOWNSHIP FIVE MILL LEVY; FARM TO MARKET ROADS

## AN ACT

To provide for a township tax levy of five mills to be used in cooperation with a county in the construction and maintenance of federal aid farm to market roads on the county highway system within such township, and providing for notification.

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

§ 1.) The electors of each township shall have power at the annual meeting to levy not over five mills on the dollar of the net taxable assessed valuation for the purpose of cooperating with the county in constructing and maintaining federal aid farm to market roads within such township. The tax levy provided herein shall be over and above the limitations specified in section 57-1520 of the 1953 Supplement to the North Dakota Revised Code of 1943, and shall 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 58-0401 of the 1953 Supplement to the North Dakota Revised Code of 1943, as amended.

Approved February 28, 1955.

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## CHAPTER 321

H. B. No. 631  
(Adamsen)

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DEDUCTION OF DELINQUENT TAXES FROM  
PUBLIC SALARIES OR CLAIMS

## AN ACT

To amend and reenact section 57-2226 of the North Dakota Revised Code of 1943, relating to deduction of personal property taxes from salaries and claims against public funds.

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

§ 1. **Amendment.)** Section 57-2226 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:



**57-2226. Deduction Of Personal Property Taxes From Salaries And Claims Against Public Funds.)** Any person who is required to issue warrants for, or to pay any salary or other compensation of, any officer or employee mentioned in section 57-2227, or to pay any other claim against public funds, shall ascertain from the tax records of the county wherein the services were performed, or the county wherein the person making claim for such compensation or other payment resides, whether such claimant is indebted to such county, or to any township, city, village, school district, park district, or any other municipality or political subdivision, for delinquent personal taxes, and, if such indebtedness is found to exist, fifteen percent of the amount claimed for such salary or other compensation, or for such other payment, shall be withheld from each payment made until such personal property taxes, with interest and penalty, are fully satisfied, except that the total amount deducted and withheld shall never exceed double the amount of the total indebtedness. If, however, in any case the amount of the salary, compensation, or other claim allowed for payment amounts to less than ten dollars, then one dollar only shall be withheld therefrom to apply upon such delinquent personal property taxes.

Approved March 8, 1955.

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## CHAPTER 322

S. B. No. 51  
(Duffy, Knudson)

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### DETERMINATION OF NET ESTATE

#### AN ACT

To amend and reenact subdivisions b and i of subsection 2 of section 57-3711 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to terminable interests and interests in property considered as passing from a decedent, and declaring an emergency.

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

**§ 1. Amendment.)** Subdivision b of subsection 2 of section 57-3711 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

- 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; provided, that the value of any interest within the meaning of the foregoing provisions of this subdivision shall be deductible to the extent that the total value of other interests deductible under this subsection is less than twenty thousand dollars. 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.

**§ 2. Amendment.)** Subdivision i of subsection 2 of section 57-3711 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

- i. For the purposes 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, or (7) such interest passed by way of exemption pursuant to chapter 30-16 of the North Dakota Revised Code of 1943, as amended, provided that such interest is not one which would be disqualified under subdivision (b) of this subsection and provided that such interest is not otherwise deductible under this section. 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.

**§ 3. Application.)** This Act shall be applicable to estates of all decedents who shall have died subsequent to January 1, 1955.

**§ 4. 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 2, 1955.

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## CHAPTER 323

H. B. No. 596  
(Nygaard and Dick)

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### TAX EXEMPT CIGARETTES FOR SOLDIERS' HOME

#### AN ACT

Exempting cigarettes given to soldiers' home from state cigarette taxes.

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

**§ 1. Cigarettes Given Soldiers' Home Exempt.)** All gift cigarettes, not for resale, which are given to the North Dakota soldiers' home for distribution to the occupants thereof, and which are exempt from the cigarette excise taxes of the United States, shall also be exempt from all cigarette excise taxes levied by the state of North Dakota.

Approved February 23, 1955.

## CHAPTER 324

S. B. No. 114

(Dewing)

(At the request of  
the state tax commissioner)

## INCOME TAX CLARIFICATION

## AN ACT

To create new subsections 18 and 19 to section 57-3801 of the North Dakota Revised Code of 1943 and the 1953 Supplement thereto and to amend and reenact section 57-3805, subsection 6 of section 57-3809, subsection 1 of section 57-3827, section 57-3835, section 57-3836, and subsections 1 and 3 of section 57-3842 of the North Dakota Revised Code of 1943, relating to definitions, deductions, exemptions, payment of tax, and information at the source, and for purposes of clarifying existing income tax laws.

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

**§ 1. Amendment.)** Subsection 18 of section 57-3801 of the North Dakota Revised Code of 1943 as amended is hereby created and enacted to read as follows:

18. "Taxable income" or "income taxable" shall mean income against which the tax rate provided for in this chapter is applied;

**§ 2. Amendment.)** Subsection 19 of section 57-3801 of the North Dakota Revised Code of 1943 as amended is hereby created and enacted to read as follows:

19. "Nontaxable income" or "income not taxable" shall mean all income against which the tax rate provided in this chapter is not applied, provided that the terms shall not mean personal exemptions, deductions for dependents, or deductions provided in section 57-3822.

