

TAXATION

CHAPTER 472

HOUSE BILL NO. 1107

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

ELECTRONIC TRANSFER TAX PAYMENTS

AN ACT to amend and reenact subdivision a of subsection 15 of section 57-01-02 of the North Dakota Century Code, relating to the use of electronic funds transfers for the payment of taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 15 of section 57-01-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. ~~May require, consistent with the cash management policies of the office of management and budget, that any taxpayer owing one hundred thousand dollars or more in connection with any return, report, or other document to be filed with the commissioner shall allow a taxpayer to elect to pay the tax liability to the state no later than the date the payment is required by law to be made in funds which are immediately available to the state on the date of payment. An election to pay the tax under this subdivision is binding until the taxpayer applies to the tax commissioner to rescind the election. Payment in immediately available funds may be made by wire transfer of funds through the federal reserve system or by any other means established by the commissioner which ensures the availability of the funds to the state on the date of payment. Evidence of the payment must be furnished to the commissioner on or before the due date of the tax as established by law. Failure to timely make the payment in immediately available funds or failure to provide evidence of payment in a timely manner subjects the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments. If payment is timely made in other than immediately available funds, penalty and interest must be added to the amount of tax due from the due date of the tax payment to the date that funds from the tax payment become available to the state.~~

Approved February 20, 1997
Filed February 21, 1997

CHAPTER 473

HOUSE BILL NO. 1105

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

DELINQUENT NONRESIDENT FUELS TAX COLLECTIONS

AN ACT to amend and reenact section 57-01-13 of the North Dakota Century Code, relating to the collection of delinquent motor vehicle fuels, special fuels, importer for use, aviation fuel, and motor vehicle excise taxes from nonresident taxpayers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

57-01-13. Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of ~~such~~ the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment, the first two notices must be sent by regular mail to the taxpayer at ~~his~~ the taxpayer's last known mailing address and the third notice must be sent by certified or registered mail to the taxpayer's last known mailing address. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.
2. a. Fees for services, reimbursement, or any other remuneration to ~~such~~ a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency ~~shall~~ must provide for the payment of fees for ~~such~~ the services, reimbursements, or other remunerations not in excess of

fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege tax, including penalties and interest actually collected.

- b. All funds collected, less the fees for collection services, as provided in the contract, must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for ~~such~~ the remittances must be prescribed by the tax commissioner.
 - c. Before entering into ~~such~~ a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

Approved February 20, 1997
Filed February 21, 1997

CHAPTER 474

SENATE BILL NO. 2303

(Senators St. Aubyn, Mutzenberger)
(Representatives R. Kelsch, Svedjan)

AGRICULTURAL PROPERTY DEFINITION

AN ACT to amend and reenact subsection 1 of section 57-02-01 of the North Dakota Century Code, relating to the definition of agricultural property for property tax assessment purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any ~~three~~ four of the following conditions exist:
 - a. The land is platted by the owner.
 - b. Public improvements including sewer, water, or streets are in place.
 - c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - d. Property is zoned other than agricultural.
 - e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
 - g. The property sells for more than four times the county average true and full agricultural value.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 6, 1997
Filed March 6, 1997

CHAPTER 475**HOUSE BILL NO. 1188**

(Representative Byerly)

FAIR ASSOCIATION PROPERTY TAX EXEMPTION

AN ACT to amend and reenact subsection 10 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for agricultural fair associations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 10 of section 57-02-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. Property of an agricultural fair association duly incorporated for the ~~exclusive~~ purpose of holding agricultural fairs, and not conducted for the profit of any of its members or stockholders; provided, that all property described in this subsection shall be subject to taxation for the cost of fire protection services furnished by any municipal corporation in which said property is located.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 25, 1997
Filed March 26, 1997

¹ Section 57-02-08 was also amended by section 1 of House Bill No. 1280, chapter 476, and section 1 of House Bill No. 1301, chapter 477.

CHAPTER 476

HOUSE BILL NO. 1280

(Representatives Aarsvold, Froseth, Grumbo, Olson)
(Senators Thane, Wogsland)

FARM BUILDING PROPERTY TAX EXEMPTION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

² Section 57-02-08 was also amended by section 1 of House Bill No. 1188, chapter 475, and section 1 of House Bill No. 1301, chapter 477.

- (2) "Farmer" means an individual who normally devotes the major portion of ~~his~~ time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and ~~who normally receives not less~~ has not received more than fifty percent of his annual net income from ~~any one or more of the foregoing activities; and the term also~~ nonfarm income, including that of a spouse if married, during each of the three preceding calendar years. "Farmer" includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which ~~he~~ the person lives and for which the exemption is claimed.
- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) ~~For purposes of applying the income requirements of this subdivision, if a husband and wife reside together in a residence claimed as exempt under this subdivision because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities as defined in paragraph 3 in order for the residence to qualify for the exemption.~~
- ~~(5)~~ (5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities; provided, that if that occupant is married and ~~they~~ both spouses occupy the residence, it shall be stated in the written statement ~~that whether~~ whether their net income from farming activities was, ~~or was not,~~ fifty percent or more of their combined net income from all sources.
- ~~(6)~~ (5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than thirty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the

residence in which ~~he~~ the person lives and for which the exemption is claimed.

- ~~(7)~~ (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 14, 1997
Filed March 14, 1997

CHAPTER 477

HOUSE BILL NO. 1301 (Representatives Lloyd, Aarsvold)

FARM BUILDING BED AND BREAKFAST EXEMPTION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³ **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

³ Section 57-02-08 was also amended by section 1 of House Bill No. 1280, chapter 476, and section 1 of House Bill No. 1188, chapter 475.

farming in such products' unmanufactured state and who normally receives not less than fifty percent of ~~his~~ the individual's annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which ~~he~~ the individual lives and for which the exemption is claimed.

- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
 - (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) For purposes of applying the income requirements of this subdivision, if a husband and wife reside together in a residence claimed as exempt under this subdivision because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities as defined in paragraph 3 in order for the residence to qualify for the exemption.
- (5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities; provided, that if that occupant is married and they both occupy the residence, it shall be stated in the written statement that their net income from farming activities was, or was not, fifty percent or more of their combined net income from all sources.
- (6) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than ~~thirty~~ forty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which ~~he~~ the individual lives and for which the exemption is claimed.
- (7) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

- (8) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 478

SENATE BILL NO. 2191

(Senators Holmberg, W. Stenehjem, Traynor)

INCOME TAX LIEN FILING

AN ACT to amend and reenact subsection 3 of section 57-02-08.3, sections 57-38-49, 57-38-50, subsections 3, 4, 5, and 6 of section 57-39.2-13, subsections 3, 4, 5, and 6 of section 57-40.2-16, subsections 2, 3, and 4 of section 57-40.3-07.1, subsections 3, 4, and 6 of section 57-43.1-17.4, and subsections 3, 4, and 6 of section 57-43.2-16.3 of the North Dakota Century Code, relating to filing of tax liens; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1. AMENDMENT.** Subsection 3 of section 57-02-08.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. a. Any credit allowed under subsection 1, plus interest in the amount of nine percent per year from the time the credit is taken, creates a lien in favor of the state against the property upon which the special assessment credit is allowed and remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.
- b. (1) Except as otherwise provided in this subdivision, a transfer of title to the homestead because of sale, death, or otherwise may not be made without the lien being satisfied. When a credit under subsection 1 is allowed, the county auditor shall cause a notice of lien of record to be filed against subject property with the ~~secretary of state~~ register of deeds.
- (2) When a transfer occurs between spouses because of the death of one of them, the lien allowed by this section need not be satisfied until the property is again transferred.
- c. This lien has precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. A mistake in the description of the property covered by this lien or in the name of the owner of the property does not defeat the lien if the property can be identified by the description in the special assessment list.

⁴ Section 57-02-08.3 was also amended by section 1 of Senate Bill No. 2070, chapter 479.

SECTION 2. AMENDMENT. Section 57-38-49 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-49. Preservation of lien. ~~In order to preserve the lien provided for in section 57-38-48 against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The secretary of state commissioner shall enter index in the central indexing notice system the following data; under the names of taxpayers arranged alphabetically:~~

1. The name of the taxpayer.
2. The tax identification number or social security number of the taxpayer.
3. The name "State of North Dakota" as claimant.
- ~~3.~~ 4. The date and time the notice of lien was received indexed.
4. ~~Date of notice.~~
5. ~~Amount~~ The amount of the lien then due.
6. ~~When satisfied.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and shall preserve the same, and shall index the notice in the central indexing system. The notice of lien is effective as against subsequent creditors, purchasers, and encumbrances from the time of the indexing of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds prior to July 1, 1996, may be refiled with the secretary of state indexed in the central notice system without changing its original priority as to property in the county where the lien was filed. The secretary of state commissioner shall accept index any notice of lien for filing when it is received with no payment of fees or costs to be made on behalf of the commissioner the secretary of state.~~

SECTION 3. AMENDMENT. Section 57-38-50 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-50. Satisfaction of lien. ~~Upon the payment of a the tax, together with any accrued penalties and interest attached, as to which the commissioner has filed a notice of lien with the secretary of state, the commissioner shall file with the secretary of state index a satisfaction of the tax and lien and the secretary of state shall enter the satisfaction on the notice on file and shall indicate that fact on in the central indexing notice system with no payment of without fees or costs to be made on behalf of the tax commissioner.~~

SECTION 4. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-39.2-13 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. ~~In order to preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or~~

lien on, any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.

4. The ~~secretary of state~~ commissioner shall ~~enter~~ index in the central indexing notice system the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - ~~e.~~ d. The date and time the notice of lien was received indexed.
 - ~~d.~~ Date of notice.
 - e. ~~Amount~~ The amount of the lien then due.
 - f. ~~When satisfied.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds ~~before July 1, 1996, may be refiled with the secretary of state indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.~~

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the ~~filing~~ indexing of the notice of lien, or for its satisfaction.
6. Upon ~~the~~ payment of a the tax as to which the commissioner has filed indexed notice with the secretary of state in the central notice system, the commissioner shall ~~file with the secretary of state~~ index a satisfaction of the tax and the secretary of state shall ~~enter the satisfaction on the notice on file and indicate that fact~~ lien in the central indexing notice system.

SECTION 5. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-40.2-16 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. ~~In order to preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or~~ lien on, any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.

4. ~~The secretary of state commissioner shall enter index in the central indexing notice system the following data; under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - e. ~~d. Time~~ The date and time the notice of lien was received indexed.
 - d. ~~Date of notice.~~
 - e. ~~Amount~~ The amount of the lien then due.
 - f. ~~When satisfied.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system; and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds before July 1, 1996, may be refiled with the secretary of state indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the recording and filing fees as otherwise provided by law for the ~~recording and filing indexing~~ of the notice of lien, or for its satisfaction.
6. ~~Upon the payment of a the tax as to which the commissioner has filed indexed notice with the secretary of state in the central notice system, the commissioner shall file with the secretary of state index a satisfaction of the tax and the secretary of state shall enter the satisfaction on the notice on file and indicate that fact~~ lien in the central indexing notice system.

SECTION 6. AMENDMENT. Subsections 2, 3, and 4 of section 57-40.3-07.1 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. ~~In order to preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.~~
3. ~~The secretary of state commissioner shall enter index in the central indexing notice system the following data; under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.

- b. The tax identification number or social security number of the taxpayer.
- c. The name "State of North Dakota" as claimant.
- e. d. The date and time the notice of lien was ~~received~~ indexed.
- ~~d. The date of notice.~~
- e. The amount of the lien ~~then due~~.
- f. ~~When satisfied.~~

The secretary of state shall endorse on each notice of lien the day, hour, and minute received and preserve and index the notice in the central indexing system, and the The notice of lien is effective from the time of the indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds before July 4, 1996, may be ~~refiled with the secretary of state~~ indexed in the central notice system without changing its original priority as to property in the county where the lien was filed. The commissioner is exempt from the payment of fees otherwise provided by law for the ~~filing~~ indexing or the satisfaction of the lien.

- 4. Upon ~~the~~ payment of ~~a~~ the tax relative to which the commissioner has ~~filed indexed notice with the secretary of state in the central notice system,~~ the commissioner shall ~~file with the secretary of state~~ index a satisfaction of the tax, and the secretary of state shall enter the satisfaction on the notice on file and indicate that fact lien in the central indexing notice system.

SECTION 7. AMENDMENT. Subsections 3, 4, and 6 of section 57-43.1-17.4 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 3. ~~To preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on, any property situated in a county the state, prior to the commissioner shall file a notice of the lien with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.~~
- 4. The ~~secretary of state~~ commissioner shall ~~enter~~ index in the central indexing notice system the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - e. d. The date and time the notice of lien was ~~received~~ indexed.

- d. ~~The date of notice.~~
- e. The amount of the lien ~~then due~~.
- f. ~~The date of satisfaction.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds before July 4, 1996, may be refiled with the secretary of state indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

- 6. Upon payment of a the tax as to which the commissioner has filed ~~indexed~~ notice with the secretary of state in the central notice system, the commissioner shall file with the secretary of state index a satisfaction of tax and the secretary of state shall enter the satisfaction on the notice on file and indicate the fact on the lien in the central indexing notice system.

