

Fifty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2314

Introduced by

Senators Schobinger, Grindberg, Mutch, Tollefson

Representatives Ruby, Thoreson

1 A BILL for an Act to amend and reenact subsection 1 of section 6-09.8-01, subsection 1 of
2 section 12.1-32-09, sections 25-04-16, 27-17-06, and 37-27-06, subsection 8 of section
3 40-63-01, sections 40-63-06 and 40-63-07, subsection 1 of section 50-06.3-06, subsection 2 of
4 section 52-06-30, paragraph 3 of subdivision b of subsection 15 of section 57-02-08, sections
5 57-35.3-01, 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-08.2, 57-39.2-26.1,
6 57-40.2-01, 57-40.2-02.1, 57-40.2-04, 57-40.2-05, 57-40.2-07, 57-40.2-09, 57-40.3-02,
7 57-40.5-02, and 65-04-26 of the North Dakota Century Code, relating to the rate and taxable or
8 exempt status of sales under sales, use, motor vehicle excise, and aircraft excise taxes; to
9 repeal chapter 10-30.1, sections 10-33-124, 40-57.1-04, 40-63-04, and 40-63-09, chapters
10 52-02.1, 57-38, 57-38.1, 57-38.3, 57-38.4, 57-38.5, and 57-38.6, and sections 57-39.2-03.6,
11 57-39.2-04.2, 57-39.2-04.3, 57-39.2-04.4, 57-39.2-06, 57-39.2-12.1, 57-39.2-28, 57-40.2-04.2,
12 57-40.2-07.1, and 57-59-02 of the North Dakota Century Code, relating to elimination of
13 individual and corporate income taxes and the taxable or exempt status of sales under the
14 sales, use, motor vehicle excise, and aircraft excise taxes; and to provide an effective date.

15 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

16 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 1. "Beginning farmer" means a person who ~~qualifies as a beginning farmer under~~
19 ~~subsection 2 of section 57-38-67~~ is:
20 a. A resident of this state;
21 b. Receiving more than half of that person's gross annual income from farming,
22 unless the person initially commences farming during that tax year;
23 c. Intending to use any farmland to be purchased or rented for agricultural
24 purposes;

- 1 d. Except for tax-exempt transactions entered into prior to July 1, 1985, having
2 adequate training by education in the type of farming operation which the
3 person wishes to begin on the purchased or rented land referred to in
4 subdivision c through satisfactory participation in the adult farm management
5 education program of the state board for vocational and technical education or
6 an equivalent program approved by the agriculture commissioner; and
7 e. Having, including the net worth of any dependents and spouse, a net worth of
8 less than one hundred thousand dollars, not including the value of their equity
9 in their principal residence, the value of one personal or family motor vehicle,
10 and the value of their household goods, including furniture, appliances,
11 musical instruments, clothing, and other personal belongings.

12 **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-09 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 1. A court may sentence a convicted offender to an extended sentence as a
15 dangerous special offender or a habitual offender in accordance with this section
16 upon a finding of any one or more of the following:
- 17 a. The convicted offender is a dangerous, mentally abnormal person whose
18 conduct has been characterized by persistent aggressive behavior and the
19 behavior makes the offender a serious danger to other persons.
- 20 b. The convicted offender is a professional criminal who has substantial income
21 or resources derived from criminal activity.
- 22 c. The convicted offender is a habitual offender. The court may not make such a
23 finding unless the offender is an adult and has previously been convicted in
24 any state or states or by the United States of two felonies of class C or above
25 committed at different times when the offender was an adult. For the
26 purposes of this subdivision, a felony conviction in another state or under the
27 laws of the United States is considered a felony of class C or above if it is
28 punishable by a maximum term of imprisonment of five years or more.
- 29 d. The offender was convicted of an offense that seriously endangered the life of
30 another person and the offender had previously been convicted of a similar
31 offense.

e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income ~~under chapter 57-38~~ for federal income tax purposes.

SECTION 3. AMENDMENT. Section 25-04-16 of the North Dakota Century Code is amended and reenacted as follows:

25-04-16. Waiver of payment - Use of income tax data - Confidentiality - Definition.

1. Except with respect to services provided and duties effectuated for persons other than residents of the developmental center who are developmentally disabled, and except with respect to services provided and duties effectuated under subsection 2 of section 25-04-02, the resident, former resident, parent of a resident or former resident under age eighteen, personal representative, or guardian may make application to the supervising department to pay less than the costs or none of the costs incurred by the state for the resident's care and treatment at the developmental center at westwood park, Grafton. An application from a resident, former resident, personal representative, or guardian must be accompanied by proof of the resident's or the estate of the resident's inability to pay. An application from a parent of a resident or former resident must be accompanied by proof that

1 the parent has applied for or cooperated fully in an application for medical and
2 medically related services under entitlement from the federal government, medical
3 or hospital insurance contracts, workers' compensation, or medical care and
4 disability programs for provision of services to the resident, and has assured the
5 contribution of those services, compensation, and contract and program benefits to
6 meet the cost of care provided to the resident by the developmental center at
7 westwood park, Grafton. A waiver must be granted upon receipt of an application
8 from such a parent, which is complete and supported by the required proofs and is
9 effective for so long as the parent continues to apply for or cooperate fully in
10 applications for services, compensation, and contract and program benefits, and
11 continues to assure the contribution of those services, compensation, and benefits
12 to meet the costs of care. A waiver, once granted with respect to a resident under
13 age eighteen, extinguishes any debt that would otherwise be owed by the resident,
14 the resident's parents, or the resident's estate with respect to care and treatment
15 furnished during times the waiver is effective.

- 16 2. Upon receipt of such application, the supervising department shall direct the county
17 social service board of the county from which the patient was admitted to
18 determine whether the application is complete and supported by the required
19 proofs. The supervising department shall approve, reject, or amend the
20 determination made by the county social service board. The determination made
21 by the supervising department may be appealed to the district court of the county
22 of residence of the patient.

- 23 3. Any patient, former patient, parent of a patient or former patient, guardian, or
24 personal representative who seeks relief from the payment of the cost of care and
25 treatment by filing an application for relief of payment shall do so with the
26 understanding that the supervising department may, in its discretion, and to its
27 satisfaction, verify any statement made in such application for relief of payment by
28 a request for information from financial institutions, including commercial banks,
29 and from other sources likely to possess verifying information. ~~Notwithstanding the~~
30 ~~provisions of section 57-38-57, this verification~~ Verification may include a review of
31 such applicant's ~~state income tax return or any other~~ document or report submitted

to or held by any office or department of the state of North Dakota or any of its political subdivisions.

4. ~~When any official or employee of the developmental center who, pursuant to subsection 1, obtains income tax information or other tax information from the state tax commissioner the confidentiality of which is protected by law, such official or employee may not divulge such information except to the extent necessary for the administration of this chapter or when otherwise directed by judicial order or when otherwise provided by law.~~

5. As used in this chapter, "supervising department" means the department of human services.

SECTION 4. AMENDMENT. Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

27-17-06. Immediate withdrawal of present active judges from judges retirement fund. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw his previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. ~~If a~~ A judge who selects this option, ~~he~~ is entitled to receive the combined total of the following sums:

1. The entire amount of his previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
2. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus
3. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during his years of service prior to selecting the option provided by this section. The figure applied pursuant to this subsection must be compounded annually.

~~The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38, and may be treated as an additional adjustment reducing the~~

~~amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

SECTION 5. AMENDMENT. Section 37-27-06 of the North Dakota Century Code is amended and reenacted as follows:

37-27-06. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted. Payments under this chapter are exempt from all state and local taxes, ~~including an income tax liability determined under section 57-38-30.3,~~ and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions except as provided in section 37-27-05.