**§ 3. Amendment.)** Section 57-3805 of the North Dakota Revised Code of 1943, is hereby amended and reenacted to read as follows:

**57-3805. Certain Income Of Nonresidents Not Taxed.)** Income of nonresidents derived from interest from land contracts and income of nonresidents derived from mortgages, stocks, bonds, and securities, or from the sale of similar intangible personal property, shall not be taxed.

**§ 4. Amendment.)** Subsection 6 of section 57-3809 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

6. Domestic building and loan associations and domestic savings and loan associations operated for mutual purposes;

**§ 5. Amendment.)** Subsection 1 of section 57-3827 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

1. If taxable under the provisions of subsection 1 of section 57-3807, a personal exemption of six hundred dollars;

**§ 6. Amendment.)** Section 57-3835 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-3835. Payment Of Tax.)** Except as otherwise provided in section 57-3836, every taxpayer shall compute the amount of tax due under the return and shall attach thereto a check, draft, or money order, payable to the state tax commissioner, Bismarck, North Dakota, for the amount of the tax computed. The interest on delinquent tax provided in section 57-3843 shall apply to returns filed without payment of the tax due in the manner provided herein.

**§ 7. Amendment.)** Section 57-3836 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-3836. Payment Of Tax May Be Made In Quarterly Installments When.)** If the total tax exceeds one hundred dollars it may be paid in quarterly installments, and if paid in such installments, the first installment shall be paid at the time fixed by this chapter for filing the return, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month, after the time fixed by law for filing the return.

**§ 8. Amendment.)** Subsection 1 of section 57-3842 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

1. Every individual, partnership, corporation, joint stock company, or association, or insurance company, a resident of, or having a place of business in, this state, in whatever capacity acting, including lessees and mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any state institution, or of any political subdivision within the state, having control, receipt, custody, disposal, or payment of interest, other than interest coupons payable to bearer, rent, salaries, wages, premiums, an-

nuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, amounting to six hundred dollars or over in salaries or wages, and six hundred dollars or over in other payments mentioned in this chapter, whether paid or payable during any year to any taxpayer, shall make a complete return thereof under oath to the tax commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by the tax commissioner;

**§ 9. Amendment.)** Subsection 3 of section 57-3842 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

3. All returns required under this section shall be made on or before the fifteenth day of the third month following the close of the fiscal year of the person, firm or corporation required to make the return, or if the return is made on the basis of a calendar year, then the return shall be made on or before the fifteenth day of April in the year following the year in which such payments were made or accrued.

**§ 10. Effective Date.)** This Act shall apply to every income year beginning after December 31, 1954.

Approved March 2, 1955.

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## CHAPTER 325

H. B. No. 564  
(Fay Brown)

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### INCOME TAX DEDUCTIONS—LIGNITE PRODUCTION

#### AN ACT

To amend and reenact subsection 6 of section 57-3822 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to deductions allowed in computing net income for income tax purposes, to encourage and promote the mining and production of lignite coal in North Dakota and encourage its utilization as a natural resource.

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

**§ 1. Amendment.)** Subsection 6 of section 57-3822 of the 1953 Supplement to the North Dakota Revised Code of 1943, is hereby amended and reenacted to read as follows:

6. A reasonable allowance for necessary repairs and a reasonable allowance for depreciation by use, wear, and tear of property used in business or trade, and in case of mines, oil and gas wells, or other natural deposits, a reasonable allowance for cost depletion including cost of development if capitalized, and for depreciated improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under the rules and regulations to be prescribed by the tax commissioner. The taxpayer shall have the election to capitalize or deduct currently the intangible drilling and development costs, such election once made to be binding for all subsequent years. In any case, in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate, but not the basis for depletion, shall be revised and the allowance under this subsection for subsequent taxable years shall be based upon such revised estimate. In the case of leases, the deductions shall be equitably apportioned between the lessor and the lessee. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.
- a. In the case of oil and gas wells, the taxpayer shall have an option to accept an allowance for depletion of twenty-seven and one-half per centum of the gross income from the property during the taxable year in lieu of other bases of depletion. If the option to accept the twenty-seven and one-half per centum depletion allowance is exercised, the taxpayer shall exclude from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect to the property. Such allowance shall not exceed fifty per centum of the net income of the taxpayer from the property, computed without the allowance for depletion. In no case shall the allowance of percentage depletion be less than it would have been as computed upon the basis of cost depletion;

- b. In the case of lignite coal mines, the taxpayer shall have the option to accept an allowance for depletion of ten per centum of the gross income from each property during the taxable year in lieu of other bases of depletion. If the option to accept the ten per centum depletion allowance is exercised, the taxpayer shall exclude from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect to the property. Such allowance shall not exceed fifty per centum of the net income of the taxpayer from the property, computed without the allowance for depletion. In no case shall the allowance of percentage depletion be less than it would have been as computed upon the basis of cost depletion.
- c. This Act shall apply to all income years beginning after December 31, 1954.