SECTION 8. AMENDMENT. Subsections 3, 4, and 6 of section 57-43.2-16.3 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 3. ~~To preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on,~~ any property situated in a ~~county~~ the state, prior to the commissioner shall file a notice of the lien with filing in the central notice system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
- 4. ~~The secretary of state commissioner shall enter index in the central indexing notice system the following data; under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - e. d. The date and time the notice of lien was received indexed.
 - d. ~~The date of notice.~~
 - e. The amount of the lien ~~then due~~.
 - f. ~~The date of satisfaction.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the

indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds ~~before July 1, 1996,~~ may be ~~refiled with the secretary of state~~ indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of a the tax as to which the commissioner has ~~filed~~ indexed notice ~~with the secretary of state in the central notice system,~~ the commissioner shall ~~file with the secretary of state~~ index a satisfaction of tax and the secretary of state shall ~~enter the satisfaction on the notice on file and indicate the fact~~ the lien in the central indexing notice system.

SECTION 9. EFFECTIVE DATE. This Act is effective for tax liens filed after July 31, 1997.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 479

SENATE BILL NO. 2070

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

EQUALIZATION MEETING NOTICES

AN ACT to amend and reenact subdivision a of subsection 3 of section 57-02-08.3, subsection 2 of section 57-09-01, and subsection 2 of section 57-11-01 of the North Dakota Century Code, relating to when interest on a lien for homestead credit for special assessments begins to accrue and making the township clerk or city auditor responsible for publishing the notice of the annual meeting of the township board of equalization and of the annual meeting of the city board of equalization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵ **SECTION 1. AMENDMENT.** Subdivision a of subsection 3 of section 57-02-08.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Any credit allowed under subsection 1, plus interest in the amount of nine percent per year from ~~the time the~~ June first of the year for which the special assessment installment for which a credit is taken becomes payable, ~~shall create~~ creates a lien in favor of the state against the property upon which the special assessment credit is allowed and remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.

SECTION 2. AMENDMENT. Subsection 2 of section 57-09-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding the provisions of subsection 1, if the same person performs the duties of assessor for two or more townships or cities, the ~~county director of tax equalization~~ township clerk may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each ~~such~~ township board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the ~~county~~ political subdivisions involved and posted at the usual place of meeting by the township clerk at least ten days before ~~such~~ the meeting.

⁵ Section 57-02-08.3 was also amended by section 1 of Senate Bill No. 2191, chapter 478.

SECTION 3. AMENDMENT. Subsection 2 of section 57-11-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding the provisions of subsection 1, if the same person performs the duties of assessor for two or more cities or townships, the ~~county director of tax equalization~~ city auditor may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each ~~such~~ city board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the ~~county~~ political subdivisions involved and posted at the usual place of meeting by the city auditor at least ten days before ~~such~~ the meeting.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 480

HOUSE BILL NO. 1069

(Legislative Council)
(Taxation Committee)
(Representatives Belter, Keiser, Timm)
(Senators Kringstad, Krauter, Kinnoin)

AGRICULTURAL PROPERTY ASSESSMENT FORMULA

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to use of annual gross returns to determine agricultural property assessments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶ **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. (Effective for first ~~three~~ taxable years year beginning after December 31, ~~1994~~ 1996) Valuation and assessment of agricultural lands. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. Total the annual gross returns for the most recent ~~six~~ seven years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ~~six~~ seven.
2. Divide the figure arrived at in subsection 1 by ~~four~~ five.

To find the "capitalized average annual gross return" ~~for years after 1983~~, the average annual gross return must be capitalized by a rate ~~which~~ that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the

⁶ Section 57-02-27.2 was also amended by section 1 of House Bill No. 1070, chapter 481.

gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

~~It is the duty of the~~ The agricultural economics department of North Dakota state university ~~to shall~~ compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, ~~to shall~~ compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and ~~to shall~~ provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. ~~Prior to~~ Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

~~Prior to~~ Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. ~~Such~~ The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization ~~shall~~, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

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

(Effective for taxable years beginning after December 31, 1997) Valuation and assessment of agricultural lands. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land

based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. ~~Total~~ For taxable year 1998, total the annual gross returns for the most recent ~~six~~ eight years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ~~six~~ eight. For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and thereafter, total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.
2. ~~Divide~~ For taxable year 1998, divide the figure arrived at in subsection 1 by ~~four~~ six. For taxable year 1999, divide the figure arrived at in subsection 1 by seven. For taxable year 2000 and thereafter, divide the figure arrived at in subsection 1 by eight.

To find the "capitalized average annual gross return" ~~for years after 1983~~, the average annual gross return must be capitalized by a rate ~~which~~ that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

~~It is the duty of the~~ The agricultural economics department of North Dakota state university ~~to shall~~ compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, to shall compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and ~~to shall~~ provide the tax commissioner with this information by December first of each year. ~~Prior to~~ Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

~~Prior to~~ Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. ~~Such~~ The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization ~~shall~~, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

~~It is the duty of each~~ Each local assessor ~~to shall~~ determine the relative value of each assessment parcel within ~~his~~ the assessor's jurisdiction and ~~to shall~~ determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the

parcel. Each parcel must then be assessed according to ~~the provisions in~~ section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 481

HOUSE BILL NO. 1070

(Legislative Council)

(Taxation Committee)

(Representatives Timm, Keiser, Gulleason)

(Senators Kringstad, Urlacher, Kinnoin)

IRRIGATED CROPLAND ASSESSED VALUATION

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to assessed valuation of irrigated cropland; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷ **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. ~~(Effective for first three taxable years beginning after December 31, 1994)~~ Valuation and assessment of agricultural lands. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. Total the annual gross returns for the most recent six years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the six.
2. Divide the figure arrived at in subsection 1 by four.

To find the "capitalized average annual gross return" for years after 1983, the average annual gross return must be capitalized by a rate which is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the

⁷ Section 57-02-27.2 was also amended by section 1 of House Bill No. 1069, chapter 480.

gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

~~It is the duty of the~~ The agricultural economics department of North Dakota state university ~~to shall~~ compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, ~~to shall~~ compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and ~~to shall~~ provide the tax commissioner ~~with~~ this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. ~~Prior to~~ Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

~~Prior to~~ Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. ~~Such~~ The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall use, wherever possible, ~~use~~ soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

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

(Effective for taxable years beginning after December 31, 1997) Valuation and assessment of agricultural lands: "True and full value" of agricultural lands must be their agricultural value for the purposes of sections ~~57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04.~~ Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced; "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced; and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land

based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. Total the annual gross returns for the most recent six years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the six.
2. Divide the figure arrived at in subsection 1 by four.

To find the "capitalized average annual gross return" for years after 1983, the average annual gross return must be capitalized by a rate which is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

It is the duty of the agricultural economics department of North Dakota state university to compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; to compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and to provide the tax commissioner with this information by December first of each year. Prior to January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

Prior to February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. Such estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall, wherever possible, use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

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

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1997.

CHAPTER 482

HOUSE BILL NO. 1298 (Representative Kretschmar)

RAILROAD MILEAGE CERTIFICATION

AN ACT to amend and reenact section 57-05-04 of the North Dakota Century Code, relating to the certificate of mileage and valuation for purposes of taxation of a railroad.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-05-04 of the North Dakota Century Code is amended and reenacted as follows:

57-05-04. Certification of mileage and valuation. The state tax commissioner, at the time of certifying the equalized value of each organized county to the county auditor, shall certify the number of miles [kilometers] of each main line of railroad, and of the branch lines and sidetracks ~~thereof~~ of railroad within ~~said~~ the county, and the valuation per mile [1.61 kilometers] of ~~such~~ the line and branch lines, if any, as determined by the state board of equalization, and the county auditor of ~~such~~ the county shall apportion ~~such~~ the valuation to the cities, townships, and districts through which ~~such~~ the railroad and branch lines run according to the number of miles [kilometers] within the boundaries of each, as a part of the valuation of ~~such~~ the city, township, or district for the purposes of taxation; ~~and the same must be taxed as personal property is taxed in each county.~~

Approved March 6, 1997
Filed March 6, 1997

CHAPTER 483

HOUSE BILL NO. 1068

(Legislative Council)
(Taxation Committee)
(Representatives Keiser, Timm, Wilkie)
(Senator Kringstad)

TELECOMMUNICATIONS INDUSTRY TAXATION RESTRUCTURING

AN ACT to amend and reenact sections 57-06-01, 57-06-02, 57-06-05, 57-06-07, 57-06-14, 57-06-18, 57-34-01, 57-34-02, 57-34-03, 57-34-05, 57-34-06, 57-34-10, 57-34-11, and 57-34-12 of the North Dakota Century Code, relating to property tax exemptions and gross receipts taxes for telecommunications carriers and services; to repeal sections 57-06-01.1, 57-34-04, and 57-34-08 of the North Dakota Century Code, relating to assessment of property and gross receipts taxes for telecommunications carriers; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-01 of the North Dakota Century Code is amended and reenacted as follows:

57-06-01. Public utilities subject to provisions of chapter. ~~The provisions of this chapter govern~~ governs the assessment of the property of any public utility company defined in section 57-06-02, and of any other company used directly or indirectly in carrying or conveying persons; ~~or property, or messages,~~ unless the operative property is subject to a lieu tax in place of a general property tax. This chapter does not apply to the property of any railway or street railway company, ~~nor to the property of a company, the only business of which is providing signaling, paging, or other domestic public land mobile radio service if that service has seven hundred subscribers or less,~~ nor to the fixtures, buildings, and improvements owned by any cooperative or nonprofit corporation organized under the laws of this state and used by it to furnish potable water to its members and customers for uses other than irrigation of agricultural land, and except as otherwise provided in chapter 57-32, does not apply to the property of any express or air transportation company.

SECTION 2. AMENDMENT. Section 57-06-02 of the North Dakota Century Code is amended and reenacted as follows:

57-06-02. Definitions. As used in this chapter, unless the context and subject matter otherwise clearly require:

1. "Company" ~~means and~~ includes any individual, copartnership, business trust, corporation, limited liability company, joint-stock company, or association.
2. "Gas company" means a company owning, holding, or operating under lease or otherwise, any property in this state for the purpose of

furnishing gas, or distributing the same, for public use, by means of pipelines.

3. "Pipeline company" means a company owning, holding, or operating under a lease or otherwise, any property in this state for the purpose of transporting crude oil, natural gas, processed gas, manufactured gas, refined petroleum products, or coal and related products for public use.
4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state, and operating the same, for the purpose of furnishing electric light, electric power, or steam heat, or distributing the same, for public use.
5. ~~"Telecommunications company" means a company engaged in the furnishing of telecommunications service within this state.~~
6. ~~"Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.~~
7. ~~"Telegraph company" means a company owning or operating any telegraph or cable line in this state with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation as owner, lessee, or otherwise.~~

SECTION 3. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

57-06-05. Annual assessment. The state board of equalization, at its annual meeting in August, shall assess the franchises and all operative property of ~~telephone, telegraph,~~ power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

SECTION 4. AMENDMENT. Section 57-06-07 of the North Dakota Century Code is amended and reenacted as follows:

57-06-07. Additional information from ~~telephone, telegraph,~~ and power companies. Each ~~telephone, telegraph,~~ and power company shall report further as follows:

1. Number of miles [kilometers] of pole line in each taxing district in each county in the state, separated and classified as to location and character, as the tax commissioner may require; and
2. Cost of construction of such lines fully equipped, together with the present value per mile [1.61 kilometers] of such lines in each taxing district in each county.

SECTION 5. AMENDMENT. Section 57-06-14 of the North Dakota Century Code is amended and reenacted as follows:

57-06-14. Method of valuation. The operative property of each company assessed under this chapter must be assessed in the following manner:

1. For the purpose of determining the value of the property, the tax commissioner and the state board of equalization shall take into consideration the earning power of the property as shown by its gross earnings and net operating income, the market or actual value of its stocks and bonds, the value of its franchises, rights, and privileges granted under the laws of this state to do business in this state, and ~~such~~ any other legally established evidences of value as ~~enables~~ enable the board to make a just and equitable assessment.
2. In the case of a company ~~which~~ that owns or operates properties or lines partly within and partly without this state, the tax commissioner and state board of equalization shall value only the property within this state.
3. In determining the value of the portion within this state of an interconnected, or continuous system, the tax commissioner and state board of equalization may take into consideration the value of the entire system and of the part within this state, the mileage of the whole system and of the part within this state, the total operating earnings within and without this state, together with ~~such~~ any other information, facts, and circumstances as will enable ~~such~~ the officers to make a just and correct assessment.
4. ~~Repeated by S.L. 1985, ch. 604, § 22.~~
5. ~~In the case of a telephone or telegraph company, the term "mileage" means miles [kilometers] of pole line or cable.~~
6. The board may take into consideration the reports, annual or otherwise, filed by any company required to be assessed under this chapter with the public service commission, and ~~also~~ shall take into consideration any valuation of such company by the public service commission.

SECTION 6. AMENDMENT. Section 57-06-18 of the North Dakota Century Code is amended and reenacted as follows:

57-06-18. Allocation of assessment of other operative property. All lots and parcels of real estate, not including rights of way, with the buildings, structures, and improvements thereon, ~~telephone exchange buildings,~~ dams and powerhouses, substations, shops, and other buildings, ~~telephone exchange systems,~~ electric power, electric light, gas, or steam distribution systems, and other personal property not a part of any single and continuous property, must be separately assessed and the assessment must be allocated to the taxing district in which ~~such~~ the property is located. The assessment by the state board of equalization covering ~~such~~ the property must give a legal description of the real estate and a general description of other property sufficient for identification. The assessment by ~~such~~ the board of ~~such~~ the operative property must cover the aggregate valuation of the property of any company in any municipality or taxing district of the state as a unit, and need not be made in detail.

