

Fifty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2315

Introduced by

Senators Stenehjem, Holmberg, Wardner

Representatives Belter, Grosz, Porter

1 A BILL for an Act to amend and reenact subsection 3 of section 57-36-09, subsection 4 of
2 section 57-36-25, subsection 3 of section 57-36-26, subsection 1 of section 57-38-35.2,
3 subsection 1 of section 57-38-45, subsection 1 of section 57-39.2-11, subdivision a of
4 subsection 1 of section 57-39.2-18, subsection 1 of section 57-39.2-25, subdivision a of
5 subsection 1 of section 57-40.2-15, subsection 2 of section 57-40.3-11, subsection 2 of section
6 57-40.5-10, subsection 1 of section 57-43.2-15, section 57-51-10, and section 57-51-19 of the
7 North Dakota Century Code, relating to the rate of interest on underpayments of tobacco
8 products tax, financial institutions tax, income tax, sales and use tax, motor vehicle excise tax,
9 aviation excise tax, motor vehicle fuel tax, special fuels tax, oil and gas gross production tax,
10 and oil extraction tax, and the rate of interest on overpayments of income tax, sales and use
11 tax, and oil and gas gross production tax and oil extraction tax; and to provide an effective date.

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

13 **SECTION 1. AMENDMENT.** Subsection 3 of section 57-36-09 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 3. Any person failing to file any prescribed form or return or to pay any tax within the
16 time required or permitted by this section is subject to a penalty of five percent of
17 the amount of tax due or five dollars, whichever is greater, plus interest of
18 sixty-seven hundredths of one percent of the tax per month or fraction of a month
19 of delay except the first month after the return or the tax became due. The tax
20 commissioner, if satisfied that the delay was excusable, may waive all or any part
21 of the penalty. The penalty must be paid to the tax commissioner and disposed of
22 in the same manner as are other receipts under this chapter.

23 **SECTION 2. AMENDMENT.** Subsection 4 of section 57-36-25 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 1 4. Any person failing to file any prescribed form or return or to pay any tax within the
2 time required or permitted by this section is subject to a penalty of five percent of
3 the amount of tax due or five dollars, whichever is greater, plus interest of
4 sixty-seven hundredths of one percent of the tax per month or fraction of a month
5 of delay except the first month after the return or the tax became due. The tax
6 commissioner, if satisfied that the delay was excusable, may waive all or any part
7 of the penalty. The penalty must be paid to the tax commissioner and disposed of
8 in the same manner as are other receipts under this chapter.

9 **SECTION 3. AMENDMENT.** Subsection 3 of section 57-36-26 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 3. Any person failing to file any prescribed forms of return or to pay any tax within the
12 time required by this section is subject to a penalty of five dollars or a sum equal to
13 five percent of the tax due, whichever is greater, sixty-seven hundredths of plus
14 one percent of the tax for each month of delay or fraction thereof excepting the
15 month within which the return was required to be filed or the tax became due. The
16 tax commissioner, if satisfied that the delay was excusable, may waive all or any
17 part of the penalty. The penalty must be paid to the tax commissioner and
18 disposed of in the same manner as are other receipts under this chapter.

19 **SECTION 4. AMENDMENT.** Subsection 1 of section 57-38-35.2 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 1. Interest at the rate of fifty hundredths of one percent per month or fraction of a
22 month must be allowed and paid upon overpayments of tax as follows:
23 a. Interest on refunds arising from excess income tax withholding or
24 overpayment of estimated tax accrues for payment forty-five days after the
25 due date of the return or after the date the return was filed, whichever comes
26 later.
27 b. Interest on refunds arising from amended returns or claims made for credit or
28 refund accrues for payment from the due date of the return to the date of
29 payment of the refund excepting the month in which the return was required to
30 be filed.

- 1 c. Interest on refunds arising from net operating loss carrybacks or capital loss
2 carrybacks accrues for payment from the due date of the return for the year,
3 determined without regard to extensions of the time for filing, giving rise to the
4 loss carryback, to the date of payment of the refund, except that no interest
5 accrues if the refund payment is made within forty-five days of the date the
6 amended return or claim is filed to claim the refund attributable to the net
7 operating loss or capital loss carryback.