Approved March 1, 1955.

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## CHAPTER 326

H. B. No. 691

(Brown, Baldwin and Thompson)

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### NET INCOME GIFT DEDUCTIONS

#### AN ACT

To amend and reenact subsection 8 of section 57-3822 of the 1943 Revised Code relating to deductions allowed in computing net income.

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

**§ 1. Amendment.)** Subsection 8 of section 57-3822 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

- 8. Contributions or gifts made within the income year to:
  - a. The state of North Dakota, or any political subdivision thereof, exclusively for public purposes;
  - b. To any community chest, corporation, association, or trust, or fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of



cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

- c. To posts or organizations of war veterans or auxiliary units or societies of such organizations, if such posts, organizations, units or societies are within North Dakota and if no part of their net income inures to the benefit of any private shareholder or individual.

Such contributions or gifts may be deducted only to an amount which in all the above cases combined does not exceed twenty percent of the taxpayer's net income as computed without the benefit of this subdivision;

Approved March 2, 1955.

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## CHAPTER 327

S. B. No. 112

(Dewing)

(at the request of  
the state tax commissioner)

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### LIMITATION OF ACTIONS ON FAILURE TO MAKE INCOME TAX RETURN

#### AN ACT

To amend and reenact section 57-3844 of the North Dakota Revised Code of 1943 relating to income tax as a personal debt by adding thereto a provision relating to limitations of actions in those instances of failure to make a return as required by the income tax law.

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

§ 1. **Amendment.**) Section 57-3844 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-3844. Tax A Personal Debt; Limitation Of Actions.)** Every tax imposed by this chapter, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a personal debt from the person or corporation liable to pay the same to this state. In the case of any tax imposed by this chapter if the taxpayer has failed to file a return of income as required by this chapter, the tax may be assessed, or a proceeding in court for the collection of such

tax may be begun without such assessment, at any time within ten years after the due date of the return; provided that no limitation of time to assess or collect the tax shall apply if the failure to file a return was due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax; and provided further that no limitation of time shall apply if at the effective date of this amendment a lien has been filed and recorded pursuant to section 57-3849.

Approved March 2, 1955.

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## CHAPTER 328

S. B. No. 113

(Dewing)

(At the request of  
the state tax commissioner)

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### INCOME TAX LIENS

#### AN ACT

To amend and reenact section 57-3849 of the North Dakota Revised Code of 1943, relating to the filing and recording of income tax liens and to the payment of fees therefor.

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

§ 1. **Amendment.)** Section 57-3849 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-3849. Preservation Of Lien.)** In order to preserve the lien provided in section 57-3848 against subsequent mortgages, or judgment creditors, for value and without notice of the lien, on any property situated in any 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 to be known as index of tax liens, 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;
6. When satisfied.

The register of deeds shall endorse on each notice of lien the day, hour, and minute when received and shall preserve the same, and forthwith shall index said notice in the index book and shall record the lien in the manner provided for recording real estate mortgages. Such lien shall be effective as against subsequent creditors, purchasers, and encumbrancers from the time of the recording thereof. The tax commissioner shall pay a recording fee as provided by law for the recording of such lien, or for the satisfaction thereof; provided that the register of deeds shall accept any such lien for filing and recording when it is received whether or not the filing and recording fees are paid at that time.

Approved March 2, 1955.

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## CHAPTER 329

H. B. No. 811  
(Sticka and Gress)

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### 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 of title or possession, 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, including the leasing or renting, 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, including leasing or renting, 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 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, 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. "Gross receipts" shall also mean, 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 such tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state;

7. "Relief agency" means the state, any county, city and county, city or district thereof, or 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, 1955 and ending the 30th day of June, 1957 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;
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 corporation;
7. Gross receipts from the sale, by any drug store, of drugs sold under a doctor's prescription; and
8. Gross receipts from sales of commercial fertilizers and from the sale of seeds, roots, bulbs and small plants to users or consumers for planting or transplanting for vegetable gardens or agricultural purposes.

**§ 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 the 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	1c tax
.75 to 1.24	2c tax
1.25 to 1.74	3c tax
1.75 to 2.24	4c tax
2.25 to 2.74	5c tax
2.75 to 3.24	6c tax
3.25 to 3.74	7c tax
3.75 to 4.24	8c tax
4.25 to 4.74	9c tax

4.75 to	5.24	.....	10c tax
5.25 to	5.74	.....	11c tax
5.75 to	6.24	.....	12c tax
6.25 to	6.74	.....	13c tax
6.75 to	7.24	.....	14c tax
7.25 to	7.74	.....	15c tax
7.75 to	8.24	.....	16c tax
8.25 to	8.74	.....	17c tax
8.75 to	9.24	.....	18c tax
9.25 to	9.74	.....	19c tax
9.75 to	10.24	.....	20c tax
Each additional 50c		.....	1c 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 last day of the month following the close of the first quarterly period as defined in the following section, and on or before the last 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 last day of the month next succeeding each quarterly period, the first of such periods being the period commencing with July 1, 1955;
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 Liens," 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; provided that the register of deeds shall accept any such lien for filing and recording when it is received whether or not the filing and recording fees are paid at that time.

