

TAXATION

CHAPTER 416

H. B. No. 642
(Dornacker)

DEFINITION OF REAL PROPERTY

AN ACT

To amend and reenact section 57-02-04 of the North Dakota Century Code, relating to the definition of real property, and to repeal subsections 9, 10, and 11 of section 57-02-05 of the North Dakota Century Code, relating to the definition of personal property.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-04. "Real Property" Defined.) Real property, for the purpose of taxation, includes the land itself, whether laid out in town lots or otherwise, and, except as otherwise provided, all buildings, structures, and improvements except plowing and trees, and all rights and privileges thereto belonging or in any-wise appertaining, and all mines, minerals, and quarries in and under the same and shall expressly include all improvements made by persons upon lands held by them under the laws of the United States, all such improvements on land the title to which still is vested in any railroad company and which is not used exclusively for railroad purposes, and improvements to land belonging to any other corporation whose property is not subject to the same mode and rule of taxation as other property.

§ 2. Repeal.) Subsections 9, 10, and 11 of section 57-02-05 of the North Dakota Century Code are hereby repealed.

Approved February 24, 1967.

CHAPTER 417

S. B. No. 172

(Litten, Longmire, Larson(32))

PARKING IMPROVEMENTS EXEMPT FROM TAXATION

AN ACT

To create and enact subsection 12 of section 57-02-05 and subsection 23 of section 57-02-08 of the North Dakota Century Code, relating to exempting improvements for public parking facilities, and to amend and reenact subsections 10 and 11 of section 57-02-05 and subsection 22 of section 57-02-08 of the North Dakota Century Code, relating to property classified as personal property and exemptions from taxation respectively.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsections 10 and 11 of section 57-02-05 of the North Dakota Century Code are hereby amended and reenacted and subsection 12 of section 57-02-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

- *10. All such improvements upon land the title to which still is vested in any railroad company, and which is not used exclusively for railroad purposes;
- *11. The improvements of any other corporation whose property is not subject to the same mode and rule of taxation as other property; and
- 12. All structural improvements other than paving or surfacing made to land used exclusively for the business of operating an automobile parking lot within a city open for general public patronage.

§ 2. Amendment.) Subsection 22 of section 57-02-08 of the North Dakota Century Code is hereby amended and reenacted and subsection 23 of section 57-02-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

- 22. All or any part of fixtures, building and improvements upon any nonfarm land up to an assessed valuation of six thousand dollars, owned and occupied as a home by a blind person. For purposes of this section a blind person shall be defined as one who is totally blind, has visual acuity of not more than 20/200 in the better eye

***Note:** Subsections 10 and 11 of section 57-02-05 were repealed by section 2 of chapter 416, 1967 S.L.

with correction, or whose vision is limited in field so that the widest diameter subtends an angle no greater than twenty degrees;

23. All structural improvements other than paving and surfacing to land used exclusively for the business of operating an automobile parking lot within a city open for general public patronage.

Approved March 14, 1967.

CHAPTER 418

H. B. No. 871
(Boustead, Schaffer)

EXEMPTION OF MOTOR VEHICLES HELD FOR RESALE FROM TAXATION

AN ACT

To create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to property tax exemptions.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) A new subsection to section 57-02-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

All new and used motor vehicle inventories held for resale by licensed motor vehicle dealers in this state.

Approved March 2, 1967.

CHAPTER 419

H. B. No. 670
(Hilleboe, Strinden)

LISTING OF PERSONAL PROPERTY

AN ACT

To amend and reenact subsection 1 of section 57-02-12 of the North Dakota Century Code, relating to the listing of personal property and to provide a consignee with a lien for the amount of tax on consigned merchandise assessed to him.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 1 of section 57-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every person of full age and sound mind shall list all taxable personal property of which he is the owner, or which is in his possession, or under his control as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent, or corporation official; provided that merchandise that is held or kept for sale on consignment in a merchant's place of business shall be assessed and taxed in the name of the merchant holding or keeping the merchandise and the merchant shall have a lien upon such merchandise or upon the proceeds from the sale thereof for the amount of the tax imposed under such assessment.

Approved March 3, 1967.

CHAPTER 420

H. B. No. 558
(Dornacker)

EXEMPTION OF PERSONAL PROPERTY OF
CERTAIN ELDERLY PERSONS

AN ACT

To amend and reenact section 57-02-21 of the North Dakota Century Code, providing that persons over the age of sixty-five with an income of less than three thousand dollars per annum shall be exempt from the personal property tax, and providing a penalty for a false statement.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-02-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-21. Tax Exemption of Personal Property of Certain Persons with Minimum Income—Penalty for False Statement.)

1. The assessor shall show upon his listing blank the name of every head of a family. For the purpose of this section, any person who has one or more others dependent upon him for support shall be regarded as the head of a family. If the total value of the personal property of such person at the time of assessment does not exceed one hundred dollars, and his total income during the preceding twelve months has been less than six hundred dollars, his personal property shall be exempt from taxation. After the assessor's valuation of such property shall have been equalized, the county auditor shall cause the names of such heads of families to be removed from the tax roll as exempt from personal property taxation. The personal property of any person who receives a major part of his income from any state or federal public assistance program shall be exempt from taxation and the name of such person, if certified to the county auditor by the county welfare board, shall be removed from the personal property tax roll. Any person exempt from personal property taxation under this section, and any dependent of such person, shall also be exempt from the per capita school tax, and such tax if levied shall be canceled by the county auditor.