SECTION 6. AMENDMENT. Subsection 8 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Taxpayer" means an individual, corporation, financial institution, or trust subject to the taxes imposed by chapter 57-35.3 or ~~57-38~~ federal income taxes and includes a partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity.

SECTION 7. AMENDMENT. Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

40-63-06. Historic preservation and renovation tax credit. A credit against state tax liability as determined under ~~sections section 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3~~ section 57-35.3-03 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

SECTION 8. AMENDMENT. Section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

40-63-07. Renaissance fund organization - Exemption from taxation.

- 1 1. Each city with a designated renaissance zone may establish a renaissance fund
2 corporation, if the detailed plan for such an organization is clearly established in
3 the development plan and approved with the plan, or is submitted at a later date to
4 the department of commerce division of community services for approval after the
5 designation of a renaissance zone.
- 6 2. The purpose of a renaissance fund organization is solely to raise funds to be used
7 to make investments in zone projects and to make investments in businesses
8 within a city's zone. A renaissance fund organization may provide financing to
9 projects undertaken by individuals, partnerships, limited partnerships, limited
10 liability companies, trusts, corporations, nonprofit organizations, and public entities.
11 The financing may include any combination of equity investments, loans,
12 guarantees, and commitments for financing. The amount of financing is not limited
13 by this chapter.
- 14 3. A renaissance fund organization that is established by a city may provide financing
15 to businesses within the city's zone and may provide financing to zone-approved
16 projects throughout the state.
- 17 4. A renaissance fund organization is exempt from any tax imposed by chapter
18 57-35.3 or 57-38. ~~An exemption under this section may be passed through to any~~
19 ~~shareholder, partner, and owner if the renaissance fund organization is a~~
20 ~~passthrough entity for tax purposes. A corporation or financial institution entitled to~~
21 the exemption provided by this subsection must file required returns and report
22 income to the tax commissioner as required by the provisions of those chapters as
23 if the exemption did not exist. ~~If an employer, this subsection does not exempt a~~
24 ~~renaissance fund organization from complying with the income tax withholding~~
25 ~~laws.~~
- 26 5. A credit against state tax liability as determined under section 57-35.3-03;
27 ~~57-38-29, 57-38-30, or 57-38-30.3~~ is allowed for investments in a renaissance fund
28 organization. The amount of the credit is fifty percent of the amount invested in the
29 renaissance fund organization during the taxable year. Any amount of credit which
30 exceeds a taxpayer's tax liability for the taxable year may be carried forward for up
31 to five taxable years after the taxable year in which the investment was made.

- 1 6. The total amount of credits allowed under this section may not exceed, in the
2 aggregate, an initial limit of two million five hundred thousand dollars. Upon
3 exhaustion of this initial limit, an additional one million dollars in credits is available
4 for investments in renaissance fund organizations for taxable years beginning after
5 December 31, 2000, for investments permitted under this chapter if more than
6 sixty-five percent of the organization's net investments received have been
7 invested as permitted under this chapter or the organization is established after the
8 exhaustion of the initial limit. Upon exhaustion of the initial limit, an additional one
9 million five hundred thousand dollars in credits is available for investments in
10 renaissance fund organizations for taxable years beginning after December 31,
11 2002, for investments permitted under this chapter if more than sixty-five percent of
12 the qualifying organization's net investments received have been invested as
13 permitted under this chapter or the organization is established after the exhaustion
14 of the initial limit.
- 15 7. Income to a renaissance fund organization derived from the sale or refinancing of
16 zone properties financed wholly or in part by the organization may be ~~dispersed~~
17 disbursed as annual dividends equal to the income, minus ten percent, derived
18 from all sources and proportional to the investment. In the event of a loss to the
19 fund resulting in a temporary diminishment of the fund below the original principal
20 amount, no annual dividend may be paid until the fund is restored.
- 21 8. Income to a renaissance fund organization derived from interest or the temporary
22 investment of its funds in certificates of deposit, bonds, treasury bills, or securities
23 may be used for administration.
- 24 9. If an investment in a renaissance fund organization which is the basis for a credit
25 under this section is redeemed by the investor within ten years of the date it is
26 purchased, the credit provided by this section for the investment must be
27 disallowed, and any credit previously claimed and allowed with respect to the
28 investment must be paid to the tax commissioner with the appropriate return of the
29 taxpayer covering the period in which the redemption occurred. When payments
30 are made to the tax commissioner under this section, the amount collected must be
31 handled in the same manner as if no credit had been allowed.

10. A renaissance fund organization shall secure an annual audit of its financial records, prepared by an independent certified public accounting firm in accordance with generally accepted auditing standards. The audit report must include a statement of the percentage of annual net investments received by the organization after December 31, 2000, which have been invested by the organization in investments permitted under this chapter. If the audit report shows that less than fifty percent of such net investments have been so invested during the previous four years and the organization has been incorporated for four years or more, that organization may not accept any new investments until the governing body of the city in which the organization was established determines that good cause exists for the failure to reach that level of investment or until a subsequent audit report shows that fifty percent or more of such net investments have been so invested. A renaissance fund organization shall file a copy of each audit of its financial records under this subsection with the governing body of the city in which it was established, the department of commerce division of community services, and the tax commissioner. The department of commerce division of community services shall provide an annual report to the budget section of the legislative council showing the conclusions of audit reports filed under this subsection.
11. A renaissance fund organization may invest in any residential or commercial property involved in a zone project.

SECTION 9. AMENDMENT. Subsection 1 of section 50-06.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person liable for the expenses of care and treatment at the state hospital may make application to the department to pay less than the expenses charged. The application must be accompanied by proof of the applicant's inability to pay. Any person who seeks relief from the payment of expenses for services provided by the state hospital shall do so with the understanding that the department may verify any statement made in such application by a request for information from financial institutions, including commercial banks. ~~Notwithstanding the provisions of section 57-38-57, this verification~~ Verification may include a review of the applicant's state

~~income tax return or any other~~ document or report submitted to or held by any
office or department of the state of North Dakota; or any of its political subdivisions.

SECTION 10. AMENDMENT. Subsection 2 of section 52-06-30 of the North Dakota
Century Code is amended and reenacted as follows:

2. An individual filing a new claim for unemployment compensation benefits, at the
time of filing the claim, must be advised that:
 - a. Unemployment compensation is subject to federal income tax ~~and state~~
~~income tax~~;
 - b. Requirements exist pertaining to estimated federal ~~and state~~ tax payments;
 - c. The individual may elect to have federal income tax deducted and withheld
from the individual's payment of unemployment compensation benefits at the
amount specified in the federal Internal Revenue Code;
 - d. ~~The individual, having elected to have federal income tax withheld, may also~~
~~elect to have state income tax deducted and withheld from the individual's~~
~~payment of unemployment compensation at a rate determined by the tax~~
~~commissioner pursuant to section 57-38-59; and~~
 - e. The individual is permitted to change a previously elected withholding status.
Amounts deducted and withheld from unemployment compensation must
remain in the unemployment fund until transferred to the federal and state
taxing authority as payment of income tax. The bureau shall follow all
procedures specified by the United States department of labor, the federal
internal revenue service, and the tax commissioner pertaining to the
deducting and withholding of income tax. Amounts must be deducted and
withheld under this section only after amounts are deducted and withheld for
any overpayments of unemployment compensation, child support obligations,
or any other amounts required to be deducted and withheld under this
chapter.

SECTION 11. AMENDMENT. Paragraph 3 of subdivision b of subsection 15 of section
57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

(3) "Net income from farming activities" means taxable income from those activities as computed for federal 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.
- (c) Depreciation expenses from farming activities which have been deducted in computing taxable income.