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 therein. 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 Act or any rules or regulations prescribed by the commissioner and adopted under

this Act, 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 to 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, 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 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 he may designate to give bond for the faithful performance of the duties in such sum and with such sureties as he 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 his 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 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 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 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 or for other educational purposes specifically authorized by the legislature. The remaining five-twelfths of said trust fund shall be used and disbursed only for the payment of appropriations to be expended by public welfare board for the purpose authorized by law or for other welfare purposes specifically authorized by the legislature; 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 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 332 of the Session Laws of 1953, 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 17, 1955.

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## CHAPTER 330

S. B. No. 146

(Dewing, Page, Freed and Luick)

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### REPEALING DEFINITION OF "FUEL" AS PROPERTY USED IN PROCESSING

#### AN ACT

To repeal subdivision b of subsection 3 of section 57-4001 of the North Dakota Revised Code of 1943, relating to definitions of processing.

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

**§ 1. Repeal.)** Subdivision b of subsection 3 of section 57-4001 of the North Dakota Revised Code of 1943 is hereby repealed.

Approved March 1, 1955.

## CHAPTER 331

H. B. No. 846  
(Ziegler, Rosberg)  
(At the request of  
the state tax commissioner)

## USE TAX AMENDMENTS

## AN ACT

To amend and reenact subsections 2, 4, and 5 of section 57-4001, section 57-4002, subsection 2 of section 57-4003, and section 57-4010 of the North Dakota Revised Code of 1943 relating to definitions, imposition of the excise tax, exemptions, and credit for taxes paid in other states, and to create and enact subsection 10 of section 57-4001 of the North Dakota Revised Code of 1943 relating to definitions of "purchased at retail" and to create and enact subsection 8 of section 57-4003 of the North Dakota Revised Code of 1943 relating to exemptions.

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

**§ 1. Amendment.)** Subsection 2 of section 57-4001 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

2. "Use" shall mean the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, except that it shall not include processing, or the sale of that property in the regular course of business;

**§ 2. Amendment.)** Subsection 4 of section 57-4001 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

4. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

**§ 3. Amendment.)** Subsection 5 of section 57-4001 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts allowed and taken on sales shall not be included; "purchase price" shall also mean the total cost of fabricating, compounding, or manufacturing tangible personal property by a person for storage, use, or consumption by that person;

§ 4.) Subsection 10 of section 57-4001 of the North Dakota Revised Code of 1943 is hereby created and enacted to read as follows:

10. "Purchased at retail" shall include, but shall not be limited to, the completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person; "purchased at retail" shall also include, but shall not be limited to, the leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.

§ 5. **Amendment.)** Section 57-4002 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4002. Tax Imposed.)** 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 two percent of the purchase price of such property. Except as limited by section 57-4010, 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 two percent of the fair market value of such property at the time it was brought into this state.

§ 6. **Amendment.)** Subsection 2 of section 57-4003 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

2. Tangible personal property brought into this state by a nonresident thereof for his own storage, use, or consumption while temporarily within this state, except that such property shall not be exempt if brought into this state for storage, use, or consumption in the conduct of a trade, occupation, business, or profession;

§ 7. **Amendment.)** Section 57-4010 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4010. Articles Taxed In Other States.)** If any article or tangible personal property has been subjected already to a tax by any other state in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference only between the rate fixed in this chapter and the rate by which the previous tax upon the sale or use was computed. If the tax imposed in such other state is two percent

or more, then no tax shall be due on such article. The provisions of this section shall apply only if such other state allows a tax credit with respect to the retail sales and use taxes imposed by this state which is substantially similar in effect to the credit allowed by this section.

**§ 8. Amendment.)** Section 57-4003 of the North Dakota Revised Code of 1943 is hereby amended by creating and enacting a new subsection 8 as follows:

8. Railway cars and locomotives used in interstate commerce, and tangible personal property which becomes a component part thereof.

Approved March 10, 1955.

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## CHAPTER 332

S. B. No. 168  
(Dewing, Page)

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### REMOVING "TANGIBLE PROPERTY USED IN INTERSTATE TRANSPORTATION OR COMMERCE" FROM USE TAX EXEMPTIONS

#### AN ACT

To repeal subsection 3 of section 57-4003 of the North Dakota Revised Code of 1943, pertaining to exemptions under the Use Tax Act.

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

**§ 1. Repeal.)** Subsection 3 of section 57-4003 of the North Dakota Revised Code of 1943 is hereby repealed.

Approved March 2, 1955.

## CHAPTER 333

H. B. No. 810  
(Gress and Sticka)

## USE TAX; RETURN AND PAYMENT TIMES

## AN ACT

To amend and reenact subsections 4, 5, and 6 of section 57-4006 of the North Dakota Revised Code of 1943 relating to and extending the time for filing returns required under the use tax law and relating to and extending the time for the payment of the tax due thereunder.

