

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED 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 57-43.1-21, subsection 1 of section 57-43.2-15,
7 subsection 1 of section 57-43.3-23, subsection 1 of section 57-51-05, and sections 57-51-10
8 and 57-51-19 of the North Dakota Century Code, relating to the rate of interest on
9 underpayments of tobacco products tax, financial institutions tax, income tax, sales and use
10 tax, motor vehicle excise tax, aviation excise and fuel tax, motor vehicle fuel tax, special fuels
11 tax, oil and gas gross production tax, and oil extraction tax, and the rate of interest on
12 overpayments of income tax, sales and use tax, and oil and gas gross production tax and oil
13 extraction tax; and to provide an effective date.

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

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

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

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

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

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

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

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

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

1 payment of the refund excepting the month in which the return was required
2 to be filed.

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

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

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

- 1 d. If the mathematical verification of a taxpayer's return results in additional tax
2 due, there must be added to the additional tax interest at the rate of
3 sixty-seven hundredths of one percent of the additional tax due for each
4 month or fraction of a month during which the tax remains unpaid, computed
5 from the due date of the return to the date paid, excepting the month in which
6 the return was required to be filed or the tax became due.
- 7 e. If a deficiency is determined for a tax period for which there was an
8 overpayment that was applied to the following tax period's estimated tax
9 under subsection 6 of section 57-38-62, interest accrues with respect to the
10 amount of the deficiency that is equal to or less than the amount of the
11 overpayment applied from the estimated tax payment date to which the
12 overpayment was applied.
- 13 f. If a deficiency is determined for a tax period for which there was an
14 overpayment of estimated tax that was refunded, interest accrues, with
15 respect to the amount of the deficiency which is equal to or less than the
16 amount of the overpayment of estimated tax refunded, from the date of
17 payment of the refund.

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

- 20 1. Except as provided in section 57-39.2-12 for monthly reports and payments, on or
21 before the last day of the month following the close of the first quarterly period, and
22 on or before the last day of the month following each subsequent quarterly period
23 of three months, the retailer shall make out a return for the preceding quarterly
24 period in the form and manner as may be prescribed by the commissioner,
25 showing the gross receipts of the retailer, the amount of the tax for the period
26 covered by the return, and any further information as the commissioner may
27 require to enable the retailer correctly to compute and collect the tax herein levied.
28 The commissioner, upon request by any retailer and a proper showing of the
29 necessity therefor, may grant unto the retailer an extension of time not to exceed
30 thirty days for making a return. If the extension is granted to any retailer, the time
31 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 sixty-seven hundredths of one percent of such tax for each month or fraction thereof subsequent to the month in which the motor vehicle purchaser's certificate was due or the false or fraudulent motor vehicle purchaser's certificate was furnished to the director of the department of transportation. Such penalty must be paid to either the tax commissioner or the director of the department of transportation and disposed of pursuant to the provisions of section 57-40.3-10. The tax commissioner, if satisfied that the failure to submit or the delay was excusable, may waive, and if paid, refund all or any part of such penalty and interest. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

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

2. Any person who fails to submit a purchase certificate or who submits a false or fraudulent aircraft purchaser's 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 sixty-seven hundredths of one percent of such tax for each month or fraction thereof subsequent to the month in which the false or fraudulent aircraft purchaser's certificate was furnished to the director. Any penalty must be paid to the tax commissioner or the director. The director or the tax commissioner, if satisfied that the delay in payment of the tax was excusable, may waive, and if paid, refund all or any part of such penalty and interest. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

SECTION 12. AMENDMENT. Subsection 1 of section 57-43.1-21 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is 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 of a month during which the delinquency continues, excepting the month within which the report was required to be filed or the tax became due. If a person files a false or fraudulent 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~~ one and six-tenths percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this subsection.

SECTION 13. AMENDMENT. Subsection 1 of section 57-43.2-15 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is 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 of a month during which the delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent 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 14. AMENDMENT. Subsection 1 of section 57-43.3-23 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is 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 of a month during which the delinquency continues, excepting the month within which the report was required to be filed or the tax became due. If a person files a false or fraudulent report with the 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~~ one and six-tenths percent per month on the

deficiency, for each calendar month or fraction of a month during which the deficiency continues. The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this subsection.

SECTION 15. AMENDMENT. Subsection 1 of section 57-51-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The gross production tax on oil or gas, as herein provided, must be paid on a monthly basis. The tax on oil is due and payable on the twenty-fifth day of the month succeeding the month of production. The tax on gas is due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it becomes delinquent and must be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when the request is granted the tax is not delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of ~~twelve~~ eight percent per annum from the date the tax was due to the date the tax is paid.

SECTION 16. 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

1 commissioner shall add thereto the amount of any penalties accrued thereon. The
2 commissioner, for good cause shown, may waive the penalty or the interest provided by this
3 section.

4 **SECTION 17. AMENDMENT.** Section 57-51-19 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-51-19. Claim for credit or refund.** In all cases of overpayment, duplicate payment,
7 or payment made in error, the commissioner may issue a certificate stating therein the facts
8 and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the
9 certificate to the office of management and budget, a warrant shall be issued to the taxpayer for
10 the purpose of refunding any overpayment, duplicate payment, or payment made in error out of
11 the unapportioned gross production tax in the state treasury and a pro rata share thereof must
12 be charged against the county entitled to share in the tax. Interest arising from refunds of
13 overpayments, duplicate payments, and erroneous payments must be allowed and paid at the
14 rate of ~~ten~~ six percent per annum and accrues for payment from sixty days after the due date of
15 the return or after the return was filed or after the tax was fully paid, whichever comes later.

16 A taxpayer may file a claim for credit or refund of an overpayment of tax within three
17 years of the due date of the return or three years after the return was filed. However, if there is
18 a change in tax liability on any return by an amount in excess of twenty-five percent of the
19 amount of tax liability reported on a return, a claim for refund of tax may be filed within six years
20 after the due date of the return or six years after the return was filed, whichever period expires
21 last.

22 **SECTION 18. EFFECTIVE DATE.** Sections 1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15,
23 and 16 of this Act are effective for interest additions made after June 30, 2003. Sections 4, 8,
24 and 17 of this Act are effective for refunds made after June 30, 2003.