SECTION 12. AMENDMENT. Section 57-35.3-01 of the North Dakota Century Code is amended and reenacted 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;

- 1 f. A corporation organized under the provisions of Public Law No. 63-6, § 25A
2 [38 Stat. 273; 12 U.S.C. 611 to 631];
- 3 g. An agency or branch of a foreign depository as defined in Public Law
4 No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
- 5 h. A production credit association organized under the Farm Credit Act of 1933
6 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which
7 held by the federal production credit corporation has been retired;
- 8 i. A corporation the voting stock of which is more than fifty percent owned,
9 directly or indirectly, by any person or business entity described in
10 subdivisions a through h other than an insurance company taxable under
11 section 26.1-03-17 or a corporation taxable under chapter 57-38;
- 12 j. A corporation or other business entity that derives more than fifty percent of
13 its total gross income for financial accounting purposes from finance leases.
14 For purposes of this subdivision, a "finance lease" means any lease
15 transaction that is the functional equivalent of an extension of credit and which
16 transfers substantially all of the benefits and risks incident to the ownership of
17 property. The phrase includes any "direct financing lease" or "leverage lease"
18 that meets the criteria of financial accounting standards board statement
19 no. 13, "accounting for leases", or any other lease that is accounted for as a
20 financing by a lessor under generally accepted accounting principles. For the
21 classification under this subdivision to apply:
- 22 (1) The average of the gross income in the current tax year and
23 immediately preceding two tax years must satisfy the more than fifty
24 percent requirement; and
- 25 (2) Gross income from incidental or occasional transactions must be
26 disregarded; or
- 27 k. Any other person or business entity, other than an insurance company taxable
28 under section 26.1-03-17, a real estate broker, a securities dealer, or a person
29 or entity taxable under chapter 57-38, which derives more than fifty percent of
30 its gross income from activities that a person described in subdivisions b
31 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.

Any reference in this chapter to a provision of chapter 57-38 or 57-38.1 incorporates by
reference into this chapter the applicable provisions of chapter 57-38 or 57-38.1 as they existed
on December 31, 2002.

SECTION 13. AMENDMENT. Section 57-39.2-01 of the North Dakota Century Code is
amended and reenacted as follows:

57-39.2-01. Definitions. The following words, terms, and phrases, when used in this
chapter, have the meaning ascribed to them in this section, unless the context clearly indicates
a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be
engaged in by the person with the object of gain, benefit or advantage, either direct
or indirect.
2. "Commissioner" means the tax commissioner of the state of North Dakota.
3. "Gross receipts" means the total amount of sales of retailers, valued in money,
whether received in money or otherwise. Provided, discounts for any purposes
allowed and taken on sales are not included, nor is the sale price of property

1 returned or services rejected by customers when the full sale price is refunded
2 either in cash or by credit. Provided, further, when tangible personal property is
3 taken in trade or in a series of trades as a credit or part payment of a retail sale
4 taxable under this chapter, if the tangible personal property traded in will be subject
5 to the sales tax imposed by this chapter when sold, will be subject to the motor
6 vehicle excise tax imposed by chapter 57-40.3, or if the tangible personal property
7 traded in is used farm machinery or used irrigation equipment, the credit or trade-in
8 value allowed by the retailer are not gross receipts. Provided, further, on all sales
9 of retailers, valued in money, when the sales are made under a conditional sales
10 contract, or under other forms of sale wherein the payment of the principal sum is
11 to be extended over a period longer than sixty days from the date of sale that only
12 the portion of the sale amount shall be accounted for, for the purpose of imposition
13 of tax imposed by this chapter, as has actually been received in cash by the retailer
14 during each quarterly period as defined herein. When a farm machine is
15 purchased as a replacement for machinery which was stolen or totally destroyed, a
16 credit or trade-in credit is allowed in an amount equal to the compensation received
17 for the loss from an insurance company. The purchaser shall provide the seller
18 with a notarized statement from the insurance company verifying that the original
19 farm machine is a total loss and indicating the amount of compensation. The
20 notarized statement must be retained by the seller to verify the amount of credit or
21 trade-in credit allowed. "Gross receipts" also means, with respect to the leasing or
22 renting of tangible personal property, the amount of consideration, valued in
23 money, whether received in money or otherwise, received from the leasing or
24 renting of only tangible personal property the transfer of title to which has not been
25 subjected to a retail sales tax in this state. For the purpose of this chapter, gross
26 receipts shall also include the total amount of sales of every clerk, auctioneer,
27 agent, or factor selling tangible personal property owned by any other retailer.

- 28 4. "Local governmental unit" means incorporated cities, counties, school districts, and
29 townships.

- 1 5. "Person" includes any individual, firm, partnership, joint venture, association,
2 corporation, limited liability company, estate, business trust, receiver, or any other
3 group or combination acting as a unit and the plural as well as the singular number.
- 4 6. "Relief agency" means the state, any county, city and county, city or district
5 thereof, or an agency engaged in actual relief work.
- 6 7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a
7 consumer or to any person for any purpose, other than for processing or for resale,
8 of tangible personal property, service, labor, or anything except real property for
9 which the purchaser pays the seller; the sale of steam, gas, and communication
10 service to retail consumers or users; the sale of vulcanizing, recapping, and
11 retreading services for tires; the furnishing of bingo cards; the ordering, selecting,
12 or aiding a customer to select any goods, wares, or merchandise from any price list
13 or catalog, which the customer might order, or be ordered for such customer to be
14 shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist
15 court accommodations, tickets, or admissions to any place of amusement, athletic
16 event, or place of entertainment including the playing of any machine for
17 amusement or entertainment in response to the use of a coin; sales at auction,
18 including sales of farm machinery or irrigation equipment whether or not the seller
19 is a retailer; and the sales of magazines and other periodicals. By the term
20 "processing" is meant any tangible personal property including containers which it
21 is intended, by means of fabrication, compounding, manufacturing, producing, or
22 germination shall become an integral or an ingredient or component part of other
23 tangible personal property intended to be sold ultimately at retail. The sale of an
24 item of tangible personal property for the purpose of incorporating it in or attaching
25 it to real property must be considered as a sale of tangible personal property for a
26 purpose other than for processing; the delivery of possession within the state of
27 North Dakota of tangible personal property by a wholesaler or distributor to an
28 out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a
29 person who by contract incorporates such tangible personal property into, or
30 attaches it to, real property situated in another state may not be considered a
31 taxable sale if such delivery of possession would not be treated as a taxable sale in

1 that state. As used in this subsection, the word "consumer" includes any hospital,
2 infirmary, sanatorium, nursing home, home for the aged, or similar institution that
3 furnishes services to any patient or occupant. The sale of an item of tangible
4 personal property to a purchaser who rents or leases it to a person under a finance
5 leasing agreement over the term of which the property will be substantially
6 consumed must be considered a retail sale if the purchaser elects to treat it as
7 such by paying or causing the transferor to pay the sales tax thereon to the
8 commissioner on or before the last day on which payments may be made without
9 penalty as provided in section 57-39.2-12.