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

**§ 1. Amendment.)** Subsections 4, 5, and 6 of section 57-4006 of the North Dakota Revised Code of 1943 are hereby amended and reenacted to read as follows:

4. Each retailer required or authorized, pursuant to this section, to collect such tax shall pay the tax in quarterly installments on or before the last day of the month next succeeding each quarterly period ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Every retailer, at the time of making the return required by this chapter, shall compute and pay to the commissioner the tax due for the preceding period;
5. The retailer, on or before the last day of the month following the close of the first quarterly period as defined in subsection 4 of this section, and on or before the last day of the month following each subsequent quarterly period of three months, 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 tax commissioner may require to enable him correctly to compute and collect such tax, but the tax commissioner, upon receipt of a proper showing by any retailer 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 retailer, the time in which he is required to make payment shall be extended for the same period. The commissioner, if he deems it necessary or advisable in order to insure the payment of the

tax, may require returns and payment of the tax to be made for other than quarterly periods, the provisions of this chapter to the contrary notwithstanding. A return shall be signed by the taxpayer or his duly authorized agent and must be verified by oath;

6. Any person who uses any property upon which the said tax has not been paid, either to the retailer or directly to the tax commissioner, shall be liable therefor, and, on or before the last day of the month next succeeding each quarterly period, shall pay the tax upon all such property used by him during the preceding quarterly period, in such manner and accompanied by such returns as the commissioner shall prescribe;

Approved March 7, 1955.

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## CHAPTER 334

H. B. No. 847

(Thompson of McLean, and Rosberg)

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### DESTRUCTION OF MOTOR VEHICLE FUEL TAX REFUND CLAIMS, INVOICES, ETC.

#### AN ACT

Providing for the destruction of motor vehicle fuel tax refund claims, invoices, and other items attached to such refund claims and repealing section 57-4133 of the 1953 Supplement to the North Dakota Revised Code of 1943.

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

**§ 1. Destruction Of Motor Vehicle Fuel Tax Refund Claims.)** Whenever necessary to obtain needed vault space, the state auditor may destroy motor vehicle fuel tax refund claims, dealer invoices, and other items attached to such claims paid under chapter 57-50 of the 1953 Supplement to the North Dakota Revised Code of 1943, when such instruments are more than six years old.

**§ 2. Repeal.)** Section 57-4133 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby repealed.

Approved March 7, 1955.

## CHAPTER 335

H. B. No. 556  
(Legislative Research Committee)

## SPECIAL FUELS TAX ACT

## AN ACT

Imposing a tax on special motor fuels, providing for the administration and enforcement thereof, providing a penalty, and repealing chapter 57-42 of the North Dakota Revised Code of 1943, as amended.

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

§ 1. **Title.)** This Act may be cited as the "Special Fuels Tax Act".

§ 2. **Statement Of Purpose.)** The purpose of this Act is to supplement the motor fuel tax Act as found in chapters 57-41, 57-43, and 57-48 of the North Dakota Revised Code of 1943, as amended, by imposing a tax upon the sale or delivery of all fuels not taxed under said motor fuel tax Act.

§ 3. **Definitions.)** As used in this Act, unless the context otherwise requires:

1. "Person" includes every natural person, fiduciary, association, or corporation. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof;
2. "Highway" means every way or place generally open to the use of the public for the purpose of vehicular travel notwithstanding that it may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;
3. "Motor vehicle" means any vehicle propelled by an internal combustion engine and licensed for operation or operated upon the highways;
4. "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor fuel as defined in section 57-4101 of the North Dakota Revised Code of 1943, as amended;
5. "Sale" means the receipt, delivery or transfer of title to special fuels by a special fuel dealer to a special fuel



user except that it shall not include the receipt, delivery, or transfer of title to heating fuels when such fuel is delivered into a fuel tank connected with a heating appliance;

6. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any part thereof to a special fuel user; and
7. "Special fuel user" means any person receiving or purchasing special fuel except that it shall not include a person purchasing or receiving heating fuels when such fuel is delivered into a fuel tank connected with a heating appliance nor shall it include a special fuel dealer purchasing or receiving special fuel for resale.

**§ 4. Tax Imposed.)** There is hereby levied and imposed an excise tax of six cents per gallon on the sale or delivery of special fuel to any special fuel user, except that special fuel for heating purposes which is delivered into a fuel tank connected with a heating appliance shall be exempt from the tax imposed by this Act. Said tax shall attach at the time of sale, delivery, or transfer of title of such special fuel to a special fuel user. Such tax shall be collected from the special fuel user by the special fuel dealer and paid over to the state auditor as hereinafter provided. The tax imposed herein shall be refundable when used for industrial, agricultural, or other nonhighway purposes, and the provisions and procedures of chapter 57-50 of the 1953 Supplement to the North Dakota Revised Code of 1943, as amended, relating to the refund of motor fuel taxes shall apply to the tax imposed by this Act.

