

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1467
(Representatives Mahoney, Kempenich)

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new section to chapter 57-61 of the North Dakota Century Code, relating to an exemption for sales of coal used in agricultural processing or sugar beet refining plants and a reduction of the severance tax for coal burned in small boilers; and to amend and reenact sections 57-39.2-02.1, 57-39.2-26.1, and 57-40.2-02.1 of the North Dakota Century Code, relating to the imposition of a sales and use tax on coal and the allocation of sales and use tax revenues from coal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in ~~subsection~~ subsections 2 and 3 for sales of mobile homes used for residential or business purposes ~~and~~; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and for sales of coal, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within ~~the this state of North Dakota~~ of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
 - d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
 - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
 - g. Coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
2. There is ~~hereby~~ imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery

repair parts, and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within ~~the this state of North Dakota~~ to consumers or users.

3. There is imposed a tax of six cents per million British thermal units on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
4. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

SECTION 2. A new subsection to section 57-39.2-04 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

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

SECTION 3. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of sales, use, and motor vehicle excise tax revenues to revenue sharing and personal property tax replacement and coal development fund.

1. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, excluding collections allocated under subsection 2, equal to sixty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. The state aid distribution fund must be allocated, subject to legislative appropriation, as follows:
 4. a. Fifty percent of the revenues must be allocated in the first month subsequent to each quarterly period for state revenue sharing as provided in sections 54-27-20.2 and 54-27-20.3.
 2. b. Fifty percent of the revenues must be allocated for personal property tax replacement as provided in section 57-58-01.
2. Notwithstanding any other provision of law, the sales and use tax collections on coal imposed by subsection 3 of section 57-39.2-02.1 and subsection 3 of section 57-40.2-02.1 must be deposited in the coal development fund established under section 57-61-10 and distributed under section 57-62-02.

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

57-40.2-02.1. Use tax imposed.

1. Except as otherwise expressly provided in ~~subsection~~ subsections 2 and 3 for purchases of mobile homes used for residential or business purposes ~~and,~~ for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this

state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.
3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of six cents per million British thermal units, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
4. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 5. A new section to chapter 57-61 of the North Dakota Century Code is created and enacted as follows:

Tax reduction for coal burned in small boilers. For coal subject to taxes under this title which is burned in coal-fired boilers within this state or adjacent states in which the generating station has a total capacity of not more than two hundred ten megawatts, after June 30, 1999:

1. The coal is exempt from fifty percent of the taxes imposed under sections 57-61-01, 57-39.2-02.1, and 57-40.2-02.1;
2. The coal is subject to fifteen percent of the taxes imposed under section 57-61-01 and the entire revenue under this subsection must be deposited in the coal development trust fund for use as provided in subsection 1 of section 57-62-02 and allocated to the lignite research fund as provided in subsection 2 of section 57-61-01.5;
3. In addition to the taxes under subsection 2, the coal is subject to thirty-five percent of the severance taxes imposed under section 57-61-01, and an exemption from a portion of the tax imposed by this subsection may be granted by a city, school district, or the board of county commissioners of the county in which the coal is mined. The board of county commissioners, governing body of a city, or school board of a school district, by resolution, may grant to an operator of a mine that supplies coal to such a small coal-fired generating station, a partial or complete exemption from that county's, city's, or school district's share of revenues from the severance tax for all such coal. Any tax revenue from full or partial taxation under this subsection must be allocated as provided in subsection 2 of section 57-62-02, except that a political subdivision that has granted a partial or complete exemption from its share of severance tax revenues must be omitted from the allocation or have its allocation adjusted to reflect the reduction it has granted; and
4. Taxes imposed under section 57-61-01.5 apply to coal subject to this section and must be allocated as provided in that section.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1467.

House Vote: Yeas 92 Nays 0 Absent 5

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State