8 **SECTION 5. AMENDMENT.** Subsection 1 of section 57-38-45 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 1. In addition to other increases to tax and penalty prescribed in this chapter, a
11 taxpayer is subject to interest as follows:
- 12 a. Any taxpayer who requests and is granted an extension of time for filing a
13 return shall pay, with the tax, interest on the tax at the rate of ~~twelve~~ eight
14 percent per annum from the date the tax would have been due if the
15 extension had not been granted to the date the tax is paid.
- 16 b. If any amount of tax imposed by this chapter, including tax withheld by an
17 employer, is not paid on or before the due date or extended due date for the
18 payment, there must be added to the tax interest at the rate of sixty-seven
19 hundredths of one percent per month or fraction of a month during which the
20 tax remains unpaid, computed from the due date of the return to the date paid
21 excepting the month in which the return was required to be filed or the tax
22 became due.
- 23 c. If upon audit an additional tax is found to be due, there must be added to the
24 additional tax due interest at the rate of sixty-seven hundredths of one percent
25 of the additional tax for each month or fraction of a month during which the tax
26 remains unpaid, computed from the due date of the return to the date paid,
27 excepting the month in which the return was required to be filed or the tax
28 became due.
- 29 d. If the mathematical verification of a taxpayer's return results in additional tax
30 due, there must be added to the additional tax interest at the rate of
31 sixty-seven hundredths of one percent of the additional tax due for each

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

e. If a deficiency is determined for a tax period for which there was an overpayment that was applied to the following tax period's estimated tax under subsection 6 of section 57-38-62, interest accrues with respect to the amount of the deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.

f. If a deficiency is determined for a tax period for which there was an overpayment of estimated tax that was refunded, interest accrues, with respect to the amount of the deficiency which is equal to or less than the amount of the overpayment of estimated tax refunded, from the date of payment of the refund.

SECTION 6. AMENDMENT. Subsection 1 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in section 57-39.2-12 for monthly reports and payments, on or before the last day of the month following the close of the first quarterly period, and on or before the last day of the month following each subsequent quarterly period of three months, the retailer shall make out a return for the preceding quarterly period in the form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by the return, and any further information as the commissioner may require to enable the retailer correctly to compute and collect the tax herein levied. The commissioner, upon request by any retailer and a proper showing of the necessity therefor, may grant unto the retailer an extension of time not to exceed thirty days for making a return. If the extension is granted to any retailer, the time in which the retailer is required to make payment as provided for in section 57-39.2-12 must be extended for the same period but interest must be charged upon the amount of the deferred payment at the rate of ~~twelve~~ eight percent per

annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.

SECTION 7. AMENDMENT. Subdivision a of subsection 1 of section 57-39.2-18 of the North Dakota Century Code is amended and reenacted as follows:

1. a. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, the person is subject to interest of sixty-seven hundredths of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due.

SECTION 8. AMENDMENT. Subsection 1 of section 57-39.2-25 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever by any provisions of this chapter a refund is authorized, the commissioner shall certify the amount of the refund, the reason therefor, and the name of the payee to the office of management and budget, who shall thereupon draw a warrant on the general fund in the amount specified payable to the named payee. Interest of ~~ten~~ six percent per annum must be allowed and paid upon any overpayment of tax from sixty days after the due date of the return or after the date the return was filed or after the date the tax due was fully paid, whichever comes later, to the date of the refund.

SECTION 9. AMENDMENT. Subdivision a of subsection 1 of section 57-40.2-15 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Any person failing to file a return or corrected return or to pay any tax imposed under this chapter, within the time required by this chapter, is subject to interest of sixty-seven hundredths of one percent of the tax for each month or fraction of a month except the first month after the return or the tax became due.