SECTION 7. AMENDMENT. Section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Access revenues" means telephone company revenues resulting from charges to individuals, partnerships, corporations, and limited liability companies for their use of telephone company services or facilities to provide a toll service that permits origination or termination of telecommunications between a point or points within one telephone exchange and a point or points within another telephone exchange.
2. "Adjusted telephone operating gross receipts" means telephone operating telecommunications carrier gross receipts less all amounts paid by the reporting telephone company telecommunications carrier on telecommunications service that is taxable under this chapter in state and local sales and use taxes and federal excise taxes and amounts paid by the reporting telecommunications carrier to an individual, partnership, corporation, or limited liability company another telecommunications carrier for connecting fees, switching charges, access charges, and directory assistance.
3. "Originating revenues factor" means a fraction the numerator of which is the revenues of the telephone company from toll business generated from customer premises equipment in this state, regardless of the location to which the billing notice is sent, and the denominator of which is the total revenues of the telephone company from toll business everywhere.
4. "Property factor" means a fraction the numerator of which is the undepreciated original cost as of December thirty-first of the property located in this state owned or rented by the telephone company and used in operating its telecommunications business and the denominator of which is the undepreciated original cost as of December thirty-first of the property located everywhere owned or rented by the telephone company and used in operating its telecommunications business.
2. "Gross receipts" means all telecommunications carrier revenues from telecommunications service charges billed to any station in this state and from charges to another telecommunications carrier for directory assistance.
5. 3. "Station" means a subscriber line service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.
6. 4. "Telephone company" "Telecommunications carrier" means all mutual associations and cooperative organizations or cooperative corporations engaged in the business of furnishing communication by telephone, and shall further mean all other persons, firms, corporations, limited liability companies, or other organizations which are a person that is engaged in the business of furnishing means of communication by telephone telecommunications service within this state exclusively to rural areas or to rural areas and cities provided that each city served has a population of two thousand five hundred persons or less. The term includes a reseller of telecommunications service.
7. 5. "Telephone operating receipts" "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The

term includes all revenue derived from local and rural exchange service, revenues from wide area telephone service, access revenues, billing and collection revenues, revenues from coin-operated telephones, revenues from directory advertising, revenues from directory assistance, recoveries within the year of all telecommunications revenues written off in prior years as uncollectible, all other operating revenues from telecommunications service as defined in subsection 44 of section 49-21-01 attributable to this state, and toll business gross revenues as defined in this section:

- a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state;
 - d. A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests, if there is a separately stated charge for the service; and
 - e. Telegraph service.
6. "Telecommunications service charges" means the value of all consideration received by a telecommunications carrier for provision of telecommunications service and recovery within the year of telecommunications service charges written off in a prior year as uncollectible. For a telephone company telecommunications carrier operating on any form of mutual basis, "telephone operating receipts" the term includes all amounts assessed against the members for the operation and maintenance of the business. "Telephone operating receipts" The term does not include income revenue from merchandising, jobbing and contract work, charges for the maintenance or repair of customer premises equipment, including equipment leased or rented by the customer from any source, revenue from commercial and cable television, unless it is used for two-way communication, radio, one-way radio paging, the transmission of messages incidental to transient occupancy in hotels, income from nonutility operations not directly related to provision of telecommunications service, amounts charged for billing and collection on behalf of another telecommunications carrier, proceeds from transfer of capital stock, or revenues from the transfer, sale, or lease of property not devoted directly related to telecommunications operation. "Telephone operating receipts" does not include excise taxes on telephone service or facilities or uncollectible telephone operating revenues actually written off during the year.
8. "Toll business gross revenues" means gross revenues from toll business originating and terminating in this state and toll business gross revenues attributable to this state.
9. "Toll business gross revenues attributable to this state" means the telephone company's total gross revenues from interstate toll services everywhere multiplied by the amount obtained by dividing the sum of

the property factor and the originating revenues factor by two service. The term does not include amounts collected for or amounts collected from federal and state mechanisms to preserve and advance universal service.

SECTION 8. AMENDMENT. Section 57-34-02 of the North Dakota Century Code is amended and reenacted as follows:

57-34-02. Reports of ~~telephone companies~~ telecommunications carriers. Each ~~telephone company required~~ telecommunications carrier subject to be assessed gross receipts taxes under the provisions of this chapter shall annually make and file with the tax commissioner, on or before May first of each year, on such the form as the tax commissioner may prescribe, a report containing a statement of its telephone operating gross receipts in this state during the preceding calendar year, the number of stations in service on December thirty-first preceding, the number of miles [kilometers] of telephone line operated in providing telephone service, amounts paid by the carrier on telecommunications service that is taxable under this chapter during the preceding calendar year in state and local sales and use taxes and federal excise taxes, amounts received from or paid to another telecommunications carrier for directory assistance, and such any other information as the tax commissioner may require except that any telephone company having thirty telephone stations or less in service on December thirty-first preceding may not be required to furnish a statement of its telephone operating receipts. Each report must contain a statement of the number of stations located in each county served and each school district within such counties and the number of stations maintained per mile [1.64 kilometers] of telephone line in this state. Each report must be signed, subject to the provisions of section 12.1-11-02, by the president, secretary, or other official of the ~~telephone company~~ telecommunications carrier. Each ~~telephone company~~ subject to the provisions of this chapter, at the time of submitting its report to the tax commissioner, shall forward a copy of such report to the county auditor of each county in which it maintains a station or stations.

SECTION 9. AMENDMENT. Section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

57-34-03. Computation of taxes by tax commissioner - Exemption for high-volume customers - Continuing appropriation.

1. On or before ~~August first~~ July fifteenth of each year, the tax commissioner shall review the report under section 57-34-02 and compute the tentative total tax to be assessed against each telephone company telecommunications carrier in this state in the following manner:
 - a. Telephone companies maintaining an average of one and twenty-five hundredths telephone stations or less per mile [1.64 kilometers] of telephone line operated in this state must be taxed at the rate of one-half of one percent of their adjusted telephone operating receipts.
 - b. Telephone companies maintaining an average of not less than one and twenty-six hundredths and not more than one and seventy-five hundredths telephone stations per mile [1.64 kilometers] of telephone line operated in this state must be taxed at the rate of one percent of their adjusted telephone operating receipts.

- e. Telephone companies maintaining an average of not less than one and seventy-six hundredths and not more than two and twenty-five hundredths telephone stations per mile [1.64 kilometers] of telephone line operated in this state must be taxed at the rate of one and one-half of one percent of their adjusted telephone operating receipts.
 - d. Telephone companies maintaining an average of more than two and twenty-five hundredths telephone stations per mile [1.64 kilometers] of telephone line operated in this state must be taxed at the rate of two percent of their adjusted telephone operating receipts.
- 2. If the tax due from any telephone company as computed under subsection 4 is less than fifty cents per station maintained in this state or if such company had less than thirty-one stations in service in this state on the preceding December thirty-first, such company is subject to a tax of fifty cents per station.
 - 3. Notwithstanding the provisions of subsections 4 and 2, any telephone company having twenty telephone stations or less in service on December thirty-first preceding the year for which the tax computed under this section is assessed is exempt from the provisions of this chapter at a rate of two and one-half percent of adjusted gross receipts. The tax commissioner shall give ten days' notice by mail to each telecommunications carrier of its tentative total tax under this section and of its right to contest the determination before the state board of equalization at its August meeting. The state board of equalization shall assess the tax under this section after consideration of any contest presented.
 - 2. A telecommunications carrier's customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 10. AMENDMENT. Section 57-34-05 of the North Dakota Century Code is amended and reenacted as follows:

57-34-05. Certification of tax - Allocation to counties - Continuing appropriation. The tax commissioner shall certify to the county auditor of each county in which the company assessed maintains a telephone station or stations, the gross receipts of the company, the number of telephone stations within the county and the number within each school district of the county belonging to the said company and the amount of tax to be collected from said company.

The tax commissioner shall allocate the tax to be collected from each telephone company, as determined by the state board of equalization, to the counties upon a pro rata basis to be determined according to the proportion that each

company's stations in a county bears to the total number of stations maintained by such company net gross receipts tax revenues among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. Gross receipts tax revenues of eight million four hundred thousand dollars per taxable year are appropriated as a standing and continuing appropriation to the tax commissioner for allocation to counties under this section and any gross receipts tax revenues exceeding that appropriation in any taxable year must be deposited in the state general fund. If gross receipts tax revenues available for allocation in a taxable year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation for the taxable year, results in allocation of eight million four hundred thousand dollars to counties per taxable year.

SECTION 11. AMENDMENT. Section 57-34-06 of the North Dakota Century Code is amended and reenacted as follows:

57-34-06. Duties of county ~~auditor~~ treasurer. It is the duty of the county auditor after receiving such statement from the tax commissioner to certify such taxes to the county treasurer for collection at the time that real and personal property taxes are required to be certified. Such certification must give the amount allocated to each school district in which the company maintains a station or stations. The county auditor treasurer shall make such allocation and pay such funds allocate taxes received under this chapter to the state, the county, and the various school taxing districts upon a pro rata basis within the county according to the proportion that each company's stations in a school district bears to the total number of stations of such company in the county taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and each taxing district in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and all taxing districts in the county.

SECTION 12. AMENDMENT. Section 57-34-10 of the North Dakota Century Code is amended and reenacted as follows:

57-34-10. ~~Penalty for failure to furnish statement~~ Penalties - Lien for tax.

1. ~~In case any company~~ If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall inform himself as best he may on use the best available facts necessary to be known in order to discharge his duties with respect to the and estimates to determine taxation of the property gross receipts of such company, and the that carrier. The tax must be imposed upon the basis of such that information, and the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report; which must be collected as a part of the tax.
2. Taxes levied under this chapter are due and payable to the tax commissioner on January first following the year in which the taxes were assessed. The unpaid principal balance of taxes on the following March

first is subject to a penalty of three percent, on the following May first an additional penalty of three percent, on the following July first an additional penalty of three percent, and on the following October fifteenth an additional penalty of three percent. Beginning January first of the year following the year the taxes became due, simple interest at the rate of twelve percent per annum applies to the unpaid principal balance until the taxes and penalties are paid. Interest penalties must be prorated to the nearest full month for a fractional year of delinquency.

3. Taxes under this chapter constitute a first and paramount lien in favor of the state upon all property and rights to property of the taxpayer. The lien may be foreclosed in the same manner provided by law for mortgages on real or personal property.

SECTION 13. AMENDMENT. Section 57-34-11 of the North Dakota Century Code is amended and reenacted as follows:

57-34-11. ~~Exemption from other taxation~~ Taxes in lieu of property taxes. The taxes imposed by this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real and personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is directly used by any telephone company subject to the provisions of this chapter the telecommunications carrier in its telephone telecommunications operations and in lieu of real and personal property taxes on property leased or rented to any other person or company when the revenue derived from such leases or rentals is included in the telephone operating receipts of the company deriving the revenue. Real and personal property directly used by a telephone company subject to the provisions of this chapter and owned by any other person or company may not be assessed or taxed under the provisions of this chapter; provided, that any such property held under a contract for the purchase thereof by any telephone company subject to the provisions of this chapter must be considered for all purposes of taxation as property owned by that telephone company.

SECTION 14. AMENDMENT. Section 57-34-12 of the North Dakota Century Code is amended and reenacted as follows:

57-34-12. Rules and regulations - Appeals.

1. The state tax commissioner may ~~promulgate~~ adopt any rules and regulations that are necessary to carry out the provisions of this chapter. ~~The provisions of chapter 28-32 govern the promulgation of all rules and regulations, the holding of hearings thereon, and the appeal therefrom. All such appeals must be taken to the district court of Burleigh County.~~
2. Any person aggrieved by a decision of the state board of equalization may appeal to the district court of Burleigh County after the hearing ~~provided for in section 57-34-04.~~ The tax commissioner shall adopt rules as necessary to avoid double taxation of gross receipts and to eliminate the avoidance of taxation of gross receipts of telecommunications carriers under this chapter.

SECTION 15. REPEAL. Sections 57-06-01.1, 57-34-04, and 57-34-08 of the North Dakota Century Code are repealed.