- 10 8. "Retailer" includes every person engaged in business, including every person
11 engaged in the business of leasing or renting hotel, motel, or tourist court
12 accommodations, every person engaged in the business of selling services or
13 labor whether or not accompanied by the sale of tangible personal property, and
14 every person engaged in the business of selling tangible goods, wares, or
15 merchandise at retail, or furnishing of steam, gas, and communication services, or
16 tickets or admissions to places of amusement, entertainment, and athletic events
17 including the playing of any machine for amusement or entertainment in response
18 to the use of a coin, or magazines, or other periodicals; any organization licensed
19 by the attorney general to conduct bingo games pursuant to section 53-06.1-03;
20 and includes any person as herein defined who by contract or otherwise agrees to
21 furnish for a consideration a totally or partially finished product consisting in whole
22 or in part of tangible personal property subject to the sales tax herein provided, and
23 all items of tangible personal property entering into the performance of such
24 contract as a component part of the product agreed to be furnished under said
25 contract shall be subject to the sales tax herein provided and the sales tax thereon
26 shall be collected by the contractor from the person for whom the contract has
27 been performed in addition to the contract price agreed upon, and shall be remitted
28 to the state in the manner provided in this chapter; and shall include the state or
29 any municipality furnishing steam, gas, or communication service to members of
30 the public in its proprietary capacity. For the purpose of this chapter, retailer shall
31 also include every clerk, auctioneer, agent, or factor selling tangible personal

property owned, or services or labor performed, by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

9. "Sale" means any provision of services or labor for consideration and any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of newspapers and magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include ~~newspapers nor~~ subscriptions to magazines or periodicals or magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

10. "Services" or "labor" does not include provision of services or labor by an employee. "Services" includes cable television and telecommunications service, except charges for interstate telecommunications service.

11. "Used" with respect to farm machinery or irrigation equipment means:

- a. Tax under this chapter has been paid on a previous sale;
- b. Originally purchased outside this state and previously owned by a farmer; or
- c. Has been under lease or rental for three years or more.

SECTION 14. 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 2 ~~for sales of mobile homes used for residential or business purposes~~, and except as otherwise expressly

provided in this chapter, there is imposed a tax of ~~five~~ six 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 this state 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 new farm machinery and new 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 mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.~~

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail within this state of ~~mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of new~~ used farm machinery, farm machinery repair parts, and ~~new~~ used irrigation equipment used exclusively for agricultural purposes, including the leasing or

renting of ~~new farm~~ such machinery, parts, and ~~new irrigation~~ equipment used exclusively for agricultural purposes within this state to consumers or users.

3. 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~~ July 1, 2003, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

SECTION 15. AMENDMENT. Section 57-39.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.2. Sales tax on alcoholic beverages and tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof means and includes any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of seven percent on the gross receipts of retailers from all sales at retail of alcoholic beverages, cigarettes, cigars, and other tobacco products, which is in lieu of and not in addition to any other tax imposed by this chapter.

SECTION 16. AMENDMENT. Section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04. Exemptions. There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

1. Gross receipts from sales of tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of North Dakota.
2. Gross receipts from the sales, furnishing, or service of passenger transportation service and gross receipts from the sales, furnishing, or service of freight transportation service when provided by a common carrier and title to the transported tangible personal property has passed from the seller to the purchaser.
3. ~~Repealed by S.L. 1971, ch. 567, § 1.~~

- 1 4. ~~Gross receipts from sales of tickets, or admissions to state, county, district, and~~
2 ~~local fairs, and the gross receipts from educational, religious, or charitable~~
3 ~~activities, unless the gross receipts from the event exceed five thousand dollars~~
4 ~~and the activities are held in a publicly owned facility, when the entire amount of~~
5 ~~net receipts is expended for educational, religious, or charitable purposes and the~~
6 ~~gross receipts derived by any public school district if such receipts are expended in~~
7 ~~accordance with section 15.1-07-12. This exemption does not apply to regular~~
8 ~~retail sales that are in direct competition with retailers. Gross receipts from~~
9 ~~educational, religious, or charitable activities held in a publicly owned facility are~~
10 ~~exempt if the sponsoring organization is a nonprofit music or dramatic arts~~
11 ~~organization that is exempt from federal income taxation and is organized and~~
12 ~~operated for the presentation of live public performances of musical or theatrical~~
13 ~~works on a regular basis.~~
- 14 5. ~~Gross receipts from sales of textbooks to regularly enrolled students of a private or~~
15 ~~public school and from sales of textbooks, yearbooks, and school supplies~~
16 ~~purchased by a private nonprofit elementary school, secondary school, or any~~
17 ~~other nonprofit institution of higher learning conducting courses of study similar to~~
18 ~~those conducted by public schools in this state.~~
- 19 6. Gross receipts from all sales otherwise taxable under this chapter made to the
20 United States or to any state, including the state of North Dakota, or any of the
21 subdivisions, departments, agencies, or institutions of any state. A political
22 subdivision of another state is exempt under this subsection only if a sale to a
23 North Dakota political subdivision is treated as an exempt sale in that state. The
24 governmental units exempted by this subsection must be issued a certificate of
25 exemption by the commissioner and the certificate must be presented to each
26 retailer whenever this exemption is claimed.
- 27 ~~7.~~ 4. Gross receipts from the sale, by any drugstore, of drugs sold under a doctor's
28 prescription.
- 29 ~~8.~~ 5. Gross receipts from sales of adjuvants required by the chemical label for
30 application of a product warranty, commercial fertilizers, fungicides, seed
31 treatments, inoculants and fumigants, herbicides, and insecticides to agricultural or

commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

9- 6. Gross receipts from sales of oxygen sold to any person who purchases it upon the written order of a doctor for the person's own use for medical purposes.

40- 7. Gross receipts from the sale of gasoline, insurance premiums, gaming tickets, or any other article or product, except coal and as otherwise provided, upon which the state of North Dakota imposes a special tax.

44- 8. Gross receipts from the sale of feed which is fed to poultry or livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, milk, meat, fibers, or other products for human consumption and the gross receipts from the sale of feed purchased for the purpose of being fed to draft or fur-bearing animals. The word "feed" as used herein shall be construed to mean and include only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone, molasses, beet pulp, meat and bone scraps, meal, drugs to be used as part of a feed ration, and other generally recognized animal feeds. The term "feed" does not include drugs not used as part of a feed ration, medicants, disinfectants, wormers, tonics, and like items.

~~42- Gross receipts from a sale otherwise taxable under this chapter made to a person who is a resident of an adjoining state which does not impose or levy a retail sales tax under the following conditions:~~

~~a. The nonresident is in the state of North Dakota for the express purpose of making a purchase and not as a tourist.~~

~~b. The nonresident furnishes to the North Dakota retailer a certificate signed by the nonresident in a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless the certificate is furnished it must be presumed, until the contrary is shown, that the nonresident was not in the state of North Dakota for the express purpose of making a purchase.~~

~~c. The sale is fifty dollars or more.~~

- 1 ~~43.~~ 9. Gross receipts from the sale of any motor vehicle taxable under the provisions of
2 the motor vehicle excise tax laws of North Dakota. However, gross receipts from
3 the rental of any motor vehicle for fewer than thirty days are not exempt but taxes
4 imposed under home rule authority do not apply to such rentals.
- 5 ~~14. Repealed by S.L. 1969, ch. 528, § 24.~~
- 6 ~~45.~~ 10. Gross receipts from sales in which a contractor furnishes to the retailer a certificate
7 which includes the contractor's license number assigned to the contractor under
8 the provisions of chapter 43-07 and the use tax account number assigned to the
9 contractor by the commissioner pursuant to section 43-07-04. Such certificate
10 shall be in the form prescribed by the commissioner and shall be furnished by the
11 contractor to the retailer each calendar year prior to the making of any purchases
12 during such calendar year from the retailer without liability for paying the tax to the
13 retailer. Any contractor furnishing such certificate must report and remit the tax to
14 the commissioner on purchases taxable under this chapter made by the contractor
15 in the same manner as retailers remit such tax under this chapter.
- 16 ~~16. Gross receipts from the sale of newsprint and ink used in the publication of a~~
17 ~~newspaper.~~
- 18 ~~47.~~ 11. Gross receipts from the sale of all services furnished by any physician,
19 chiropractor, therapist, dentist, or other health care professional or any hospital,
20 infirmery, sanatorium, nursing home, basic care facility, or similar institution to any
21 patient or occupant.
- 22 ~~48. Repealed by S.L. 1973, ch. 480, § 6.~~
- 23 ~~49. Repealed by S.L. 1971, ch. 555, § 3.~~
- 24 ~~20.~~ 12. Gross receipts from the sale of food supplies to any public school, to any parochial
25 or private nonprofit school conducting courses of study similar to those conducted
26 by public schools in this state, or to any nonprofit organization, for use by the
27 public, parochial, or private school or nonprofit organization in sponsoring or
28 conducting a lunch program or programs in and for any such public, parochial, or
29 private nonprofit school.