SECTION 10. AMENDMENT. Subsection 2 of section 57-40.3-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person who submits a false or fraudulent motor vehicle purchaser's certificate, or who fails to submit the certificate, is subject to a penalty of five percent of the true amount of the tax which was due or five dollars, whichever is greater, plus

1 sixty-seven hundredths of one percent of such tax for each month or fraction
2 thereof subsequent to the month in which the motor vehicle purchaser's certificate
3 was due or the false or fraudulent motor vehicle purchaser's certificate was
4 furnished to the director of the department of transportation. Such penalty must be
5 paid to either the tax commissioner or the director of the department of
6 transportation and disposed of pursuant to the provisions of section 57-40.3-10.
7 The tax commissioner, if satisfied that the failure to submit or the delay was
8 excusable, may waive, and if paid, refund all or any part of such penalty and
9 interest. Unpaid penalties may be enforced in the same manner as the tax
10 imposed by this chapter.

11 **SECTION 11. AMENDMENT.** Subsection 2 of section 57-40.5-10 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 2. Any person who fails to submit a purchase certificate or who submits a false or
14 fraudulent aircraft purchaser's certificate is subject to a penalty of five percent of
15 the true amount of the tax which was due or five dollars, whichever is greater, plus
16 sixty-seven hundredths of one percent of such tax for each month or fraction
17 thereof subsequent to the month in which the false or fraudulent aircraft
18 purchaser's certificate was furnished to the director. Any penalty must be paid to
19 the tax commissioner or the director. The director or the tax commissioner, if
20 satisfied that the delay in payment of the tax was excusable, may waive, and if
21 paid, refund all or any part of such penalty and interest. Unpaid penalties may be
22 enforced in the same manner as the tax imposed by this chapter.

23 **SECTION 12. AMENDMENT.** Subsection 1 of section 57-43.2-15 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 1. If a person fails to file the required report or to pay the full amount of the tax as
26 required by this chapter, there is imposed a penalty of five dollars or a sum equal
27 to five percent of the tax due, whichever is greater, with interest at the rate of
28 sixty-seven hundredths of one percent per month on the tax due, for each calendar
29 month or fraction of a month during which the delinquency continues, excepting the
30 month within which the tax became due. If a person files a false or fraudulent
31 report with intent to evade the tax imposed by this chapter, there is imposed a

penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.

SECTION 13. AMENDMENT. Section 57-51-10 of the North Dakota Century Code is amended and reenacted as follows:

57-51-10. Proceedings and penalty on delinquency. When the tax provided for in this chapter becomes delinquent, there is hereby imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of sixty-seven hundredths of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due, which must be collected in the manner hereinafter provided. If any person fails to make any report herein required, within the time prescribed by law for such report, it is the duty of the commissioner to examine the books, records, and files of such person to ascertain the amount and value of such production to compute the tax thereon as provided herein, and the commissioner shall add thereto the amount of any penalties accrued thereon. The commissioner, for good cause shown, may waive the penalty or the interest provided by this section.

SECTION 14. AMENDMENT. Section 57-51-19 of the North Dakota Century Code is amended and reenacted as follows:

57-51-19. Claim for credit or refund. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the office of management and budget, a warrant shall be issued to the taxpayer for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned gross production tax in the state treasury and a pro rata share thereof must be charged against the county entitled to share in the tax. Interest arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and paid at the rate of ~~ten~~ six percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

A taxpayer may file a claim for credit or refund of an overpayment of tax within three years of the due date of the return or three years after the return was filed. However, if there is

1 a change in tax liability on any return by an amount in excess of twenty-five percent of the
2 amount of tax liability reported on a return, a claim for refund of tax may be filed within six years
3 after the due date of the return or six years after the return was filed, whichever period expires
4 last.

5 **SECTION 15. EFFECTIVE DATE.** Sections 1, 2, 3, 5, 6, 7, 9, 10, 11, 12, and 13 of this
6 Act are effective for interest additions made after June 30, 2003. Section 4, 8, and 14 of this
7 Act are effective for refunds made after June 30, 2003.