SECTION 16. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1997.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 484**SENATE BILL NO. 2339**

(Senators Lips, Tallackson)
(Representatives Kerzman, Skarphol)

**CARBON DIOXIDE PIPELINE PROPERTY TAX
EXEMPTION**

AN ACT to amend and reenact section 57-06-17.1 of the North Dakota Century Code, relating to the property tax exemption for carbon dioxide pipelines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-06-17.1. Carbon dioxide pipeline exemption. Property, not including land, is exempt from taxation during construction and for the first ten full taxable years after commencement of construction following initial operation if it consists of a pipeline, constructed after 1996 and necessary associated equipment for the transportation or storage of carbon dioxide ~~to an oilfield in this state~~ for use in enhanced recovery of oil or natural gas.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 485

HOUSE BILL NO. 1288

(Representatives Devlin, Glassheim, Jacobs, Mickelson)
(Senators Grindberg, Urlacher)

PROPERTY REASSESSMENTS

AN ACT to amend and reenact section 57-14-08 of the North Dakota Century Code, relating to property reassessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-14-08 of the North Dakota Century Code is amended and reenacted as follows:

57-14-08. General reassessment of property - Allowance. A reassessment may be made as follows:

1. Upon the filing of a petition signed by not less than ten freeholders in ~~any~~ a political subdivision, or by the governing body of ~~any such that~~ such the subdivision, requesting a reassessment of property in ~~such the~~ such the subdivision or upon investigation by the board of county commissioners, the board of county commissioners, ~~in its discretion~~, before October first, may order a reassessment of any class of property, or of all property, located within ~~such the~~ such the subdivision or within any subdivision if, in its opinion, taxable property located within ~~such the~~ such the subdivision has escaped assessment in whole or in part, or has been assessed unfairly, or has not been assessed according to law.
2. The board of county commissioners then may appoint ~~some~~ a competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the board, and who shall proceed in accordance with the provisions of law governing assessors. The special assessor may be selected by competitive bidding or a process determined by the board of county commissioners. ~~Such~~ The special assessor ~~must be allowed~~ is entitled to reasonable compensation; ~~not to exceed eighty dollars per day~~, by the board of county commissioners for ~~his~~ the special assessor's services, together with meals and lodging as allowed by law, and mileage expense at the rate allowed by law for each mile [1.61 kilometers] actually and necessarily traveled in the performance of ~~his~~ that person's duties, which must be audited and allowed by the board of county commissioners and paid out of the county treasury upon warrant of the county auditor. If the reassessment was ordered by the tax commissioner, ~~such the~~ the commissioner shall appoint ~~some~~ a competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the commissioner and who shall proceed in accordance with the provisions of the law governing assessors; ~~such the~~ the special assessor ~~must be allowed~~ is entitled to reasonable compensation by the commissioner for ~~his~~ that person's services; ~~not to exceed eighty dollars per day~~, together with ~~plus~~ meals, lodging, and mileage expense at the rates provided by law, and the commissioner shall audit and allow the bill, and the same must be paid out of the county treasury. In either case, ~~such the~~ the compensation must

be charged to the political subdivision in which ~~such~~ the reassessment was made and must be deducted by the county treasurer from funds coming into ~~his~~ the treasurer's hands apportionable to ~~such~~ the subdivision. The board of county commissioners or tax commissioner who appoints a special assessor may authorize such assistants as may be necessary to aid the special assessor and shall allow reasonable compensation; ~~not to exceed eighty dollars per day,~~ for each of ~~such~~ the assistants ~~together with~~ plus meals, lodging, and mileage expense at the rates provided by law, which amounts must be audited, allowed, and paid and must be charged to the political subdivision reassessed in the manner provided for the special assessor.

3. Upon completion of the reassessment, the assessor shall certify the ~~same~~ result to the county auditor, who forthwith shall give notice by mail to the state tax commissioner and the board of county commissioners and the governing boards of each township, city, and school district which is wholly or ~~partly in~~ partially within the reassessment district, that a reassessment has been completed in the named assessment district and that a meeting for the purpose of equalizing the assessment will be held in the county courthouse on the day and at the time specified in the notice. Each ~~such~~ board shall appoint one of its members to attend the equalization meeting and the tax commissioner shall attend or appoint a representative from ~~his~~ the commissioner's office to attend the meeting. ~~Such~~ The group of persons ~~shall~~ comprise the special board of equalization for the reassessment. The member representing the board of county commissioners ~~shall serve~~ serves as chairman and the county auditor ~~shall serve~~ serves as secretary for ~~such~~ the special board of equalization. ~~Such~~ The meeting must be held not later than thirty days from the date of the written notice of the meeting mailed by the county auditor. A notice of ~~such~~ the special meeting and ~~the~~ its purpose ~~thereof~~ must be published at least once in the official newspaper of the county in which the reassessment was made not less than one week prior to ~~such~~ the meeting. Each person, except the tax commissioner or ~~his~~ the commissioner's appointee, serving on this special board of equalization is entitled to compensation at the rate of ~~ten~~ up to forty-five dollars ~~a~~ per day plus mileage expense and necessary expenses for meals and lodging at the rate allowed by law for attendance at ~~such~~ the meeting. Claims therefor must be audited and allowed by the board of county commissioners and must be paid, charged, and deducted in the same manner as the claim of the special assessor. The claims for mileage expense and necessary expenses for meals and lodging of the tax commissioner or ~~his~~ the commissioner's appointee in attending the special equalization meeting must be audited, allowed, and paid as are other similar claims made by them.
4. At ~~such~~ the meeting, the special board of equalization shall hear all grievances and complaints in regard to ~~such~~ the reassessment and shall proceed to equalize the same. All tax lists ~~thereupon~~ must be corrected to comply with ~~such~~ the action.

CHAPTER 486

HOUSE BILL NO. 1341

(Representatives Nichols, Wardner, Brown)
(Senator Kinnoin)

EXEMPT PROPERTY VALUATION LIMITATION

AN ACT to amend and reenact section 57-15-01.1 of the North Dakota Century Code, relating to establishing values for property exempt from property taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸ **SECTION 1. AMENDMENT.** Section 57-15-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-01.1. (Effective for first four taxable years beginning after December 31, 1994) Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
 - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year; and
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy two percent more in taxable year 1995 and two percent more in taxable year 1996 than the amount levied in dollars in the base year and for taxable years 1997 and 1998 may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year. However, no reduction may be made under this

⁸ Section 57-15-01.1 was also amended by section 3 of House Bill No. 1018, chapter 18.

section due to the exemption of the personal property of railroads by enactment of House Bill No. 1396 by the fifty-fourth legislative assembly.

- b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrepealable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

(Effective for taxable years beginning after December 31, 1998) Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
 - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year;
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section; ~~and~~
 - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable property in the base year plus the taxable value of the ~~exempt~~ property exempt by local discretion or charitable status, calculated in the same manner as the taxable property; ~~and~~
 - d. "Property exempt by local discretion or charitable status" means property exempted from taxation as new or expanding businesses under chapter 40-57.1; improvements to property under chapter 57-02.2; or buildings belonging to institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements under section 57-02-08.
3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and ~~exempt~~ property that exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or ~~exempt~~ property that exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.

4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrepealable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

Approved March 14, 1997
Filed March 14, 1997

CHAPTER 487**SENATE BILL NO. 2141**

(Senators Freborg, Tomac)
(Representatives Carlisle, Delzer)

RURAL FIRE PROTECTION DISTRICT MILL LEVY

AN ACT to amend and reenact section 57-15-26.3 of the North Dakota Century Code, relating to the mill levy limitation for rural fire protection districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-26.3 of the North Dakota Century Code is amended and reenacted as follows:

57-15-26.3. General tax levy of fire protection districts. A rural fire protection district may levy a tax in accordance with chapter 18-10 not exceeding five mills on the taxable valuation of property in the district except upon resolution adopted by the board of directors after receipt of a petition by not less than twenty percent of the qualified electors residing within the district, the levy may be made in an amount not exceeding ~~ten~~ thirteen mills.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 488**SENATE BILL NO. 2195**

(Senators Krebsbach, Lindaas)
(Representatives Froseth, Stenehjem, Wardner)

OASIS LEVY

AN ACT to amend and reenact subsection 5 of section 57-15-28.1 of the North Dakota Century Code, relating to the old-age and survivor insurance system tax levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 489

HOUSE BILL NO. 1292 (Representative Kunkel)

SCHOOL DISTRICT SPECIAL RESERVE FUND USE

AN ACT to create and enact two new sections to chapter 57-19 of the North Dakota Century Code, relating to the control and use of school district special reserve funds; to amend and reenact section 57-19-02 of the North Dakota Century Code, relating to school district special reserve funds; to repeal sections 57-19-06, 57-19-07, and 57-19-08 of the North Dakota Century Code, relating to school district special reserve funds, the use of vouchers, and the liability of school district officers and county treasurers in connection with school district special reserve funds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-19-02 of the North Dakota Century Code is amended and reenacted as follows:

57-19-02. ~~Fund deposited with county treasurer~~ Special reserve fund - Separate trust fund. ~~Such~~ The special reserve fund must be deposited with the county treasurer of the county in which the school district, or the greater part of its territory, is situated, is a separate trust fund for the use and benefit of the school district, to be drawn upon as provided in this chapter; and kept by such county treasurer as a separate trust fund. Moneys in ~~such the~~ the fund may be deposited, held, or invested in the same manner as the sinking fund of the district or in the purchase of shares or securities of federal savings and loan associations or state-chartered building and loan associations, within the limits of federal insurance. The ~~county treasurer~~ school district business manager shall annually, upon a resolution of the school board, ~~pay transfer~~ transfer to the school district general fund any part or all of the investment income or interest earned by the principal amount of the school district's special reserve fund.

SECTION 2. A new section to chapter 57-19 of the North Dakota Century Code is created and enacted as follows:

Special reserve funds - Transfer of control. Each county treasurer shall transfer control over school district reserve funds to local school boards and their business managers on the effective date of this Act, or as soon thereafter as practical.

SECTION 3. A new section to chapter 57-19 of the North Dakota Century Code is created and enacted as follows:

Special reserve fund - Use. If collections from taxes levied for the current budget are insufficient to meet the requirements of the budget for teacher salaries, heat, light, and fuel, a majority of the school board may direct the school district business manager to draw on funds in the special reserve fund of the district. The school board, by resolution, may withdraw without repayment fifty percent of the funds from the special reserve fund of the school district.

⁹ **SECTION 4. REPEAL.** Sections 57-19-06, 57-19-07, and 57-19-08 of the North Dakota Century Code are repealed.

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

Approved March 23, 1997

Filed March 24, 1997

⁹ Section 57-19-06 was amended by section 8 of House Bill No. 1146, chapter 175.

CHAPTER 490

SENATE BILL NO. 2331

(Senators Nething, Kringstad, Wogsland)
(Representatives Bernstein, Mahoney, Wardner)

FINANCIAL INSTITUTION TAX REVISIONS

AN ACT to create and enact chapter 57-35.3, a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 3 of section 57-38-30.3, and a new subdivision to subsection 4 of section 57-38-30.3 of the North Dakota Century Code, relating to taxation of financial institutions and allocation of tax revenue and to adjustments to taxable income for individuals; to amend and reenact section 10-30.2-11, subdivision i of subsection 1 of section 57-38-01.2, and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to taxation; to repeal chapters 57-35, 57-35.1, and 57-35.2 of the North Dakota Century Code, relating to the taxation of banks, trust companies and building and loan associations; to provide penalties; to provide continuing appropriations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.2-11 of the North Dakota Century Code is amended and reenacted as follows:

10-30.2-11. Tax credits for investment by ~~banks, savings and loan associations, trust companies,~~ financial institutions and insurance companies. A ~~bank, savings and loan association, trust company,~~ financial institution as defined in section 57-35.3-01 or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or ~~investments~~ invests in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to ~~twenty-five~~ fifty percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to ~~sections section 26.1-03-17; 57-35-02, 57-35.1-02, and 57-35.2-02~~ or sections 57-35.3-01 through 57-35.3-12, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. Except in the case of a tax credit that is carried forward from a prior tax year, no tax credit is allowed under this section to a taxpayer who received a tax credit for investment in the corporation and as a result of the dissolution of the corporation agreed to invest in the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

SECTION 2. Chapter 57-35.3 of the North Dakota Century Code is created and enacted as follows:

57-35.3-01. Definitions. As used in sections 57-35.3-01 through 57-35.3-12, unless the context otherwise requires:

1. "Commissioner" means the state tax commissioner.
2. "Financial institution" means:
 - a. A corporation or other business entity registered under state law as a bank holding company, registered under the Bank Holding Company Act of 1956, as amended [Pub. L. 84-240; 70 Stat. 133; 12 U.S.C. 1841 et seq.], or registered as a savings and loan holding company under the National Housing Act, as amended [Pub. L. 73-847; 48 Stat. 1246; 12 U.S.C. 1701 et seq.];
 - b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act [1864 ch. 106, §5; 13 Stat. 100; 12 U.S.C. 21 et seq.];
 - c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 873; 12 U.S.C. 1813(b)(1)];
 - d. A bank or thrift institution incorporated or organized under the laws of any state;
 - e. A trust company organized under the laws of any state, the United States, a dependency or insular possession of the United States, or a foreign country;
 - f. A corporation organized under the provisions of Public Law No. 63-6, §25A [38 Stat. 273; 12 U.S.C. 611 to 631];
 - g. An agency or branch of a foreign depository as defined in Public Law No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
 - h. A production credit association organized under the Farm Credit Act of 1933 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which held by the federal production credit corporation has been retired;
 - i. A corporation the voting stock of which is more than fifty percent owned, directly or indirectly, by any person or business entity described in subdivisions a through h other than an insurance company taxable under section 26.1-03-17 or a corporation taxable under chapter 57-38;
 - j. A corporation or other business entity that derives more than fifty percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subdivision, a "finance lease" means any lease transaction that is the functional equivalent of an extension of credit and which transfers substantially all of the benefits and risks incident to the ownership of property. The phrase includes any "direct financing lease" or "leverage lease" that

meets the criteria of financial accounting standards board statement no. 13, "accounting for leases", or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. For the classification under this subdivision to apply:

- (1) The average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement; and
 - (2) Gross income from incidental or occasional transactions must be disregarded; or
- k. Any other person or business entity, other than an insurance company taxable under section 26.1-03-17, a real estate broker, a securities dealer, or a person or entity taxable under chapter 57-38, which derives more than fifty percent of its gross income from activities that a person described in subdivisions b through h and j is authorized to transact. For the purpose of this subsection, the computation of gross income does not include income from nonrecurring, extraordinary items.

The commissioner may exclude any person from the application of subdivision k upon that person proving, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in subdivisions b through h and j.

3. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.
4. "Taxable income" means federal taxable income, as defined in the Internal Revenue Code, determined on a separate legal entity basis, with the modifications provided in section 57-35.3-02.
5. "Taxpayer" means an entity subject to the tax imposed by sections 57-35.3-01 through 57-35.3-12.

Any term used in sections 57-35.3-01 through 57-35.3-12 has the same meaning as when used in a comparable context in the Internal Revenue Code unless a different meaning is clearly required or intended.

57-35.3-02. Taxable income.