~~21. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition if the sale of tickets or admissions to the exhibition of the film is subject to the sales tax imposed by this chapter.~~

~~22.~~ 13. Gross receipts from the leasing or renting of factory manufactured homes, including mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or tourist court accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.

~~23.~~ 14. Food purchased by a student under a boarding contract with a college, university, fraternity, or sorority.

~~24.~~ 15. Gross receipts from all sales when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health.

~~25. Gross receipts from the sale of Bibles, hymnals, textbooks, and prayerbooks sold to nonprofit religious organizations.~~

~~26.~~ 16. Gross receipts from sales of:

- a. Artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual.
- b. Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.
- c. Artificial teeth sold by a dentist.
- d. Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
- e. Crutches and wheelchairs for the use of disabled persons.

- 1 f. Equipment, including manual control units, van lifts, van door opening units,
2 and raised roofs, for attaching to or modifying a motor vehicle for use by a
3 permanently physically disabled person.
- 4 g. Equipment, including elevators, dumbwaiters, chair lifts, and bedroom or
5 bathroom lifts, whether or not sold for attaching to real property, for use by a
6 permanently physically disabled person in that person's principal dwelling.
- 7 h. Equipment, including manual control units, for attaching to or modifying
8 motorized implements of husbandry for use by a permanently physically
9 disabled person.
- 10 i. Devices and supplies designed or intended for ostomy care and management
11 to include collection devices, colostomy irrigation equipment and supplies,
12 skin barriers or skin protectors, and other supplies especially designed for use
13 of ostomates.
- 14 j. Supplies, equipment, and devices to be used exclusively by a person with
15 bladder dysfunction, including catheters, collection devices, incontinent pads
16 and pants, and other items used for the care and management of bladder
17 dysfunction.

18 ~~27. Gross receipts from the sale of electricity.~~

19 ~~28.~~ 17. Gross receipts from the leasing or renting of any tangible personal property upon
20 which a North Dakota sales tax or use tax has been paid or is payable.

21 ~~29.~~ 18. Gross receipts from all sales otherwise taxable under this chapter when made to
22 any nonprofit organization for meals, including the containers, packages, and
23 materials used for wrapping food items, for delivery to persons who are confined to
24 their homes by illness or incapacity, including ~~but not limited to~~ senior citizens and
25 disabled persons, for consumption by such shut-ins in their homes.

26 ~~30. Gross receipts from all sales of recreational travel trailers not exceeding eight feet~~
27 ~~[2.44 meters] in width or thirty-two feet [9.75 meters] in length which are designed~~
28 ~~to be principally used as temporary vacation dwellings when made to persons who~~
29 ~~are residents of other states which impose excise taxes upon registration of such~~
30 ~~recreational travel trailers.~~

31. ~~Gross receipts from the sale of money including all legal tender coins and
currency.~~

32. ~~Gross receipts from sales to nonprofit voluntary health associations which are
exempt from federal income tax under section 501(c)(3) of the United States
Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a
voluntary health association is an organization recognized by the internal revenue
service, the national health council, the state tax commissioner, and the North
Dakota secretary of state as a nonprofit organization that is exempt under section
501(c)(3) of the United States Internal Revenue Code and meets the following
requirements: It has been organized and operated exclusively in providing
services for the purposes of preventing and alleviating human illness and injury.
Methods used to obtain these goals would include education, research, community
service, and direct patient services, income being derived solely from private
donations with some exceptions of a minimal membership fee. Its members are
not limited to only individuals, who themselves are licensed or otherwise legally
authorized to render the same professional services as the organization. The
disbursement of funds within a volunteer health association is to be controlled by a
board of directors who work voluntarily and without pay.~~

33. ~~Gross receipts from all sales of water, except water sold in containers of less than
one gallon [3.79 liters] volume.~~

34. ~~Gross receipts from the sale of byproducts, arising from the processing of
agricultural products, for use in the manufacture or generation of steam or
electricity.~~

35. 19. Gross receipts from the sale of a mobile home which has been sold, bargained,
exchanged, given away, or transferred by the person who first acquired it from a
retailer in a sale at retail and upon which the North Dakota sales tax has previously
been imposed.

36. 20. Gross receipts from all sales of insulin in all its forms dispensed pursuant to the
direction of a licensed physician, all sales of glucose usable for treatment of insulin
reactions, all sales of urine and blood testing kits and materials, and all sales of

- 1 insulin measuring and injecting devices, including insulin syringes and hypodermic
2 needles.
- 3 ~~37. Gross receipts from the sale of any aircraft taxable under the provisions of chapter~~
4 ~~57-40.5.~~
- 5 ~~38.~~ 21. Gross receipts from all sales of air carrier transportation property subject to
6 ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07,
7 57-08, 57-13, and 57-32.
- 8 ~~39. Gross receipts from sales of tangible personal property consisting of flight~~
9 ~~simulators or mechanical or electronic equipment for use in association with a flight~~
10 ~~simulator.~~
- 11 ~~40.~~ 22. Gross receipts from sales of tickets or admissions to, or sales made at, an annual
12 church supper or bazaar held in a publicly owned facility. For purposes of this
13 subsection, "annual" means occurring not more than once in any calendar year.
- 14 ~~41. Gross receipts from the initial sale of beneficiated coal taxed under chapter 57-60.~~
- 15 ~~42. Gross receipts from electronic gaming devices licensed by the attorney general~~
16 ~~under chapter 53-06.1.~~
- 17 ~~43. Gross receipts from all sales made to a nonprofit medical research institute. For~~
18 ~~purposes of this subsection, "nonprofit medical research institute" means an~~
19 ~~institute that is a member of the association of independent research institutes,~~
20 ~~which is not a private foundation, and which is recognized by the internal revenue~~
21 ~~service as having exempt status under 26 U.S.C. 501(c)(3).~~
- 22 ~~44. Gross receipts from all sales of coal used in agricultural processing or sugar beet~~
23 ~~refining plants located within this state.~~
- 24 ~~45. Gross receipts from the sale or lease of used farm machinery, farm machinery~~
25 ~~repair parts, or used irrigation equipment used exclusively for agricultural~~
26 ~~purposes. For purposes of this subsection, "used" means:~~
- 27 ~~a. Tax under this chapter has been paid on a previous sale;~~
28 ~~b. Originally purchased outside this state and previously owned by a farmer; or~~
29 ~~c. Has been under lease or rental for three years or more.~~

30 **SECTION 17. AMENDMENT.** Section 57-39.2-08.2 of the North Dakota Century Code
31 is amended and reenacted as follows:

57-39.2-08.2. Sales tax to be added to purchase price and be a debt.

~~4. Except as otherwise provided in subsection 2, retailers~~ A retailer shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, ~~such the tax constitutes is~~ a part of ~~such the~~ price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:

\$0.01 through \$0.15	no tax
\$0.16 through \$0.20	1¢ tax
\$0.21 through \$0.40	2¢ tax
\$0.41 through \$0.60	3¢ tax
\$0.61 through \$0.80	4¢ tax
\$0.81 through \$1.00	5¢ tax

~~Each additional \$1.00 — 5¢ additional tax, or each additional 20¢ or fraction thereof over \$1.00 — 1¢ additional tax~~ adopted by the commissioner by rule.