**§ 5. Special Fuel Dealer's License Required.)** It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is a holder of an uncanceled special fuel dealer's license issued to him by the state auditor. Application for a special fuel dealer's license shall be made to the state auditor and a separate license shall be required for each separate place of business or location where special fuels are regularly sold, delivered, or placed into the tanks of bulk supply vehicles for delivery into supply tanks of special fuel users. Such application shall be filed upon a form prepared and furnished by the state auditor and shall contain such information as the state auditor in his discretion shall require.

**§ 6. Special Fuel Dealer's Bond.)** No special fuel dealer's license shall be issued to any person or continued in force unless such person has furnished a surety bond in such form and amount as the state auditor shall require, but not less than the amount of five hundred dollars, to secure his compliance with this Act and the payment of all taxes, interest, and penalties due or to become due hereunder.

**§ 7. Issuance In Term Of Licenses, Fees.)** Upon receipt of the application and bond in proper form and upon the payment by the applicant of a special fuel dealer's license fee of ten dollars, the state auditor shall issue to the applicant a license to act as a special fuel dealer. The state auditor may refuse to issue a special fuel dealer's license to any person who formerly held such a license but which was revoked prior to the time of filing the application, or who is a subterfuge for the real party of interest whose license prior to the time of filing of the application has been revoked, or upon other sufficient cause being shown. Before such refusal the state auditor shall grant the applicant a hearing and give him at least ten days' written notice of the time and place thereof. Each special fuel dealer's license shall be valid until suspended or revoked for cause or otherwise canceled. No special fuel dealer's license shall be transferable.

**§ 8. Revocation, Cancellation, And Surrender Of License And Bond.)** The state auditor may revoke the license of any special fuel dealer for reasonable cause. Before revoking any such license the state auditor shall notify the licensee to show cause within fifteen days of the date of the notice why such license should not be revoked; provided, however, that at any time prior to and pending such hearing the state auditor may, in the exercise of reasonable discretion, suspend such license. The state auditor shall cancel any license to act as a special fuel dealer immediately upon the surrender thereof by the holder.

**§ 9. Special Fuel Dealer's Records.)** For each location where special fuel is sold or delivered to any special fuel user the special fuel dealer making such sale or delivery shall prepare and maintain such records as the state auditor may reasonably require with respect to all sales and deliveries, and with respect to inventories, receipts, purchases, sales, or other dispositions of special fuel. The records required under this section shall be retained for a minimum period of three years and shall be available at all reasonable times for examination by the state auditor.

**§ 10. Monthly Returns And Payments.)** For the purpose of determining the amount of his liability for the tax herein imposed each special fuel dealer shall file with the state auditor on forms prescribed by the auditor, a monthly tax return. Such returns shall contain a sworn statement to the effect that the statements and claims contained therein are true and are made under the penalties of perjury. The return shall show, with reference to each location at which special fuel is sold, delivered or placed by such dealer, such information as the state auditor may reasonably require for the proper administration

and enforcement of this Act. The special fuel dealer shall file such return on or before the tenth day of the next succeeding calendar month following the monthly period to which it relates. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the state auditor and postmarked before midnight of the final filing date. The state auditor may, for good cause, grant a taxpayer a reasonable extension of time for filing such returns. The tax imposed by this Act shall be computed by each special fuel dealer by multiplying the rate of tax per gallon provided in this Act by the number of gallons of special fuel sold or delivered by him to special fuel users. The monthly tax return shall be accompanied by remittance covering the tax due hereunder on special fuels sold or delivered to special fuel users during the preceding month; except that the special fuel dealer, at his option, may pay only fifty percent of the tax collected to the state auditor at the time above specified, but in such event shall pay the balance of the tax due within four months from the date the above mentioned tax return is due or by the last day of the calendar year in which the sale of taxable fuel was made, whichever shall first occur.

**§ 11. Distribution Of Tax.)** All money collected by the state auditor under the provisions of this Act shall be transferred to the state treasurer who shall credit seventy-nine percent of all such money so received to the state highway department construction fund and such moneys are hereby appropriated for use by the state highway department in the construction and reconstruction of highways, roads, streets, and bridges of this state under the jurisdiction of the state highway department. Twenty-one percent of the money so received by the state treasurer shall be credited to the county highway aid fund and shall be distributed to the counties in the manner, and at the times, and for the purposes provided for in section 57-4113 of the North Dakota Revised Code of 1943, as amended.

**§ 12. Refusal Or Failure To File Return Or Pay Tax When Due, Deficiencies, Penalties.)** In case any special fuel dealer refuses or fails to file a return required by this Act within the time prescribed by section 10 of this Act, there is hereby imposed a penalty of three dollars or a sum equal to two percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues. The state auditor, in his discretion for good cause shown, may waive the penalty provided by this section. Where a special fuel dealer files a return but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of

one percent per month or fraction thereof from the date such tax was due to the date of payment in full thereof. If it be determined by the state auditor that the tax reported by any special fuel dealer is deficient, he shall proceed to assess the deficiency on the basis of information available to him and there shall be added to this deficiency interest at the rate of one percent per month or fraction thereof from the date the return was due.