1. In determining "taxable income" there must be added to federal taxable income:
 - a. The adjustments provided by subdivisions d, e, and i of subsection 1 of section 57-38-01.3;
 - b. Interest not subject to federal tax upon obligations of the state of North Dakota and its political subdivisions;
 - c. The amount of any charitable contribution deduction taken for federal income tax purposes under section 170 of the Internal Revenue Code;

- d. In the case of a building and loan association or savings and loan association, the amount of any bad debt reserve deduction taken for federal income tax purposes under section 585 of the Internal Revenue Code; and
 - e. Dividends paid by a federal reserve bank to the extent not subject to federal tax.
- 2. In determining "taxable income" there must be subtracted from federal taxable income:
 - a. The adjustments provided by subdivisions b, c, and h of subsection 1 of section 57-38-01.3;
 - b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
 - c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
 - d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
 - e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
 - f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
 - g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision a that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; and
 - h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned

to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions.

3. A net operating loss for any prior taxable period, attributable to North Dakota sources, must be allowed as a deduction from the sum otherwise calculated under this section to the extent that it exceeds the taxable income for each of the prior taxable years to which the loss may be carried under sections 57-35.3-01 through 57-35.3-12 or under prior chapters 57-35, 57-35.1, or 57-35.2, or corporations under chapter 57-38, governing the taxation of the taxpayer. Net operating losses may be carried forward for the same time period as federal net operating losses may be carried forward. If a financial institution uses an apportionment formula in the loss year to determine the amount of income or loss that is attributable to North Dakota sources, the amount of the North Dakota loss so determined is the net operating loss attributable to North Dakota sources for purposes of this subsection. No deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources. No net operating loss carryback deduction is allowed.
4. The commissioner may adopt rules to prevent requiring income that had been previously taxed under sections 57-35.3-01 through 57-35.3-12, or prior law governing the taxation of financial institutions, from being taxed again because of the provisions of sections 57-35.3-01 through 57-35.3-12 and to adopt rules to prevent any income from becoming exempt from taxation because of sections 57-35.3-01 through 57-35.3-12 if it would otherwise have been subject to taxation under sections 57-35.3-01 through 57-35.3-12.
5. If it appears to the commissioner that the segregation of assets shown by any return made under sections 57-35.3-01 through 57-35.3-12 does not properly reflect the taxpayer's activity or business done, or the income earned from the taxpayer's activity or from business done in this state, because of the character of the taxpayer's business and the character and location of its assets, the commissioner may equitably adjust the tax.

57-35.3-03. Imposition and basis of tax. An annual tax is imposed upon each financial institution for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year. The tax is based upon and measured by the taxable income of the financial institution for the calendar year. The rate of tax is seven percent of taxable income, but the amount of tax may not be less than fifty dollars.

57-35.3-04. Lieu tax. The tax imposed by sections 57-35.3-01 through 57-35.3-12 is in lieu of all other state, county, or local taxes or impositions, except motor vehicle fuel and special fuel taxes, sales and use taxes, motor vehicle excise taxes, and real property taxes.

57-35.3-05. Credits.

1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under

this subdivision for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

- b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of secondary education located within the state. The amount allowable as a credit under this subdivision for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- c. For the purpose of this subsection, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the department of public instruction and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through twelfth grades.
- d. For the purposes of this subsection, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed for filing the return for the taxable year.
- 2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.
- b. For purposes of determining distributions to and from the counties under section 57-38.3-09:

 - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;

- (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
- (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.

57-35.3-06. Tax return. On or before April fifteenth of each year, the taxpayer shall file with the commissioner, on forms or in a manner prescribed by the commissioner, a report in writing under oath showing the amount of taxable income of the financial institution for the preceding calendar year. If required by the commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information in the form and manner prescribed by the commissioner. A true copy of the federal income tax return must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed the return required by this section if required by the commissioner before the expiration of the applicable period for assessment of additional tax liability under section 57-38-38. The commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that has the same validity and consequence as the actual signature and written declaration for a paper return. The commissioner may grant a reasonable extension of time for filing a return under the standards and terms applicable to other corporations under section 57-38-34.

57-35.3-07. Payment of tax. Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 1 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

57-35.3-08. Disposition of tax. The commissioner shall deposit the portion of the tax payable in the year the return is due in the general fund of the state treasury, and shall deposit the portion of the tax payable in the year after the return is due in the financial institution tax distribution fund of the state treasury, which is hereby created. Interest, penalty, and late tax payments attributable to each portion of the tax must be deposited in the appropriate fund.

57-35.3-09. Financial institution tax distribution fund - Continuing appropriation. The balance in the financial institution tax distribution fund on February first of 1999 and each subsequent year must be distributed in the following manner:

1. On or before February 1, 1999, the commissioner shall determine and certify to all county auditors:
 - a. The total amount of tax certified to each county under chapters 57-35 and 57-35.1 in the years 1993 through 1997; and

- b. The amount determined under subdivision a for each county as a percentage of the amount determined under subdivision a for all counties.
- 2. On or before February fifteenth of 1999 and each subsequent year, the commissioner shall determine and certify to the state treasurer an amount for payment by the state treasurer to each county treasurer equal to:
 - a. The percentage for that county determined under subdivision b of subsection 1; multiplied by
 - b. The balance in the financial institution tax distribution fund on February first of that year.
- 3. On or before March first of 1999 and each subsequent year, the state treasurer shall pay to the treasurer of each county the amount determined for that county under subsection 2. The amounts necessary to make these payments are appropriated to the state treasurer as a standing and continuing appropriation for distribution under this subdivision.
- 4. On or before February 1, 1999, the treasurer of each county shall determine and certify to the state treasurer and to all affected political subdivisions of the county:
 - a. The total amount of tax apportioned and distributed to the state, the county, and each political subdivision of the county under sections 57-35-13 and 57-35.1-06 in the years 1994 through 1998; and
 - b. The amount determined under subdivision a for each distributee as a percentage of the amount determined under subdivision a for all distributees.
- 5. On or before the tenth working day of March in 1999 and each subsequent year, the treasurer of each county shall determine and distribute to each distributee described in subsection 4 an amount equal to:
 - a. The percentage for that distributee determined under subdivision b of subsection 4; multiplied by
 - b. The amount of the payment by the state to the county in that year under subsection 3.

57-35.3-10. Certification of estimated tax. On or before August 1, 1998, and each subsequent year, the commissioner shall provide a preliminary estimate of the distribution to be made to each county in the following year. On or before November fifteenth of 1998 and each subsequent year, the commissioner shall determine the estimated amount of the distribution to be made to each county in the following year under section 57-35.3-09 and shall certify that amount to the county auditor.

57-35.3-11. Refunds. Refunds of the tax imposed by sections 57-35.3-01 through 57-35.3-12, including related interest, must be paid from the state general

fund. An amount equal to the portion of any such refund attributable to tax collections deposited in the financial institution tax distribution fund must be reimbursed to the state general fund from the first available assets of the financial institution tax distribution fund, with interest thereon at the rate prescribed by section 57-38-35.2 from the date of payment of the refund from the state general fund. The amounts necessary to pay these refunds are hereby appropriated to the state treasurer as a standing and continuing appropriation for payment under this section.

57-35.3-12. Applicable provisions of chapter 57-38 relating to administration, interest, and penalties. The provisions of section 57-38-33, subsection 1 of section 57-38-34, sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49, 57-38-50, 57-38-51, 57-38-53, 57-38-54, 57-38-56, and 57-38-57, insofar as consistent therewith, govern the administration of sections 57-35.3-01 through 57-35.3-12. For this purpose, the term "corporation", as used in the sections listed in this section, includes a financial institution.

57-35.3-13. Apportionment and allocation - General.

1. Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in sections 57-35.3-13 through 57-35.3-17. All items of nonbusiness income, meaning income that is not includable in the apportionable income tax base, must be allocated under chapter 57-38.1. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States the effectively connected income of which, as defined under the Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in sections 57-35.3-13 through 57-35.3-17.
2. All business income, meaning income that is includable in the apportionable income tax base, must be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor under section 57-35.3-15, property factor under section 57-35.3-16, and payroll factor under section 57-35.3-17 together and dividing the sum by three. If one of the factors is missing, the two remaining factors must be added and the sum divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.
3. Each factor must be computed according to the method of accounting, cash or accrual basis, used by the taxpayer for the taxable year.
4. If the allocation and apportionment provisions of sections 57-35.3-13 through 57-35.3-17 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
 - a. Separate accounting;

- b. The exclusion of any one or more of the factors;
- c. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or
- d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

57-35.3-14. Apportionment and allocation - Definitions. As used in sections 57-35.3-13 through 57-35.3-17, unless the context otherwise requires:

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on such later date in the taxable year when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed.
2. "Borrower or credit card holder located in this state" means:
 - a. A borrower, other than a credit card holder, who is engaged in a trade or business that maintains its commercial domicile in this state; or
 - b. A borrower who is not engaged in a trade or business or a credit card holder whose billing address is in this state.
3. "Commercial domicile" means:
 - a. The headquarters of the trade or business, meaning the place from which the trade or business is principally managed and directed; or
 - b. If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile must be deemed for the purposes of sections 57-35.3-13 through 57-35.3-17 to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.
4. "Commissioner" means the state tax commissioner.
5. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code must be made as though those employees were subject to the Internal Revenue Code.

6. "Credit card" means a credit, travel, or entertainment card.
7. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.
8. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
9. "Financial institution" has the meaning given in section 57-35.3-01.
10. "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.
 - a. "Gross rents" includes:
 - (1) Any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;
 - (2) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and
 - (3) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, if a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.
 - b. "Gross rents" does not include:
 - (1) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
 - (2) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;
 - (3) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and
 - (4) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

11. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.
12. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participation, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include properties treated as loans under section 595 of the Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in an REMIC, or other mortgage-backed or asset-backed security; and other similar items.
13. "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
14. "Merchant discount" means the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the credit card holder.
15. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
16. "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.
17. "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly starts the employee's work and to which the employee customarily returns in order to receive instructions from the employee's employer, communicates with the employee's customers or other persons, or performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points.
18. "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the taxpayer may claim depreciation for federal income tax purposes, or to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

19. "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.
20. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.
21. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
22. "Taxable" means either:
 - a. That a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax including a bank shares tax, a single business tax, or an earned surplus tax, or any tax that is imposed upon or measured by net income; or
 - b. That another state has jurisdiction to subject the taxpayer to any of those taxes regardless of whether or not the state subjects the taxpayer to those taxes.
23. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

57-35.3-15. Apportionment and allocation - Receipts factor.

1. General. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described in this section which constitute business income and are included in the computation of the apportionable income base for the taxable year.
2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.
3. Receipts from the lease of tangible personal property.
 - a. Except as described in subdivision b, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

- b. Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.
- 4. Interest from loans secured by real property.
 - a. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the receipts factor if the borrower is located in this state.
 - b. The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.
- 5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.
- 6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.
 - a. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor under subsection 4 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
 - b. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the

receipts factor under subsection 5 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to cardholders, such as annual fees, if the billing address of the cardholder is in this state.
8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 7 and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to cardholders.
9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 7 and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to cardholders.
10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder chargebacks, but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.
11. Loan servicing fees.
 - a. (1) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under subsection 4 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
 - (2) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under subsection 5 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
 - b. In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor must include such fees if the borrower is located in this state.

12. Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income-producing activity is performed in this state based on cost of performance.
13. Receipts from investment assets and activities and trading assets and activities.

 - a. Interest; dividends; net gains, but not less than zero; and other income from investment assets and activities and from trading assets and activities must be included in the receipts factor. Investment assets and activities and trading assets and activities include investment securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in paragraphs 1 and 2, the receipts factor must include the amounts described in those paragraphs.

 - (1) The receipts factor must include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.
 - (2) The receipts factor must include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.
 - b. The numerator of the receipts factor includes interest; dividends; net gains, but not less than zero; and other income from investment assets and activities and from trading assets and activities described in subdivision a which are attributable to this state.

 - (1) The amount of interest; dividends; net gains, but not less than zero; and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.
 - (2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 1 of subdivision a from such funds and such securities by a

fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

- (3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in paragraph 1 or 2, attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 2 of subdivision a by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.
 - (4) For purposes of this subdivision, average value must be determined using the rules for determining the average value of tangible personal property set forth in subsections 3 and 4 of section 57-35.3-16.
- c. In lieu of using the method set forth in subdivision b, the taxpayer may elect, or the commissioner may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subdivision.
- (1) The amount of interest; dividends; net gains, but not less than zero; and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.
 - (2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 1 of subdivision a from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.
 - (3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts

described in paragraphs 1 and 2, attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 2 of subdivision a by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

- d. If the taxpayer elects or is required by the commissioner to use the method set forth in subdivision c, the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the commissioner to use, or the commissioner requires, a different method.
 - e. The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity must be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines must be presumed to be established at the commercial domicile of the taxpayer.
14. All other receipts. The numerator of the receipts factor includes all other receipts under the rules set forth in chapter 57-38.1, to the extent not inconsistent with this section.
15. Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable must be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

57-35.3-16. Apportionment and allocation - Property factor.

- 1. General. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.
- 2. Property included. The property factor includes only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed or depreciated or expensed to a

nominal amount, in the computation of the apportionable income base for the taxable year.

3. Value of property owned by the taxpayer.
 - a. The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.
 - b. Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged off for federal income tax purposes must be treated as charged off for purposes of this section.
 - c. Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.
4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the commissioner may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the commissioner or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the commissioner or the commissioner requires a different method of determining average value.
5. Average value of real property and tangible personal property rented to the taxpayer.
 - a. The average value of real property and tangible personal property that the taxpayer has rented from another, and which is not treated as property owned by the taxpayer for federal income tax purposes, must be determined annually by multiplying the gross rents payable during the taxable year by eight.
 - b. If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the commissioner or by the taxpayer when approved in writing by the commissioner. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the commissioner or the commissioner requires a different method of valuation.