~~2. On retail sales 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, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it three percent of such price or charge.~~

SECTION 18. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. (Effective through July 31, 2003) Allocation of revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in

effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. Ten and four-tenths percent of the amount must be allocated among counties with a population of one hundred thousand or more, based upon the proportion each such county's population bears to the total population of all such counties.
 - b. Eighteen percent of the amount must be allocated among counties with a population of forty thousand or more but fewer than one hundred thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - c. Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - d. Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - e. Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - f. Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer

than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.

- g. Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
- a. Fifty-three and nine-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more, based upon the proportion each such city's population bears to the total population of all such cities.
- b. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- c. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.

d. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.

e. Six and four-tenths percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.

f. Three and five-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.

g. Two and two-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

3. The population figures used for the allocation of revenues to counties and cities under subsections 1 and 2 must be the population figures determined by the 1990 federal decennial census unless an official special census was conducted between the 1990 federal decennial census and January 1, 1997.

(Effective after ~~July 31~~ June 30, 2003) Allocation of revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, equal to ~~forty~~ twenty-seven percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect

when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. Ten and four-tenths percent of the amount must be allocated among counties with a population of one hundred thousand or more, based upon the proportion each such county's population bears to the total population of all such counties.
 - b. Eighteen percent of the amount must be allocated among counties with a population of forty thousand or more but fewer than one hundred thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - c. Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - d. Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - e. Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - f. Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer

than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.

- g. Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

- 2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
 - a. Fifty-three and nine-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more, based upon the proportion each such city's population bears to the total population of all such cities.
 - b. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - c. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.

- 1 d. Thirteen and one-tenth percent of the amount must be allocated among cities
2 with a population of one thousand or more but fewer than five thousand,
3 based upon the proportion each such city's population bears to the total
4 population of all such cities.
- 5 e. Six and four-tenths percent of the amount must be allocated among cities with
6 a population of five hundred or more but fewer than one thousand, based
7 upon the proportion each such city's population bears to the total population
8 of all such cities.
- 9 f. Three and five-tenths percent of the amount must be allocated among cities
10 with a population of two hundred or more but fewer than five hundred, based
11 upon the proportion each such city's population bears to the total population
12 of all such cities.
- 13 g. Two and two-tenths percent of the amount must be allocated among cities
14 with a population of fewer than two hundred, based upon the proportion each
15 such city's population bears to the total population of all such cities.

16 A city shall deposit all revenues received under this subsection in the city general
17 fund. Each city shall reserve a portion of its allocation under this subsection for
18 further distribution to, or expenditure on behalf of, park districts and other taxing
19 districts within the city, excluding school districts. The share of the city allocation
20 under this subsection to be distributed to a park district must be equal to the
21 percentage of the city share of state aid distribution fund allocations that park
22 district received during calendar year 1996, up to a maximum of thirty percent. The
23 governing boards of the city and park district may agree to a different distribution.

24 **SECTION 19. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **57-40.2-01. Definitions.** In this chapter, unless the context and subject matter
27 otherwise require:

- 28 1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons",
29 "relief agency", "retail sale", "sale", each has the meaning given to it in section
30 57-39.2-01.

- 1 2. Property used in "processing", as that term is used in subsection 9, means any
2 tangible personal property including containers which it is intended, by means of
3 fabrication, compounding, manufacturing, producing, or germination, shall become
4 an integral or an ingredient or component part of other tangible personal property
5 intended to be sold ultimately at retail. The purchase of an item of tangible
6 personal property for the purpose of incorporating it in or attaching it to real
7 property must be considered as a purchase of tangible personal property for a
8 purpose other than for processing.
- 9 3. "Purchase" means to obtain services or labor of another, who is not an employee,
10 for consideration and any transfer of title or possession, exchange, or barter,
11 conditional or otherwise, in any manner or by any means whatsoever, for a
12 consideration. "Purchase" also means the severing of sand or gravel from the soil
13 of this state.
- 14 4. "Purchase price" means the total amount for which the service, labor, or tangible
15 personal property is sold, leased, or rented, valued in money, whether paid in
16 money or otherwise, but cash discounts and trade-ins allowed and taken on sales
17 shall not be included. "Purchase price" also means, in those instances when sand
18 or gravel is not sold at retail as tangible personal property by the person severing
19 the sand or gravel, the fair market value of the sand or gravel severed. If the sand
20 or gravel is not sold at retail by the person severing the sand or gravel, it must be
21 presumed until the contrary is shown by the commissioner or by the person
22 severing the sand or gravel that the fair market value is eight cents per ton of two
23 thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of
24 sand or gravel severed from the soil, it must be presumed for the purpose of this
25 chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and
26 one-half tons [1360.78 kilograms] of sand or gravel. When a farm machine is
27 purchased as a replacement for machinery which was stolen or totally destroyed, a
28 credit or trade-in credit is allowed in an amount equal to the compensation received
29 for the loss from the insurance company. The purchaser shall provide the seller
30 with a notarized statement from the insurance company verifying that the original
31 farm machine was a total loss and indicating the amount of compensation. The

notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

5. "Purchased at retail" includes, ~~but is not limited to:~~

- a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
- b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
- c. The purchase of newspapers and magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include ~~newspapers or~~ subscriptions to magazines or periodicals or magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
- d. The severance of sand or gravel from the soil.
- e. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
- f. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.

6. "Retailer" includes every person engaged in business, including every person engaged in the business of selling services or labor whether or not accompanied by the sale of tangible personal property and every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor,

1 employer, or other person under whom that person operates or from whom that
2 person obtains the tangible personal property sold by that person, whether that
3 person is making sales in that person's own behalf or in behalf of such dealer,
4 distributor, supervisor, employer, or other person, the commissioner may regard
5 that person as such agent, and may regard the dealer, distributor, supervisor,
6 employer, or other person as a retailer for the purposes of this chapter. A retailer
7 includes any organization licensed by the attorney general to conduct bingo games
8 pursuant to section 53-06.1-03. A retailer also includes every person who engages
9 in regular or systematic solicitation of a consumer market in this state by the
10 distribution of catalogs, periodicals, advertising flyers, or other advertising, or by
11 means of print, radio or television media, by mail, telegraphy, telephone, computer
12 data base, cable, optic, microwave, or other communication system.

13 7. "Retailer maintaining a place of business in this state", or any like term, means any
14 retailer having or maintaining within this state, directly or by a subsidiary, an office,
15 distribution house, sales house, warehouse, or other place of business, or any
16 agent operating within this state under the authority of the retailer or its subsidiary,
17 whether such place of business or agent is located in the state permanently or
18 temporarily, or whether or not such retailer or subsidiary is authorized to do
19 business within this state. It includes any organization licensed by the attorney
20 general to conduct bingo games pursuant to section 53-06.1-03. It also includes
21 every person who engages in regular or systematic solicitation of sales of tangible
22 personal property in this state by the distribution of catalogs, periodicals,
23 advertising flyers, or other advertising, by means of print, radio or television media,
24 or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or
25 other communication system for the purpose of effecting retail sales of tangible
26 personal property.

27 8. "Tangible personal property" means:

28 a. Tangible goods, including the furnishing of bingo cards, wares, and
29 merchandise, and gas, when furnished or delivered to consumers or users
30 within this state, and the sale of vulcanizing, recapping, and retreading
31 services for tires.

b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.

c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

d. The severance of sand or gravel from the soil.

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state. "Use" also means enjoying the benefits of services or labor.

