

HOUSE BILL NO. 1063

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-09.4 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.4. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments, are personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors ~~or~~, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be

1 in an amount equal to the estimated annual tobacco products tax liability of the
2 limited liability company.

3 **SECTION 2. AMENDMENT.** Section 57-38-60.2 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-38-60.2. Governor and manager liability.**

- 6 1. If a limited liability company is an employer and fails for any reason to file the
7 required returns or to pay the tax due, the governors ~~or~~, managers, or members of
8 a member-controlled limited liability company, jointly or severally, charged with the
9 responsibility of the preparation of ~~such~~ the returns and payments are personally
10 liable for such failure. The dissolution of a limited liability company does not
11 discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the
12 limited liability company to file a return or remit the tax due. The taxes, penalty,
13 and interest may be assessed and collected pursuant to the provisions of this
14 chapter.
- 15 2. If the governors ~~or~~, managers, or members elect not to be personally liable for the
16 failure to file the required returns or to pay the tax due, the limited liability company
17 must be required to make a cash deposit or post with the tax commissioner a bond
18 or undertaking executed by a surety company authorized to do business in this
19 state. The cash deposit, bond, or undertaking provided for in this section must be
20 in an amount equal to the estimated annual income tax withholding liability of the
21 limited liability company.

22 **SECTION 3. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code
23 is amended and reenacted as follows:

24 **57-39.2-15.2. Governor and manager liability.**

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

1 file a return or remit the tax due. The taxes, penalty, and interest may be assessed
2 and collected under the provisions of this chapter.

- 3 2. If the governors ~~or~~, managers, or members elect not to be personally liable for the
4 failure to file the required returns or to pay the tax due, the limited liability company
5 must be required to make a cash deposit or post with the tax commissioner a bond
6 or undertaking executed by a surety company authorized to do business in this
7 state. The cash deposit, bond, or undertaking provided for in this section must be
8 in an amount equal to the estimated annual sales tax liability of the limited liability
9 company.

10 **SECTION 4. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code
11 is amended and reenacted as follows:

12 **57-40.2-15.1. Corporate officer liability.**

- 13 1. If a corporation fails for any reason to file the required returns or to pay the tax due
14 under this chapter, the president, vice president, secretary, or treasurer of the
15 corporation, jointly or severally, having control or supervision of, or charged with
16 the responsibility for making the returns and payments are personally liable for the
17 failure. The dissolution of a corporation does not discharge an officer's liability for
18 a prior failure of the corporation to make a return or remit the tax due. The sum
19 due for the liability may be assessed and collected pursuant to the provisions of
20 this chapter for the assessment and collection of other liabilities.
- 21 2. If the corporate officers, governors, ~~or~~ managers, or members of a
22 member-controlled limited liability company elect not to be personally liable for the
23 failure to file the required returns or to pay the tax due, the corporation or limited
24 liability company must be required to make a cash deposit or post with the tax
25 commissioner a bond or undertaking executed by a surety company authorized to
26 do business in this state. The cash deposit, bond, or undertaking provided for in
27 this section must be in an amount equal to the estimated annual use tax liability of
28 the corporation or limited liability company.

29 **SECTION 5. AMENDMENT.** Section 57-40.2-15.2 of the North Dakota Century Code
30 is amended and reenacted as follows:

1 **57-40.2-15.2. Governor and manager liability.** If a limited liability company fails for
2 any reason to file the required returns or to pay the taxes due under this chapter, the governor
3 ~~or~~, manager, or member of a member-controlled limited liability company, jointly or severally
4 charged with the responsibility of supervising the preparation of the returns and payments, is
5 personally liable for the failure. The dissolution of a limited liability company does not discharge
6 a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability
7 company to file a return or remit the tax due. The sum due for such a liability may be assessed
8 and collected under the provisions of this chapter.

9 **SECTION 6. AMENDMENT.** Section 57-43.1-17.3 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **57-43.1-17.3. Governor and manager liability.**

- 12 1. If a limited liability company holding a license issued under this chapter fails for any
13 reason to file the required returns or to pay the taxes due under this chapter, the
14 governors ~~or~~, managers, or members of a member-controlled limited liability
15 company, jointly or severally, charged with the responsibility of supervising the
16 preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the
17 failure. The dissolution of a limited liability company does not discharge a
18 governor's ~~or~~, manager's, or member's liability for a prior failure of the limited
19 liability company to file a return or remit the tax due. The taxes, penalty, and
20 interest may be assessed and collected under the provisions of this chapter.
- 21 2. If the governors ~~or~~, managers, or members elect not to be personally liable for the
22 failure to file the required returns or to pay the tax due, the limited liability company
23 must be required to make a cash deposit or post with the tax commissioner a bond
24 or undertaking executed by a surety company authorized to do business in this
25 state. The cash deposit, bond, or undertaking provided for in this section must be
26 in an amount equal to the estimated annual motor vehicle fuel tax liability of the
27 limited liability company.

28 **SECTION 7. AMENDMENT.** Section 57-43.2-16.2 of the North Dakota Century Code
29 is amended and reenacted as follows:

30 **57-43.2-16.2. Governor and manager liability.**

- 1 1. If a limited liability company holding a license issued under this chapter fails for any
2 reason to file the required returns or to pay the taxes due under this chapter, the
3 governors ~~or~~, managers, or members of a member-controlled limited liability
4 company, jointly or severally, charged with the responsibility of supervising the
5 preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the
6 failure. The dissolution of a limited liability company does not discharge a
7 governor's ~~or~~, manager's, or member's liability for a prior failure of the limited
8 liability company to file a return or remit the tax due. The taxes, penalty, and
9 interest may be assessed and collected pursuant to the provisions of this chapter.
- 10 2. If the governors ~~or~~, managers, or members elect not to be personally liable for the
11 failure to file the required returns or to pay the tax due, the limited liability company
12 must be required to make a cash deposit or post with the tax commissioner a bond
13 or undertaking executed by a surety company authorized to do business in this
14 state. The cash deposit, bond, or undertaking provided for in this section must be
15 in an amount equal to the estimated annual special fuel tax liability of the limited
16 liability company.

17 **SECTION 8. AMENDMENT.** Section 57-43.3-21 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-43.3-21. Governor and manager liability.** If a limited liability company holding a
20 license issued under this chapter fails for any reason to file the required returns or to pay the
21 taxes due under this chapter, the governor ~~or~~, manager, or member of a member-controlled
22 limited liability company, jointly or severally, charged with the responsibility of supervising the
23 preparation of ~~such~~ the returns and payments, is personally liable for ~~such~~ the failure. The
24 dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or
25 member's liability for a prior failure of the limited liability company to file a return or remit the tax
26 due. The taxes, penalty, and interest may be assessed and collected pursuant to the
27 provisions of this chapter.

28 **SECTION 9. EFFECTIVE DATE.** This Act is effective for taxable periods beginning
29 after December 31, 2000.