6. Location of real property and tangible personal property owned by or rented to the taxpayer.

- a. Except as described in subdivision b, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.
- b. Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

7. Location of loans.

- a. (1) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.
- (2) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state must be presumed to have been properly assigned if:
 - (a) The taxpayer has assigned, in the regular course of the taxpayer's business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;
 - (b) Such assignment on the taxpayer's records is based upon substantive contacts of the loan to that regular place of business; and
 - (c) The taxpayer uses those records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.
- (3) The presumption of proper assignment of a loan provided in paragraph 2 may be rebutted upon a showing by the commissioner, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan must then be located within this state if the taxpayer had a regular place of business

within this state at the time the loan was made and the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

- b. In the case of a loan that is assigned by the taxpayer to a place without this state which is not a regular place of business, it must be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made, the taxpayer's commercial domicile, as defined in subsection 3 of section 57-35.3-14, was within this state.
- c. To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue must be reviewed on a case-by-case basis and consideration must be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. For purposes of this subdivision:

 - (1) "Administration" means the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.
 - (2) "Approval" means the procedure by which employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.
 - (3) "Investigation" means the procedure by which employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.
 - (4) "Negotiation" means the procedure by which employees of the taxpayer and the taxpayer's customer determine the terms of the agreement such as the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

- (5) "Solicitation" means either active or passive solicitation. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.
8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables must be treated as loans and are subject to the provisions of subsection 7.
9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, must remain assigned to that state for the length of the original term of the loan. Thereafter, that loan may be properly assigned to another state if that loan has a preponderance of substantive contact to a regular place of business there.

57-35.3-17. Apportionment and allocation - Payroll factor.

1. General. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor must include only that compensation that is included in the computation of the apportionable income tax base for the taxable year.
2. Compensation relating to nonbusiness income. The compensation of any employee for services or activities that are connected with the production of nonbusiness income, meaning income which is not includable in the apportionable income base, and payments made to any independent contractor or any other person not properly classifiable as an employee must be excluded from both the numerator and denominator of the factor.
3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:
- a. The employee's services are performed entirely within this state.
 - b. The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature or which is rendered in connection with an isolated transaction.
 - c. If the employee's services are performed both within and without this state, the employee's compensation must be attributed to this state:

- (1) If the employee's principal base of operations is within this state;
- (2) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or
- (3) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

¹⁰ **SECTION 3. AMENDMENT.** Subdivision i of subsection 1 of section 57-38-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- i. Reduced by any dividends or income, up to a maximum of fifteen thousand dollars, received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes where the income of such corporation has been assessed and tax paid by the corporation under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12 and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year; provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted. The commissioner is hereby authorized to prescribe rules and regulations to implement this subdivision to avoid injustice to taxpayers, to prevent duplication of deductions, and to eliminate taxation of income not fairly and properly taxable under this chapter.

¹¹ **SECTION 4.** A new subdivision to subsection 1 of section 57-38-01.2 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

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

¹⁰ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1104, chapter 491, and section 4 of Senate Bill No. 2331, chapter 490.

¹¹ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1104, chapter 491, and section 3 of Senate Bill No. 2331, chapter 490.

SECTION 5. AMENDMENT. Subdivision g of subsection 1 of section 57-38-01.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. Reduced by dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12, received by the taxpayer and included in the gross income within the income year if such corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation has been assessed and income tax paid under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom may be deducted.

¹² **SECTION 6.** A new subdivision to subsection 3 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

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

¹³ **SECTION 7.** A new subdivision to subsection 4 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 8. REPEAL. Chapters 57-35, 57-35.1, and 57-35.2 of the North Dakota Century Code are repealed.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved April 4, 1997
Filed April 4, 1997

¹² Section 57-38-30.3 was also amended by section 2 of House Bill No. 1471, chapter 492, and section 7 of Senate Bill No. 2331, chapter 490.

¹³ Section 57-38-30.3 was also amended by section 2 of House Bill No. 1471, chapter 492, and section 6 of Senate Bill No. 2331, chapter 490.

CHAPTER 491

HOUSE BILL NO. 1104

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

NONRESIDENT INCOME APPORTIONMENT AND EMPLOYER WITHHOLDING

AN ACT to amend and reenact subdivision h of subsection 1 of section 57-38-01.2, subsection 5 of section 57-38-04, and subsection 2 of section 57-38-60 of the North Dakota Century Code, relating to allocation and apportionment of nonresident income and employer income tax withholding return requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴ **SECTION 1. AMENDMENT.** Subdivision h of subsection 1 of section 57-38-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. ~~Reduced~~ Except for residents, reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.

SECTION 2. AMENDMENT. Subsection 5 of section 57-38-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Whenever a trade or business is carried on partly within and partly without this state by a nonresident of this state, the entire income therefrom must be allocated to this state and to other states, according to the provisions of ~~sections 57-38-12, 57-38-13, and 57-38-14~~ chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.

SECTION 3. AMENDMENT. Subsection 2 of section 57-38-60 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under this section which ~~shall show the total amount of wages paid to employees, the amount of federal income tax deducted and withheld during the period covered by the return,~~ shows the amount of tax

¹⁴ Section 57-38-01.2 was also amended by section 3 of Senate Bill No. 2331, chapter 490, and section 4 of Senate Bill No. 2331, chapter 490.

imposed under this chapter which was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved January 27, 1997
Filed January 27, 1997

CHAPTER 492

HOUSE BILL NO. 1471

(Representatives Niemeier, Wardner, Jensen, Kerzman)
(Senators Andrist, DeMers)

FAMILY MEMBER CARE EXPENSE INCOME TAX CREDIT

AN ACT to create and enact a new section to chapter 57-38 and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an individual or trust income tax credit for expenses of caring for certain family members; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Credit for expenses of caring for certain family members.

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

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

4. The percentage amount of credit allowable under this section is:
 - a. For a taxpayer whose taxable income does not exceed twenty-five thousand dollars, thirty percent of qualified elderly care expenses; or
 - b. For a taxpayer whose taxable income exceeds twenty-five thousand dollars, the greater of:
 - (1) Twenty percent of qualified elderly care expenses; or
 - (2) Thirty percent of qualified elderly care expenses, minus one percent of those expenses for each two thousand dollars or fraction of two thousand dollars by which the taxable income of the taxpayer for the taxable year exceeds twenty-five thousand dollars.
5. The dollar amount of credit allowable under this section is:
 - a. Reduced by one dollar for each dollar of the taxable income over fifty thousand dollars for a taxpayer whose taxable income exceeds fifty thousand dollars;
 - b. Limited to two thousand dollars per qualifying family member in a taxable year and to four thousand dollars total for two or more qualifying family members in a taxable year; and
 - c. Prorated among multiple taxpayers who each contribute to qualified care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified care expenses paid by those taxpayers for that qualified family member.
6. A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.
7. In the case of a married individual filing a separate return, the percentage amount of credit under subsection 4 and the dollar amount of credit under subsection 5 are limited to one-half of the amounts indicated in those subsections.

¹⁵ **SECTION 2.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 1 of this Act.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 26, 1997
Filed March 26, 1997

¹⁵ Section 57-38-30.3 was also amended by section 6 of Senate Bill No. 2331, chapter 490, and section 7 of Senate Bill No. 2331, chapter 490.

CHAPTER 493

HOUSE BILL NO. 1332

(Representative Timm)

INCOME TAX INTEREST, PENALTIES, AND OVERPAYMENT

AN ACT to create and enact a new subdivision to subsection 6 of section 57-38-38 and a new subsection to section 57-38-62 of the North Dakota Century Code, relating to the exemption of penalties on refunded income taxes from an amended return or claim and permitting the application of a tax overpayment for a year as an estimated tax payment for the succeeding year; to amend and reenact section 57-38-35.2 and subsections 1 and 2 of section 57-38-45 of the North Dakota Century Code, relating to income tax interest and penalties; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

57-38-35.2. Interest payments. ~~Interest at the rate of ten percent per annum must be allowed and paid upon overpayments of tax as follows:~~

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

filed, interest accrues to the date the amended return or claim is filed.

3. c. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from ~~sixty days after the due date an amended of the~~ return ~~claiming a credit or refund because of an operating loss carryback or capital loss carryback is filed with the tax commissioner for the year, determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the net operating loss or capital loss carryback.~~
4. 3. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.

SECTION 2. A new subdivision to subsection 6 of section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

If a determination is made under subdivision a of this subsection that additional tax is due and the tax commissioner has previously refunded income taxes related to the amended return or claim, subsection 2 of section 57-38-45 does not apply to the refunded amount.

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

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

unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.

- e. If, for any portion of the time period over which interest is otherwise computed under this subsection on additional tax due, interest was previously computed under subsection 2 of section 57-38-35.2 on a refund for any tax period, the interest computed on the additional tax due for that portion of the time period must be computed at the same rate and in the same manner that was used in computing the interest on the refund, but only to the extent that the amount of the additional tax due does not exceed the amount of the refund.
 - f. If a deficiency is determined for a tax period for which there was an overpayment that was applied to the following tax period's estimated tax under section 4 of this Act, interest accrues with respect to the amount of the deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.
2. In addition to the interest prescribed in this chapter, a taxpayer ~~shall be~~ is subject to additions to tax and penalty as follows:
- a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to pay the amount shown as tax due on any return, including tax withheld by an employer, filed on or before the due date or extended due date prescribed therefor, there shall be added to the tax a penalty of five percent thereof, or five dollars, whichever is greater.
 - b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return, including the employer's withheld tax return, on or before the due date or extended due date prescribed therefor, there shall be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which ~~such~~ the failure continues, not exceeding twenty-five percent in the aggregate.
 - c. If upon audit of a taxpayer's return, including tax withheld by an employer, an additional tax is found to be due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - d. If the mathematical verification of a taxpayer's return, including tax withheld by an employer, results in additional tax due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - e. The provisions of subdivision a, b, c, or d do not apply to the extent it has been determined that the taxpayer has offsetting overpayments of income taxes which have not been refunded.
 - f. An employer, required to file returns under subsection 1 of section 57-38-60, with four to eight delinquent original tax returns or

payments is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater. An employer with nine or more delinquent original returns or payments is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater.

SECTION 4. A new subsection to section 57-38-62 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

An individual or corporation may apply a tax overpayment from a preceding taxable year as an estimated tax payment on the individual's or corporation's behalf for the taxable year succeeding the overpayment. The individual or corporation may elect to apply the overpayment to specific estimated tax installments. If the individual or corporation does not specify the installment period toward which the overpayment is to be applied, the individual or corporation must be considered to have elected to apply the overpayment toward the first required estimated tax installment for the succeeding taxable year.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1997, except subdivision f of subsection 1 of section 57-38-45 and section 4 of this Act which are effective for taxable periods beginning after December 31, 1996.

Approved March 26, 1997
Filed March 27, 1997

CHAPTER 494**SENATE BILL NO. 2089**

(Senator Thane)

(At the request of Job Service North Dakota)

JOB SERVICE AND BUREAU TAX REFUND SETOFF

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 of the North Dakota Century Code, relating to inclusion of job service North Dakota and the workers compensation bureau in the definition of claimant agency for income tax refund setoff purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, the workers compensation bureau, or the North Dakota guaranteed student loan program.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 495

HOUSE BILL NO. 1401

(Representatives Poolman, R. Kelsch, Glassheim)
(Senators Krebsbach, St. Aubyn, Traynor)

SEED CAPITAL INVESTMENT CREDIT

AN ACT to amend and reenact subsection 4 of section 57-38.5-01 of the North Dakota Century Code, relating to the definition of a qualified business for purposes of the seed capital investment tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Qualified business" means a primary sector business that:
 - a. Is incorporated ~~in North Dakota~~ or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, or joint venture;
 - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
 - d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than twenty-five employees or two hundred fifty thousand dollars of sales annually; and
 - e. Has a majority of its ownership interests owned by one or more individuals for whom operation of the business is their full-time professional activity;
 - f. ~~Had gross sales receipts of less than two million dollars in its most recently ended taxable year.~~

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 496

HOUSE BILL NO. 1467

(Representatives Mahoney, Kempenich)

COAL SALES AND USE TAX

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.

¹⁶ **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.

¹⁷ **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

¹⁶ Section 57-39.2-04 was also amended by section 1 of Senate Bill No. 2072, chapter 497.

¹⁷ Section 57-39.2-26.1 was also amended by section 2 of House Bill No. 1019, chapter 19.

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.

¹⁸ **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

¹⁸ Section 57-40.2-02.1 was also amended by section 2 of Senate Bill No. 2072, chapter 497.

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.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 497

SENATE BILL NO. 2072

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

NATURAL GAS TAX, POLITICAL SUBDIVISION EXEMPTION, AND SELLER'S CERTIFICATES

AN ACT to create and enact a new subsection to section 57-40.2-02.1 of the North Dakota Century Code, relating to the imposition of a use tax on natural gas; to amend and reenact subsection 6 of section 57-39.2-04 and section 57-40.3-05 of the North Dakota Century Code, relating to a sales tax exemption for a political subdivision of another state and the requirement for a seller's certificate under the motor vehicle excise tax; and to repeal sections 57-37.1-12, 57-37.1-13, 57-37.1-14, and 57-40.3-05.1 of the North Dakota Century Code, relating to inventory of safety deposit boxes upon the death of the lessor, the notice of transfer of a decedent's assets, penalties for violating the duties of a depository, and the requirement of a seller's certificate under the motor vehicle excise tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹ **SECTION 1. AMENDMENT.** Subsection 6 of section 57-39.2-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Gross receipts from all sales otherwise taxable under this chapter made to the United States or to any state, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions of any state. A political subdivision of another state is exempt under this subsection only if it is exempt from sales tax in its home state a sale to a North Dakota political subdivision is treated as an exempt sale in that state. The governmental units exempted by this subsection must be issued a certificate of exemption by the commissioner and ~~such~~ the certificate must be presented to each retailer whenever this exemption is claimed.