SECTION 20. 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 2 ~~for purchases of mobile homes used for residential or business purposes~~, an excise tax is imposed on the storage, use, or consumption in this state of services, labor, or tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of ~~five~~ six percent of the purchase price of the services, labor, or 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~~ six percent of the fair market value of the services, labor, or 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 new used farm machinery, farm~~
~~machinery repair parts, and ~~new~~ used 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~~ 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 new~~~~
~~used farm machinery, farm machinery repair parts, and ~~new~~ used 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~~~~
~~~~new farm machinery and new irrigation equipment used exclusively for agricultural~~~~  
~~~~purposes~~ the machinery, repair parts, or equipment 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~~
~~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 December 31, 1994, if sales tax has not~~
~~been applied as provided by section 57-39.2-03.6.~~

4. In the case of a contract awarded for the construction of highways, roads, streets,
bridges, and buildings prior to ~~December 1, 1986~~ July 1, 2003, 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 21. AMENDMENT. Section 57-40.2-04 of the North Dakota Century Code is
amended and reenacted as follows:

57-40.2-04. Exemptions. This chapter hereby is declared to be an independent and
separate tax law but complementary to the retail sales tax laws of this state provided for by
chapter 57-39.2 and does not apply to:

1. Any tangible personal property or taxable service upon the sale of which the retail
sales tax imposed by chapter 57-39.2 has been collected by a retailer holding the
permit prescribed by section 57-39.2-14.

- 1 2. Tangible personal property brought into this state by a nonresident thereof for that
- 2 person's own storage, use, or consumption while temporarily within this state,
- 3 except that such property is not exempt if brought into this state for storage, use, or
- 4 consumption in the conduct of a trade, occupation, business, or profession.
- 5 3. Any motor vehicle either subject to or expressly exempted from the motor vehicle
- 6 excise taxes imposed by chapter 57-40.3.
- 7 4. Tangible personal property, except coal, upon which the state now imposes and
- 8 collects a special tax, whether in the form of license tax, stamp tax, or otherwise.
- 9 5. Railway cars and locomotives used in interstate commerce, and tangible personal
- 10 property which becomes a component part thereof.
- 11 6. ~~Newsprint and ink actually used in the publication of a newspaper.~~
- 12 7. ~~Repealed by S.L. 1981, ch. 582, § 3.~~
- 13 8. ~~Gross receipts from the leasing or renting of motion picture film to motion picture~~
- 14 ~~exhibitors for exhibition in this state if the sale of the tickets or admissions to the~~
- 15 ~~exhibition of the film is subject to the sales tax imposed by chapter 57-39.2.~~
- 16 9. Adjuvants required by the chemical label for application of a product warranty,
- 17 commercial fertilizers, fungicides, seed treatments, inoculants and fumigants,
- 18 herbicides and insecticides used by agricultural or commercial vegetable producers
- 19 and commercial applicators; chemicals used to preserve agricultural crops being
- 20 stored; and seeds, roots, bulbs, and small plants used by commercial users or
- 21 consumers for planting or transplanting for commercial vegetable gardens or
- 22 agricultural purposes.
- 23 10. ~~Gross receipts from the leasing, or renting, for residential housing, for periods of~~
- 24 ~~more than thirty consecutive days, of factory manufactured homes, including~~
- 25 ~~mobile homes, modular living units, or sectional homes, whether or not placed on a~~
- 26 ~~permanent foundation.~~
- 27 11. ~~Bibles, hymnals, textbooks, and prayerbooks used by nonprofit religious~~
- 28 ~~organizations.~~
- 29 42. 7. Gross receipts from sales of:
- 30 a. Artificial devices individually designed, constructed, or altered solely for the
- 31 use of a particular crippled person so as to become a brace, support,

supplement, correction, or substitute for the bodily structure including the extremities of the individual.

b. Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.

c. Artificial teeth sold by a dentist.

d. Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

e. Crutches and wheelchairs for the use of invalids and crippled persons.

f. Equipment, including manual control units, van lifts, van door opening units, and raised roofs, for attaching to or modifying a motor vehicle for use by a permanently physically disabled person.

g. Equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling.

h. Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by permanently physically disabled persons.

~~13. Purchases of electricity.~~

~~44.~~ 8. The leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid pursuant to the election of the purchaser pursuant to subsection 7 of section 57-39.2-01 or subsection 5 of section 57-40.2-01.

~~45.~~ 9. Any tangible personal property or service which would be exempt from the retail sales tax pursuant to an express exemption provided in chapter 57-39.2 if it were purchased in North Dakota.

~~16. Gross receipts from the sale of money including all legal tender coins and currency.~~

~~17. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a~~

~~voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.~~

~~18. Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.~~

~~19. Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota use tax has previously been imposed.~~

~~20. The donation by a retailer of tangible personal property to an organization exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].~~

~~21. 10.~~ Air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.

~~22. Tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.~~

~~23. Gross receipts from the initial sale of beneficiated coal.~~

~~24. Gross receipts from electronic games of chance licensed by the attorney general under chapter 53-06.1.~~

SECTION 22. AMENDMENT. Section 57-40.2-05 of the North Dakota Century Code is amended and reenacted as follows:

1 **57-40.2-05. Evidence of use.** For the purpose of the proper administration of this
2 chapter, and to prevent evasion of the tax, evidence that services, labor, or tangible personal
3 property was sold by any person for delivery or use in this state is prima facie evidence that
4 such services, labor, or tangible personal property was sold for use in this state.

5 **SECTION 23. AMENDMENT.** Section 57-40.2-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-40.2-07. Collection of use tax.** The tax imposed by this chapter must be collected
8 in the following manner:

- 9 1. Except as otherwise provided by section 57-39.2-14.1, every retailer maintaining a
10 place of business in this state and making sales of services, labor, or tangible
11 personal property for use in this state, not exempted under ~~the provisions of~~
12 ~~section 57-40.2-04 this chapter~~, before making any sales shall obtain a permit from
13 the commissioner to collect the tax imposed by this chapter, which permit is subject
14 to all of the requirements, conditions, and fees for its issuance that apply with
15 respect to a retail sales tax permit, and at the time of making such sales, whether
16 within or without the state, shall except as otherwise provided in subsection 1 of
17 section 57-40.2-06, collect the tax imposed by this chapter from the purchaser, and
18 give to the purchaser a receipt therefor in the manner and form prescribed by the
19 commissioner, if the commissioner, by ~~regulation~~ rule, shall require such receipt.
20 Each such retailer shall list with the commissioner the name and address of all of
21 the retailer's agents operating in this state and the location of each of the retailer's
22 distribution or sales houses or offices or other places of business in this state.
- 23 2. The commissioner, upon application, may authorize the collection of the tax
24 imposed by this chapter by any retailer not maintaining a place of business within
25 the state, who, to the satisfaction of the commissioner, furnishes adequate security
26 to ensure collections and payment of the tax. To such retailer must be issued a
27 permit to collect the tax in such manner and subject to such regulations and
28 agreements as the commissioner shall prescribe. When so authorized, such
29 retailer shall, except as otherwise provided in subsection 1 of section 57-40.2-06,
30 collect the tax upon all services, labor, or tangible property sold to the retailer's
31 knowledge for use within this state, as a retailer maintaining a place of business

1 within this state collects such tax. Such authority and permit may be canceled at
2 any time, if the commissioner considers the security inadequate, or believes that
3 such tax can be collected more effectively from the person using such property in
4 this state.

5 3. The tax required to be collected, and any tax collected, by any retailer under
6 subsections 1 and 2 constitutes a debt owed by the retailer to this state.

7 4. Except as provided in subsection 7, each retailer required or authorized, pursuant
8 to this section, to collect such tax shall pay the tax in quarterly installments on or
9 before the last day of the month next succeeding each quarterly period ending
10 March thirty-first, June thirtieth, September thirtieth, and December thirty-first of
11 each year. Except that when there is a sale of any business by any retailer
12 required or authorized, pursuant to this section, to collect such tax or when any
13 business is discontinued by such retailer, the tax becomes due immediately prior to
14 the sale or discontinuance of such business and, if not paid within fifteen days
15 thereafter, it becomes delinquent and subject to the penalties provided in section
16 57-40.2-15. Every retailer, at the time of making the return required by this
17 chapter, shall compute and pay to the commissioner the tax due for the preceding
18 period.