**§ 13. Determination If No Return Made.)** If any special fuel dealer, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the state auditor shall, on the basis of information available to him, determine the tax liability of the special fuel dealer for the period during which no return was filed, and to the tax thus determined the state auditor shall add the penalty and interest as provided in section 12 of this Act. An assessment made by the state auditor pursuant to this section or to section 12 of this Act shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive, as the case may be.

**§ 14. Fraudulent Return.)** If any special fuel dealer shall file a false or fraudulent return with intent to evade the tax imposed by this Act, there shall be added to the amount of the deficiency, determined by the state auditor, a penalty equal to ten percent of the deficiency together with interest at two percent per month, or fraction thereof on such deficiency, from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law. Except in the case of a fraudulent return or of willful neglect or refusal to make a return, every deficiency shall be assessed under section 12 of this Act within three years after the first day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

**§ 15. Erroneously Or Illegally Collected Taxes.)** In the event that any taxes, penalties, or interest imposed by this Act have been erroneously or illegally collected from a special fuel dealer, the state auditor may permit such special fuel dealer to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment, or shall certify the amount thereof to the state auditor who shall thereupon draw his warrant for such amount on the state treasurer to such special fuel dealer. Such refund shall be

paid to the special fuel dealer from undistributed funds received from the tax imposed by this Act.

**§ 16. Presumption.)** For the purpose of enforcing the provisions of this Act it shall be prima facie presumed that all special fuel received by a special fuel dealer and placed into storage or dispensing equipment normally designed to transfer and meter such fuel into the fuel tanks of motor vehicles, was in fact resold and delivered to special fuel users. The state auditor shall have authority to require that all such storage or dispensing equipment normally used to meter and transfer special fuels into the fuel tanks of motor vehicles be metered by such suitable sealed metering device as may be prescribed by him.

**§ 17. Rules And Regulations, Administration.)** The state auditor shall enforce the provisions of this Act and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The state auditor may examine the records of special fuel dealers and make other such investigations as he may deem necessary in the administration and enforcement of this Act.

**§ 18. Violations.)** It shall be unlawful for any person to:

1. Refuse or knowingly or intentionally fail to make and file any statement required by this Act in the manner or within the time required;
2. Knowingly, or with intent to evade or aid in the evasion of the tax imposed herein, to make any false statement or conceal any material fact in any record, return, or affidavit provided for in this Act;
3. Conduct any activities requiring a license under this Act without such a license or after such license has been surrendered, canceled, or revoked;
4. Assign or attempt to assign a license to act as a special fuel dealer;
5. Receive special fuel in this state into the tanks of a motor vehicle or into supply tanks for eventual use in a motor vehicle upon the highways of this state from a person not holding a valid license as a special fuel dealer;
6. Fail to keep and maintain such books, records, or metering devices as may be required by this Act.

**§ 19. Penalties.)** Any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment of not more than thirty days, or by both such fine and imprisonment.

Upon such conviction the state auditor shall revoke for a period of not less than one year the special fuel dealer's license of any special fuel dealer convicted of violating this Act. The fine and imprisonment and revocation of license, provided for in this section, shall be in addition to any other penalty imposed by other provisions of this Act.

**§ 20. Disposition Of Funds.)** All interest and penalties collected under this Act, except for fines levied upon conviction for violation hereof, shall be credited to the state highway department construction fund.

**§ 21. Repeal.)** Chapter 57-42 of the North Dakota Revised Code of 1943, as amended, is hereby repealed.

Approved March 10, 1955.

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## CHAPTER 336

H. B. No. 534

(Legislative Research Committee)

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### ADDITIONAL ONE-CENT REFUNDABLE MOTOR FUEL TAX LEVY

#### AN ACT

To amend and reenact sections 57-4111, 57-4305, 57-4302, 57-4304, 57-4306, 57-4307 and 57-4309 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to gasoline excise taxes, and providing for the levy of an additional one-cent refundable motor fuel tax.

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

**§ 1. Amendment.)** Section 57-4302 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4302. Tax Imposed On Sales Of Motor Vehicle Fuels.)** There is hereby imposed a tax of two cents 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 two cents per gallon imposed on such sales.

**§ 2. Amendment.)** Section 57-4304 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4304. 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 two cents per gallon on all motor vehicle fuel sold by him, except as provided in section 57-4302, as a part of the selling price thereof.

**§ 3. Amendment.)** Section 57-4306 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4306. 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 chapter, such purchaser on the fifteenth day of each month shall remit and pay to the state auditor the tax of two cents a gallon due on such motor vehicle fuel.

**§ 4. Amendment.)** Section 57-4307 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4307. Appropriation Of Proceeds Of Tax.)** The proceeds of such special tax of two cents 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.

**§ 5. Amendment.)** Section 57-4309 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4309. Penalty.)** Any dealer, person or association of persons, firm, or corporation violating any provisions of this chapter, or any person, firm or corporation making any false statement in any report required by this chapter, or failing or neglecting to collect or charge the two cents 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.