²⁰ **SECTION 2.** A new subsection to section 57-40.2-02.1 of the North Dakota Century Code is created and enacted as follows:

An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after

¹⁹ Section 57-39.2-04 was also amended by section 2 of House Bill No. 1467, chapter 496.

²⁰ Section 57-40.2-02.1 was also amended by section 4 of House Bill No. 1467, chapter 496.

December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.

SECTION 3. AMENDMENT. Section 57-40.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-05. Purchaser to furnish motor vehicle purchaser's certificate to director of the department of transportation. Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife, parent or child, or from a brother or sister shall complete a motor vehicle purchaser's certificate in such form and manner as may be prescribed by the director of the department of transportation, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance and description of the trade-in, if any, whether the vehicle was the subject of a gift, and any other information that the director of the department of transportation may require. ~~If the motor vehicle was the subject of a sale, the purchaser must, upon request of the department of transportation, also attach to the motor vehicle purchaser's certificate a copy of the seller's certificate required under section 57-40.3-05.1.~~

SECTION 4. REPEAL. Sections 57-37.1-13 and 57-37.1-14 of the North Dakota Century Code and sections 57-37.1-12 and 57-40.3-05.1 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 498

HOUSE BILL NO. 1311

(Representatives Grosz, Rennerfeldt, Schmidt)
(Senator Kringstad)

FUELS TAX REVISIONS

AN ACT to create and enact sections 57-43.2-02.2 and 57-43.2-02.3 of the North Dakota Century Code, relating to special fuels tax refunds and exemptions; to amend and reenact sections 57-43.1-01, 57-43.1-03, 57-43.1-03.1, 57-43.1-04, 57-43.1-05, 57-43.1-06, 57-43.1-07, 57-43.1-11, 57-43.1-17, 57-43.1-20, 57-43.2-01, 57-43.2-02, 57-43.2-03, 57-43.2-04, and 57-43.2-14 of the North Dakota Century Code, relating to motor vehicle fuels and special fuels taxes and administration; to repeal sections 57-43.1-09, 57-43.1-10, and 57-43.1-19 of the North Dakota Century Code, relating to motor vehicle fuels tax refunds and invoices; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of motor vehicle fuel including any person purchasing motor vehicle fuel in this state for use in a licensed motor vehicle; any person importing motor vehicle fuel into this state or purchasing motor vehicle fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing motor vehicle fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing motor vehicle fuel for resale.
- ~~2.~~ 4. "Dealer" means any person importing or causing to be imported into this state any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the fuel reaches this state and any person producing, refining, manufacturing, compounding, or purchasing any motor vehicle fuel in this state for use, distribution, or sale in this state.
- ~~3.~~ 5. "Director" means the director of the department of transportation.

4. 6. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.
7. "Industrial purpose" means:
- a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.
- Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.
8. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
9. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this chapter, but does not include aircraft.
5. 10. ~~"Motor vehicle fuels" includes fuel~~ "Motor vehicle fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled

(recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.

6. ~~"Motor vehicles" means all vehicles, engines, or machines, movable or immovable, which are operated in whole or in part by internal combustion of one or more of the motor vehicle fuels defined in this chapter but does not include aircraft.~~
7. 11. "Original package" means any tank car, barrel, or other package which is in the form and condition in which it was imported into the state or into which motor vehicle fuel refined in this state or imported by pipeline is placed when removed from refinery storage or pipeline terminal storage.
8. 12. "Person" ~~includes~~ means every individual, partnership, society, firm, association, joint stock company, corporation, limited liability company, trustee, executor, administrator, or guardian. Whenever used in any case prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association includes the partners or members, as applied to corporations, the officers, and as applied to limited liability companies, the managers.
9. 13. "Public road or highway" ~~or "highway"~~ means every way or place generally open to the use of the public as a matter of right, for the purpose of vehicular motor vehicle travel, notwithstanding that it may be temporarily closed for or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
10. ~~"Use" means the consumption of fuel to propel a motor vehicle upon the public highways.~~
14. "Sale" means the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of motor vehicle fuel between dealers or between a dealer and a retailer or a consumer.
44. 15. "Wholesale dealer" ~~means~~ has the same meaning as ~~is stated in subsection 2;~~ "dealer" with the added qualification that it means those selling or delivering motor vehicle fuel to retail dealers.

SECTION 2. AMENDMENT. Section 57-43.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03. Refund of tax for fuel used for an industrial purposes purpose - Reduction for agricultural fuel tax fund. Any person consumer who buys or uses any motor vehicle fuel as defined in ~~section 57-43.1-04~~ for an industrial purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state purpose~~ on which the motor vehicle fuel tax has been paid; ~~must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter.~~ The amount of the tax refund

provided for in this section must be reduced by one-half cent per gallon [3.79 liters], except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund.

²¹ **SECTION 3. AMENDMENT.** Section 57-43.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective until December 31, 1999) Refund of tax for fuel used for an agricultural ~~purposes~~ purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural ~~purposes~~, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state ~~purpose~~ on which the motor vehicle fuel tax has been paid; ~~must be reimbursed or repaid within the time provided in this chapter; the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter.~~ The amount of the tax refund provided for in this section must be reduced by four cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged four cents per gallon [3.79 liters] by the dealer and the four cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

(Effective January 1, 2000) Refund of tax for fuel used for an agricultural ~~purposes~~ purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural ~~purposes~~, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state ~~purpose~~ on which the motor vehicle fuel tax has been paid; ~~must be reimbursed or repaid within the time provided in this chapter; the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter.~~ The amount of the tax refund provided for in this section must be reduced by two cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

²² **SECTION 4. AMENDMENT.** Section 57-43.1-04 of the North Dakota Century Code is amended and reenacted as follows:

²¹ Section 57-43.1-03.1 was also amended by section 1 of House Bill No. 1286, chapter 500, and section 16 of Senate Bill No. 2019, chapter 48.

²² Section 57-43.1-04 was also amended by section 5 of Senate Bill No. 2071, chapter 54.

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle operated or intended to be operated upon the public highways of this state, the manner in purpose or type of project for which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. The original invoice or invoices indicating or sales tickets proving the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the dealer's or retailer's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, the state tax as a separate item or a statement that the state tax is included in the price, and the name of the claimant. If the original invoice or invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets. A dealer is prohibited from preparing a refund claim for the consumer.

SECTION 5. AMENDMENT. Section 57-43.1-05 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-05. Claim for refund - Limitation on filing. A refund claim must be filed, for all motor vehicle fuel purchases during a calendar year, on or after January first and before July first of the next year following the year during which the purchase was made, or the claim for refund is barred unless the commissioner grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

1. The business is being discontinued;
2. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
3. The claim for refund exceeds ~~one thousand~~ four hundred dollars.

No claim for refund may be made or approved unless the amount of the claim is in excess of five dollars.

SECTION 6. AMENDMENT. Section 57-43.1-06 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-06. Refund to prevent ~~double~~ taxation - ~~Reduction for agricultural fuel tax fund by multiple jurisdictions.~~ Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state which requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. The refund may be granted only upon application to the commissioner on forms in the manner prescribed by the commissioner; including and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state; and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 may not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section. The refund

may not be reduced by the one cent per gallon tax designated for the township highway aid fund. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

SECTION 7. AMENDMENT. Section 57-43.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-07. Commissioner to audit and approve claim - Investigation of doubtful claims - Payment of examine and pay claims. ~~The~~ Within thirty days of the receipt of a claim for a refund of tax, the commissioner, upon the presentation of a sworn claim, shall audit examine the claim for refund and if there are no apparent discrepancies, shall prepare, in duplicate, an abstract showing the claim number and the name, address, and the amount due each claimant. ~~The commissioner shall approve and submit claims for payment within thirty days of receipt in the commissioner's office unless the commissioner is in doubt as to the validity of any claim, in which case the commissioner may withhold approval for a reasonable time for purposes of investigation. The commissioner may authorize any employee or agent of his office to investigate doubtful claims and report the findings to the commissioner who shall then promptly approve or reject the claim as the facts may warrant.~~ All claims approved by the commissioner must be paid by warrant-checks prepared by the office of management and budget. The state treasurer is not required to retain the canceled checks by which any refund may have been paid for a period of more than six years from July first of the fiscal year in which the refund check is issued.

SECTION 8. AMENDMENT. Section 57-43.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. AMENDMENT. Section 57-43.1-17 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as otherwise provided in this section, the commissioner may proceed to audit the ~~statements~~ returns of dealers and, not later than three years after the due date of a ~~statement~~ return, or three years after the ~~statement~~ return was filed, whichever period expires later, assess ~~the~~ additional tax and, if due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the dealer in detail of the reason for the increase or decrease.
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date

of the statement, or six years after the statement was filed, whichever period expires later.

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

SECTION 10. AMENDMENT. Section 57-43.1-20 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-20. Tax chargeable to consumer. Every dealer required to collect remit the motor vehicle fuel tax imposed by this chapter shall ~~charge and collect the tax on all motor vehicle fuel sold by that dealer, except as provided in section 57-43.1-18,~~ pass the tax on to the consumer as a part of the selling price of the fuel.

SECTION 11. AMENDMENT. Section 57-43.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing special fuel for resale.
4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.
2. 5. "Director" means the director of the department of transportation.
3. ~~"Farm-to-market roads" means any road within the county which is not on the North Dakota state highway system and which qualifies for federal aid matching funds.~~
6. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
4. ~~"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.~~
5. 7. "Highway purposes purpose" means any use of special fuels fuel in any motor vehicle or in any phase of construction, reconstruction, repair, or maintenance of farm-to-market roads as defined in subsection 3 and of public roads or highways as defined in subsection 4, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
6. 8. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or

rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.

9. "Industrial purpose" means:

- a. A manufacturing, warehousing, or loading dock operation;
- b. Construction;
- c. Sand and gravel processing;
- d. Well drilling, well testing, or well servicing;
- e. Maintenance of business premises, golf courses, or cemeteries;
- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

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

10. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.

11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

7. 12. "Motor vehicle" means ~~any~~ a vehicle ~~propelled by an internal combustion engine and licensed for operation or operated upon the highways,~~ engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.

8. 13. "Person" ~~includes~~ means every natural person, fiduciary, association, corporation, or limited liability company. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.

14. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or

subject to restricted travel due to construction, reconstruction, repair, or maintenance.

15. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
9. 16. "Sale" means the receipt, delivery, or transfer of title to or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of special fuels by a between special fuel dealer to dealers or between a special fuel user dealer and a retailer or a consumer.
40. 17. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, and agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01 or antifreeze as defined by section 19-16.1-02.
44. 18. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
42. "Special fuel user" means any person receiving or purchasing special fuel and includes fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government but does not include a special fuels dealer purchasing or receiving special fuel for resale.
43. 19. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
14. "Use" means the consumption of fuel to propel a motor vehicle upon the public highways.
45. 20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

²³ **SECTION 12. AMENDMENT.** Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. Tax imposed - Exemptions.

1. ~~An~~ Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The tax attaches at the time of sale, delivery, or transfer of title of such special fuel to a special fuel user or unlicensed dealer. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter. The dealer shall remit the tax imposed by this section on all sales to consumers.~~
3. ~~Except as prohibited by section 57-43.1-09 the tax is refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-43.1 relating to the refund of motor fuel taxes apply to the tax imposed by this chapter, provided that the amount refunded for any special fuel does not include the amount of tax imposed by section 57-43.2-03 on the sale of that fuel. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~

SECTION 13. Section 57-43.2-02.2 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 14. Section 57-43.2-02.3 of the North Dakota Century Code is created and enacted as follows:

57-43.2-02.3. Exemptions.

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the

²³ Section 57-43.2-02 was also amended by section 2 of House Bill No. 1163, chapter 499.

consumer and is subject instead to the tax imposed by section 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.

2. Special fuel, other than diesel fuel, sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

SECTION 15. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. ~~Tax~~ Special excise tax levied. ~~A~~

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02, if the special fuels are sold to a special fuels user in this state, and the same rate of tax is imposed if the special fuel is imported for use in this state by a special fuels user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales.
2. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section ~~57-43.1-08~~. The special excise tax applies to all sales of special fuels taxed under section 57-43.2-02 for which taxes are later refunded to a special fuels user. For purposes of this section, "use" means the consumption of fuel for heating, agricultural, or railroad purposes, or for industrial purposes other than in the performance of a contract with any unit of government any consumer.
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.