19 5. Except as provided in subsection 7, the retailer, on or before the last day of the
20 month following the close of the first quarterly period as defined in subsection 4,
21 and on or before the last day of the month following each subsequent quarterly
22 period of three months, shall make out a return for the preceding quarterly period in
23 such form and manner as may be prescribed by the commissioner, showing the
24 gross receipts of the retailer, the amount of the tax for the period covered by such
25 return, and such further information as the commissioner may require to enable the
26 commissioner correctly to compute and collect such tax, but the commissioner,
27 upon receipt of a proper showing by any retailer of the necessity therefor, may
28 grant such retailer an extension of time not to exceed thirty days for making such
29 return. If such extension is granted to any retailer, the time in which the retailer is
30 required to make payment must be extended for the same period. If the
31 commissioner deems it necessary or advisable in order to ensure the payment of

1 the tax, or if the commissioner deems it practical, the commissioner may require
2 returns and payment of the tax to be made for annual periods or other than
3 quarterly periods, the provisions of this chapter to the contrary notwithstanding. A
4 return must be signed by the taxpayer or the taxpayer's duly authorized agent and
5 must contain a written declaration that it is made and subscribed under penalties of
6 this chapter.

7 6. Except as provided in subsection 7, any person who uses any property upon which
8 the said tax has not been paid, either to the retailer or directly to the commissioner,
9 is liable therefor, and, on or before the last day of the month next succeeding each
10 quarterly period, shall pay the tax upon all such property used by that person
11 during the preceding quarterly period, in such manner and accompanied by such
12 returns as the commissioner shall prescribe.

13 7. If total sales and purchases subject to sales and use taxes for the preceding
14 calendar year equal or exceed three hundred thirty-three thousand dollars, the tax
15 levied by this chapter is payable monthly on or before the last day of the next
16 succeeding month, except for taxes collected during May of each odd-numbered
17 year, which are payable on or before the twenty-second day of June of that year.
18 The amount of monthly tax payable, manner of payment, filing of the return,
19 penalty, and waiver of penalty must be that prescribed in subsection 1 of section
20 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to
21 pay the tax imposed must be that prescribed in section 57-40.2-15. If a person is
22 required to file more than one return pursuant to this section, the monthly payment
23 requirement applies separately to each return. If total sales and purchases subject
24 to sales and use taxes for any succeeding calendar year decrease below three
25 hundred thirty-three thousand dollars, a person may return to quarterly
26 installments. In the event of a business reorganization in which the ownership of
27 the business organization remains in the same person or persons as prior to the
28 reorganization, the total sales subject to sales and use taxes for the preceding
29 calendar year for the business that was reorganized must be used to determine
30 whether the tax is payable monthly under this section.

1 8. The commissioner, when in the commissioner's judgment it is necessary and
2 advisable to do so in order to secure the collection of such tax, may require any
3 person subject to the tax to file with the commissioner a bond, issued by a surety
4 company authorized to transact business in this state and approved by the
5 insurance commissioner as to solvency and responsibility, in such amount as the
6 commissioner may fix, to secure the payment of any tax or penalties due or which
7 may become due from such person. In lieu of such bond, securities approved by
8 the commissioner, in an amount which the commissioner may prescribe, may be
9 deposited with the commissioner, and such securities must be kept in the custody
10 of the commissioner, and may be sold by the commissioner at public or private
11 sale, without notice to the depositor thereof, if it becomes necessary so to do in
12 order to recover any tax or penalties due. Upon such sale, the surplus, if any
13 remains above the amounts due, must be returned to the person who deposited
14 the securities.

15 9. The commissioner may adopt rules for adding such tax, or the average equivalent
16 thereof, by providing different methods applying uniformly to retailers within the
17 same general classification for the purpose of enabling such retailers to add and
18 collect, as far as practicable, the amount of such tax.

19 **SECTION 24. AMENDMENT.** Section 57-40.2-09 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-40.2-09. Records required.** Each retailer required or authorized to collect the tax
22 imposed by this chapter, and each person using in this state services, labor, or tangible
23 personal property purchased shall keep such records, receipts, invoices, and other pertinent
24 papers as the commissioner shall require and each such retailer or person shall preserve for a
25 period of three years and three months all invoices and other records of such services, labor, or
26 tangible personal property purchased for resale or for use. The commissioner, or any duly
27 authorized agent, may examine the books, papers, records, and equipment of any person who
28 sells services, labor, or tangible personal property or who is liable for such tax, and may
29 investigate the character of the business of any such person to verify the accuracy of any return
30 made, or if no return was made, to ascertain and determine the amount due. Any such books,

papers, and records must be made available within this state for such examination upon reasonable notice if the commissioner shall make an order to that effect.

SECTION 25. AMENDMENT. Section 57-40.3-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-02. Tax imposed. There is hereby imposed an excise tax at the rate of ~~five~~ six percent on the purchase price of any motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state.

SECTION 26. AMENDMENT. Section 57-40.5-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.5-02. Tax imposed. There is imposed an excise tax at the rate of ~~five~~ six percent on the purchase price of any aircraft purchased or acquired either in or outside of the state of North Dakota or on the lease or rental cost of any aircraft, less fuel, if rented dry and required to be registered under the laws of this state, except on aircraft or helicopters designed or modified for exclusive use as agricultural aircraft for aerial application of agricultural chemicals, insecticides, fungicides, growth regulators, pesticides, dusts, fertilizer, or other agricultural materials, the excise tax is imposed at the rate of three percent on the purchase price of any such aircraft purchased or acquired in or outside of this state, including the leasing or renting of such agricultural aircraft to users for agricultural purposes.

SECTION 27. AMENDMENT. Section 65-04-26 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26. Lien priority and filing - Remedies available in action for delinquent premiums - Exemptions restricted. The claim of the bureau in bankruptcy, probate, insolvency, and receivership proceedings for premiums in default and penalties is a lien with the same priority as prior income tax liens, except that this lien is not enforceable against a purchaser (including a lien creditor) of real estate or personal property for valuable consideration without notice. Notice of this lien must be filed in the place and manner provided for in section ~~57-38-49~~ 57-51-11. A certificate of the bureau that premiums and penalties are due for the period stated in the certificate is prima facie evidence of this fact. In any action brought for the recovery of premiums in default and penalties, the remedies of garnishment or attachment, or both, are available. No exemptions except absolute exemptions under section

1 28-22-02 may be allowed against any levy under execution pursuant to judgment recovered in
2 the action.

3 **SECTION 28. REPEAL.** Chapter 10-30.1, sections 10-33-124, 40-57.1-04, 40-63-04,
4 and 40-63-09, chapters 52-02.1, 57-38, 57-38.1, 57-38.3, 57-38.4, 57-38.5, and 57-38.6, and
5 sections 57-39.2-03.6, 57-39.2-04.2, 57-39.2-04.3, 57-39.2-04.4, 57-39.2-06, 57-39.2-12.1,
6 57-39.2-28, 57-40.2-04.2, 57-40.2-07.1, and 57-59-02 of the North Dakota Century Code are
7 repealed.

8 **SECTION 29. EFFECTIVE DATE.** This Act is effective for taxable years beginning
9 after December 31, 2002, except the amendment or repeal of any of the provisions of chapters
10 57-39.2, 57-40.2, 57-40.3, and 57-40.5 are effective for taxable events occurring after June 30,
11 2003.