**§ 6. Amendment.)** Section 57-4111 of the 1953 Supplement to 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; except that any dealer, at his option, may pay only fifty percent of the tax collected to the state auditor at the time above specified, but in such event shall pay the balance of tax due within four months from the date the statement provided for in section 57-4105 is due, or by the last day of the calendar year in which the sale of taxable fuel was made, whichever shall first occur.

**§ 7. Amendment.)** Section 57-4305 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4305. 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 not later than the fifteenth day of the calendar month following the month of sale, who shall receipt to the dealer therefor, and forthwith shall pay over all the money thus received to the state treasurer; except that any dealer, at his option, may pay only fifty percent of the tax collected to the state auditor at the time above specified, but in such event shall pay the balance of tax due within four months from the date such tax was due as above specified or by the last day of the calendar year in which the sale of taxable fuel was made, whichever shall first occur.

Approved March 10, 1955.



## CHAPTER 337

H. B. No. 539

(Legislative Research Committee)

ONE CENT FUEL TAX—RETIREMENT OF  
HIGHWAY ANTICIPATION CERTIFICATES

## AN ACT

To amend and reenact sections 57-4809, 57-4813, 57-4815, and 57-4816 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to state highway anticipation certificates and the one cent motor fuel tax imposed for the retirement thereof.

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

§ 1. **Amendment.)** Section 57-4809 of the 1953 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 and for the purpose of constructing and reconstructing highways, roads, streets, and bridges in this state, 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.

§ 2. **Amendment.)** Section 57-4813 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4813. Special Fund For Payment And Retirement Of Certificates.)** There is hereby created a special fund to be used solely for the payment and retirement of the certificates authorized and to be issued under the provisions of this Act and the payment of the interest to accrue upon said certificates, said special fund to be known as "state highway revenue anticipation certificate retirement fund," into which fund the state treasurer shall pay or transfer all moneys derived from said one cent (1¢) motor vehicle fuel tax and all moneys directed

by this Act to be transferred thereto from the state highway fund until such time as all state highway revenue anticipation certificates authorized by this chapter have been issued and retired. After the retirement of all such certificates, all moneys derived from said one cent of motor vehicle fuel tax and remaining balances in the state highway revenue anticipation certificate fund shall be transferred by the state treasurer to the state highway construction fund and such funds are hereby appropriated for the purpose of construction and reconstruction of highways, roads, streets, and bridges within this state.

**§ 3. Amendment.)** Section 57-4815 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4815. Transfers To Retirement Fund Not Subject To Deductions For Administrative Costs.)** The total proceeds of said special license tax of one cent (1¢) per gallon and any moneys transferred to said state highway revenue anticipation certificate retirement fund from the state highway fund, as herein provided, are hereby appropriated and allocated without any deduction for administrative costs whatever and shall be expended only for the payment of the interest to accrue upon said certificates and the payment of the principal and the retirement of said certificates as the same mature or become payable, until all such authorized and issued certificates have been retired.

**§ 4. Amendment.)** Section 57-4816 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**57-4816. Proceeds From Fuel Tax Pledged For Payment Of Certificates; When Fuel Tax May Terminate.)** The total proceeds of said one cent (1¢) per gallon motor vehicle fuel tax and any moneys transferred or to be transferred under section 57-4814 from the state highway fund to said state highway revenue anticipation certificate retirement fund are hereby irrevocably pledged for the payment of the principal and interest of said certificates, and so long as any of said certificates remain outstanding and unpaid, the laws imposing said taxes shall not be repealed nor shall the same be altered or amended by reducing the amount or the requirement for the collection, disposition and use of said taxes, as herein and in the laws imposing said taxes provided. When there are sufficient funds in said state highway revenue anticipation certificate retirement fund to retire all authorized outstanding and unpaid certificates, the proceeds of said tax shall be transferred to the state highway construction fund as provided in section 2 of this Act.

Approved February 24, 1955.

## CHAPTER 338

S. B. No. 42  
(Legislative Research Committee)

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## REPEAL OF MINERAL RIGHTS PRIVILEGE TAX

## AN ACT

To repeal chapter 57-49 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to mineral rights privilege tax.

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

**§ 1. Repeal.)** Chapter 57-49 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby repealed.

Approved February 26, 1955.

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## CHAPTER 339

S. B. No. 75  
(Sayer)

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## ASSIGNMENT OF CLAIM FOR REFUND OF MOTOR FUEL TAX

## AN ACT

Relating to refunds of motor fuel tax where the motor fuel has been used for agricultural or industrial purposes, and allowing the buyer to assign his claim for refund to a dealer selling such fuel to him on open account.

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

**§ 1.)** Any person eligible for motor fuel tax refund under chapter 57-50 of this title, who has been sold such fuel by a seller on open account with the seller paying the refundable fuel tax, may assign to such seller his claim for such refund by attaching the assignment agreement to the refund claim form to be submitted by the claimant in accordance with section 57-5002 of the 1953 Supplement to the North Dakota Revised Code of 1943. Where such assignment of claim is made, and the claim is allowed under the provisions of chapter 57-50, the check or warrant issued therefor shall be made payable to both the claimant and his assignee hereunder.

Approved March 1, 1955.