6. The dealer shall remit the tax imposed by this section on all sales to a consumer.

SECTION 16. AMENDMENT. Section 57-43.2-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-04. ~~Collection and payment of tax~~ Tax chargeable to consumer. ~~The tax imposed by section 57-43.2-03 attaches at the time of sale of any special fuel by a special fuel dealer to a special fuel user. The tax imposed by section 57-43.2-03 on special fuels imported for use in this state attaches when the fuel is used in this state. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter. If the tax imposed by section 57-43.2-02 was paid by a special fuels user and the special fuel was used for an exempt purpose, the tax must be refunded by the tax commissioner and the tax imposed by section 57-43.2-03 must be deducted from the refund. The tax imposed by section 57-43.2-03 on special fuels imported for use in the state by a special fuels user will be collected directly by the tax commissioner. Every dealer required to remit the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 shall pass the tax on to the consumer.~~

SECTION 17. AMENDMENT. Section 57-43.2-14 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of special fuel dealers and purchase records of special fuel users and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, or three years after purchase by a special fuel user, assess the additional tax and, if due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the taxpayer in detail of the reason for the increase or decrease.~~
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
3. ~~Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.~~
4. If false or fraudulent information is given in ~~the~~ a dealer's tax return or in a consumer's claim for refund, or if the failure by a dealer to file a tax

return is due to the fraudulent intent or the willful attempt of the ~~taxpayer~~ dealer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.

4. ~~5.~~ If before the expiration of the time prescribed in ~~subsections 4 and 2~~ this chapter for the assessment of tax, the commissioner and the ~~taxpayer~~ dealer or claimant consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period ~~so~~ agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a dealer or to a consumer fixes the tax finally and irrevocably unless the dealer or consumer against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the dealer or consumer claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 18. REPEAL. Sections 57-43.1-09, 57-43.1-10, and 57-43.1-19 of the North Dakota Century Code are repealed.

SECTION 19. EFFECTIVE DATE. This Act is effective for taxable events occurring after March 31, 1997.

SECTION 20. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 1997
Filed April 1, 1997

CHAPTER 499

HOUSE BILL NO. 1163

(Finance and Taxation Committee)

(At the request of the Department of Transportation)

MOTOR VEHICLE AND SPECIAL FUELS TAXES

AN ACT to amend and reenact sections 57-43.1-02 and 57-43.2-02 of the North Dakota Century Code, relating to motor vehicle fuel and special fuel taxes; to repeal sections 57-43.1-02.1 and 57-43.2-02.1 of the North Dakota Century Code, relating to additional motor vehicle fuel and special fuel taxes; to provide an appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of ~~seventeen~~ twenty cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. The dealer shall collect the tax imposed by this section from the consumer on all sales.
3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.

²⁴ **SECTION 2. AMENDMENT.** Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. Tax imposed - Exemptions.

1. An excise tax of ~~seventeen~~ twenty cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet

²⁴ Section 57-43.2-02 was also amended by section 12 of House Bill No. 1311, chapter 498.

[3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.

2. The tax attaches at the time of sale, delivery, or transfer of title of ~~such~~ the special fuel to a special fuel user or unlicensed dealer. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter.
3. Except as prohibited by section 57-43.1-09 the tax is refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-43.1 relating to the refund of motor fuel taxes apply to the tax imposed by this chapter, provided that the amount refunded for any special fuel does not include the amount of tax imposed by section 57-43.2-03 on the sale of that fuel.

SECTION 3. REPEAL. Sections 57-43.1-02.1 and 57-43.2-02.1 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys in the state highway tax distribution fund in the state treasury the entire state's share of revenue from the additional tax imposed by sections 1 and 2 of this Act, but not exceeding \$12,200,000, or so much of the sum as may be necessary, to the department of transportation for highway purposes for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. Sections 1, 2, and 3 of this Act are effective for sales or delivery of motor vehicle or special fuels after June 30, 1997. Sections 1 and 2 of this Act are effective through December 31, 1999, and are thereafter ineffective.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 500

HOUSE BILL NO. 1286

(Representatives Brown, Rennerfeldt, Schmidt)
(Senator Kringstad)

FUEL TAX REFUND ASSIGNMENTS

AN ACT to amend and reenact section 57-43.1-03.1 of the North Dakota Century Code, relating to assignment of motor vehicle fuel tax refunds; to repeal section 57-43.1-12 of the North Dakota Century Code, relating to assignment of motor vehicle fuel tax refunds; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵ **SECTION 1. AMENDMENT.** Section 57-43.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective until December 31, 1999) Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state purpose on which the motor vehicle fuel tax has been paid; must be reimbursed or repaid within the time provided in this chapter; the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter.~~ The amount of the tax refund ~~provided for in~~ under this section must be reduced by four cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund. Those persons who have a valid tax assignment permit issued by the commissioner under ~~section 57-43.1-11~~ must be charged four cents per gallon [3.79 liters] by the dealer and the four cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

(Effective January 1, 2000) Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state purpose on which the motor vehicle fuel tax has been paid; must be reimbursed or repaid within the time provided in this chapter; the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter.~~ The amount of the tax refund ~~provided for in~~ under this section must be reduced by two cents per gallon [3.79 liters] except for those fuels

²⁵ Section 57-43.1-03.1 was also amended by section 3 of House Bill No. 1311, chapter 498, and section 16 of Senate Bill No. 2019, chapter 48.

used in aircraft or with respect to refunds claimed by aircraft fuel users, and two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. ~~Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.~~

SECTION 2. REPEAL. Section 57-43.1-12 of the North Dakota Century Code is repealed.

SECTION 3. EFFECTIVE DATE. This Act is effective for refund claims for motor vehicle fuel tax purchases made after March 31, 1997.

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

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 501

SENATE BILL NO. 2155

(Senators Urlacher, Goetz)
(Representatives Skarphol, Wardner)

WELL PRODUCTION REPORT FILING

AN ACT to amend and reenact subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code, relating to the filing of well production reports by electronic media and waiver of the requirement to file producer's reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶ **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code are amended and reenacted as follows:

1. The tax herein provided for must be paid to the commissioner and the person paying the tax shall file with the commissioner at the time the tax is required to be paid, a statement, under oath, on forms prescribed by the commissioner. The commissioner may require a purchaser to file the statement or report by electronic data interchange or other electronic media.
2. Any person engaged in the production, within this state, of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement under oath upon forms prescribed by the commissioner. The commissioner may waive the requirement that a producer file a well production report. A waiver by the commissioner of the requirement to file a well production report does not release the producer from any obligation to remit the tax under this chapter. A waiver does not release the producer from any duty or obligation under section 57-51-07 to maintain production records for inspection by the commissioner.

Approved March 6, 1997
Filed March 6, 1997

²⁶ Section 57-51-06 was also amended by section 8 of Senate Bill No. 2071, chapter 54.

CHAPTER 502

SENATE BILL NO. 2156

(Senators Urlacher, Goetz)
(Representatives Skarphol, Wardner)

OIL AND GAS RETURN AUDIT PERIOD

AN ACT to amend and reenact section 57-51-09 of the North Dakota Century Code, relating to the time allowed for assessment of gross production and oil extraction tax and the audit of returns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-09 of the North Dakota Century Code is amended and reenacted as follows:

57-51-09. Commissioner shall compute tax on incorrect returns.

1. The commissioner ~~has the power and authority to~~ may ascertain and determine whether ~~or not any a~~ return ~~herein~~ required to be filed with the commissioner is a true and correct return of the gross products, and of the value thereof, of that person; ~~and if.~~ If any person has made an untrue or incorrect return of the gross production or value thereof, as hereinbefore required, or has failed or refused to make a return, the commissioner shall under rules ~~and regulations prescribed~~ adopted by the commissioner, ascertain the correct amount of either, and compute the tax.
2. For taxable periods beginning before January 1, 1991, the tax commissioner has six years after the due date of the original return or six years after the original return is filed, whichever period expires later, to assess additional tax found due. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the time to assess is five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the time to assess is four years. Effective for taxable periods beginning after December 31, 1994, the time to assess is three years after the due date of the original return or three years after the original return is filed, whichever period expires later. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, any additional tax determined to be due may be assessed any time within six years after the due date of the return or six years after the return was filed, whichever period expired later.
3. If a taxpayer files an amended return, the tax commissioner has two years after the return is filed to audit the return and assess any additional tax attributable to the changes or corrections even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this section do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this section.

4. For periods in which the tax commissioner has waived the requirement that a producer file a well production report required under section 57-51-06, the tax commissioner has three years after the due date of the purchaser's return or three years after the purchaser's return is filed, whichever period expires later, to assess the producer for additional tax found due. However, if there is a change in tax liability on the purchaser's return by an amount in excess of twenty-five percent of the amount of tax liability reported on a purchaser's return, any additional tax determined to be due may be assessed from the producer any time within six years after the due date of the purchaser's return or six years after the purchaser's return was filed, whichever period expires later.
5. Any person who consents to an extension of time for assessment of tax must be presumed to have consented to a similar extension for refund.

Approved March 6, 1997

Filed March 6, 1997

CHAPTER 503

HOUSE BILL NO. 1256

(Representative Wardner)

(Senator Urlacher)

OIL AND GAS TAXES AND LIENS

AN ACT to amend and reenact section 57-51-11 of the North Dakota Century Code, relating to oil and gas gross production and oil extraction tax, liens, penalty, and interest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-11 of the North Dakota Century Code is amended and reenacted as follows:

57-51-11. Lien for tax - Preservation of lien - Satisfaction of lien.

1. The tax herein referred to, penalty, and interest provided for in this chapter is, at all times, and constitutes a first and paramount lien against the purchaser's or producer's property as the case may be, both real and personal; and the. The provisions hereof, of this chapter making the purchaser liable to pay such the tax; and the provisions requiring the producer to pay the royalty owner's tax, in no way releases do not release the producer or purchaser from that liability to pay same, in all cases where such. If the tax, penalty, and interest is not paid, and it may be recovered at the suit of the state, upon relation to the commissioner, in any court of competent jurisdiction of the county where any such property, assets, and effects are located.
2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in this state, prior to the commissioner filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien. The commissioner shall index in the central notice system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. of the first day following the indexing of the notice. A notice of lien filed by the commissioner with a register of deeds before the effective date of this Act, may be indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

3. Upon the payment of tax, penalty, and interest, if applicable, or a penalty assessed under section 57-51-06, as to which the commissioner has indexed a notice in the central notice system, the commissioner shall index a satisfaction of the lien in the central notice system.
4. The commissioner is exempt from the payment of the fees otherwise provided for by law for the indexing of the lien or satisfaction.

Approved March 26, 1997

Filed March 27, 1997

CHAPTER 504

SENATE BILL NO. 2371

(Senators Kinnoin, Urlacher, Yockim)
(Representatives Nichols, Rennerfeldt, Skarphol)

TRIBAL LANDS OIL TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax exemption for initial production from wells on tribal trust lands; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51.1-03 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

- a. The well is located within the boundaries of an Indian reservation;
- b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
- c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on the effective date of this Act.

SECTION 2. EFFECTIVE DATE. This Act is effective for production from wells drilled and completed after July 31, 1997.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 505

SENATE BILL NO. 2366 (Senator Goetz)

OIL TAX TRUST FUND

AN ACT to provide for deposit of certain oil extraction and oil and gas gross production tax excess revenues into a permanent oil tax trust fund and deposit of interest earned on the fund to the general fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Permanent oil tax trust fund - Deposits - Interest - Adjustment of distribution formula. At the end of any biennium beginning after June 30, 1997, all revenue deposited in the general fund during that biennium and derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds sixty-two million dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. At the end of the 1995-97 biennium all revenue deposited in the general fund during that biennium and derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds fifty-six million three hundred thousand dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. The state treasurer shall transfer interest earnings of the permanent oil tax trust fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a two-thirds vote of the members elected to each house of the legislative assembly.

If the distribution formulas under chapter 57-51 or 57-51.1 are amended effective after June 30, 1997, the director of the budget shall adjust the sixty-two million dollar amount in this section by the same percentage increase or decrease in the amount of revenue allocable to the general fund after the change in the allocation formula, and transfers to the permanent oil tax trust fund shall thereafter be made using that adjusted figure so that the dollar amount of the transfers to the permanent oil tax trust fund is not increased or decreased merely because of changes in the distribution formulas.

Notwithstanding section 54-27.2-02, the state treasurer shall make the transfers required by this section before calculating any general fund revenue balance available for transfer to the budget stabilization fund under chapter 54-27.2. In this section, "at the end of any biennium" has the same meaning as in section 54-27.2-02.

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

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 506

SENATE BILL NO. 2196

(Senators Goetz, O'Connell)
(Representatives Belter, Mahoney)

CARBON DIOXIDE COAL CONVERSION TAX EXEMPTION

AN ACT to amend and reenact subsection 7 of section 57-60-01 of the North Dakota Century Code, relating to the definition of gross receipts under the privilege tax on coal conversion facilities; to provide for retroactive application; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, but not including any revenue derived from transportation, transmission, distribution, or other events which occur after completion of the process of production of the products of the facility. For the purpose of computing the tax imposed by this chapter, "gross receipts" does not include ~~any~~:
 - a. Any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government ~~nor does it include any~~;
 - b. Any revenue derived from the sale of byproducts as herein defined to a maximum of ~~twenty~~ thirty-five percent of the gross receipts as defined in this subsection; or
 - c. Any revenue derived from the sale and transportation of carbon dioxide for use in the enhanced recovery of oil or natural gas.

SECTION 2. AMENDMENT. Subsection 7 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, but not including any revenue derived from transportation, transmission, distribution, or other events which occur after completion of the process of production of the products of the facility. For the purpose of computing the tax imposed by this chapter, "gross receipts" does not include ~~any~~:

- a. Any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government ~~not does it include any~~;
- b. Any revenue derived from the sale of byproducts as herein defined to a maximum of twenty percent of the gross receipts as defined in this subsection; or
- c. Any revenue derived from the sale and transportation of carbon dioxide for use in the enhanced recovery of oil or natural gas.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is retroactively effective to January 1, 1997, and is effective through December 31, 2000, and is thereafter ineffective. Section 2 of this Act is effective after December 31, 2000.

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

Approved March 21, 1997
Filed March 21, 1997