2. The household goods, clothing, and musical instruments of a head of a family, as defined in subsection 1 of this section, over the age of sixty-five with an income of three thousand dollars or less per annum from all sources, shall be exempt from

personal property taxation. Any person eligible for the exemption herein provided shall sign a statement that he is over the age of sixty-five and that his income does not exceed three thousand dollars per annum. Any person falsely signing such statement shall be guilty of a misdemeanor. The assessor shall attach such statement to the assessment sheet and forward a copy to the state tax department.

Approved February 27, 1967.

CHAPTER 421

S. B. No. 302
(Decker)

PERSONAL PROPERTY IN TRANSIT EXEMPT

AN ACT

To amend and reenact section 57-02-42 of the North Dakota Century Code, relating to the definition of personal property in transit and the exemption of such property from the personal property tax.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-02-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-42. Personal Property in Transit—Definition—Exemption.) Personal property in transit through this state means goods, wares and merchandise which are included in any one of the following numbered categories:

1. Moving in interstate commerce through or over the state of North Dakota.
2. Consigned to a warehouse or storage facility within the state from outside its boundaries for storage or assembly in transit to a final destination, whether specified when transportation begins or afterward, also outside this state.
3. Acquired or originating in this state and processed or manufactured in this state and destined for sale outside of this state or for sale and further processing or manufacturing in this state and subsequent sale outside of this state. The assessor may make a determination of the personal property, goods, wares, and merchandise destined for sale outside of this state based upon such

sales history of such items as the processor or manufacturer is able to validate through complete and accurate records and such rules and regulations as may be promulgated by the state tax department. Provided that the cleaning or grading of grain taxed pursuant to chapter 57-03 shall not constitute processing or manufacturing for the purposes of this subsection and such grain shall not be exempt under the provisions of this section.

Such personal property is deemed to have no situs in North Dakota for taxation purposes. Such property shall not be deprived of exemption because while in the warehouse it is assembled, bound, joined, processed, manufactured, disassembled, divided, cut, broken in bulk, relabeled or repackaged. The definition of personal property in transit and the exemption granted shall be liberally construed to effect the purposes of sections 57-02-42 through 57-02-44. This exemption shall be available to residents and nonresidents alike, whether individual, corporate, or otherwise.

Approved March 14, 1967.

CHAPTER 422

H. B. No. 909
(Erickson(4), Aafedt)

FILING OF TAX EXEMPTION CERTIFICATES

AN ACT

To require persons, corporations, associations, or organizations who claim real property to be exempt from assessment and taxation to file annually with the assessor and county auditor a certificate setting out the basis for claiming the exemption, and providing exceptions.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Tax Exemption Certificate for Real Property To Be Filed—Exceptions.) Any person, corporations, associations, or organizations owning real property located within a municipality which claims that such real property is exempt from assessment and taxation shall file with the assessor and with the county auditor a certificate setting out all facts on which the claim for exemption is based, including the names of owners, the date such property was acquired, the legal description, the use to which the property was put during the twelve

months preceding the assessment date, and any other information which the assessor may request. This certificate shall be filed with the assessor and the county auditor each year before the assessment date. If the certificate is not filed as provided herein, the assessor shall regard the property as nonexempt property and shall assess it as such. The provisions of this Act shall not apply in any case where the real property is owned by the United States or the state of North Dakota or any of its departments, institutions, agencies, or political subdivisions.

Approved March 6, 1967.

CHAPTER 423

S. B. No. 82

(Robinson, Jacobson, Ruemmele, Stroup, Trenbeath, Geving,
(Wenstrom)

GAME AND FISH DEPARTMENT TAX PAYMENTS

AN ACT

To amend and reenact sections 57-02.1-01 and 57-02.1-02, and subsection 1 of section 57-02.1-05 of the North Dakota Century Code, relating to payments to be made to counties in lieu of real property taxes which would otherwise be due if such property were not owned by a governmental entity and controlled by the state game and fish department.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-02.1-01 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02.1-01. Definitions.) As used in this chapter, unless the context or subject matter otherwise clearly indicates:

1. "Property subject to valuation" means real property owned by the state or real property leased or held by lease or license from the United States or a political subdivision of this state, and controlled by the state game and fish department but shall not include any land leased by such department if such land is being assessed for ad valorem taxation to the owner; and
2. "Value or valuation" means the true and full value or the usual selling price at a private sale between a willing buyer and a willing seller at the place where the property to which the term is applied is located as

assessed and equalized, less the valuation of any improvements to real property and of inundated land.

§ 2. **Amendment.)** Section 57-02.1-02 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02.1-02. Imposition of Payments.) The state game and fish commissioner shall annually make payments, subject to legislative appropriations, to the counties in which property subject to valuation is located pursuant to the provisions of this chapter. Such payments shall be in lieu of taxes which would otherwise be available to such counties if the real property upon which these payments are based were not owned by the state, United States, or a political subdivision of this state.

§ 3. **Amendment.)** Subsection 1 of section 57-02.1-05 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Upon receipt of the decision of the state board of equalization the state game and fish commissioner shall compute the payments due to the counties in which property subject to valuation is located by multiplying the value by one percent and deducting therefrom the amount of personal property taxes assessed against personal property having a situs upon the property subject to valuation. The payments due to each county shall be the figure determined as herein provided.

Approved February 25, 1967.

CHAPTER 424

H. B. No. 937
(Delayed Bills Committee)

ASSESSMENT OF STORED GRAINS

AN ACT

To amend and reenact section 57-03-05 of the North Dakota Century Code, relating to the assessment of grains stored in commercial elevators, warehouses, and granaries.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-03-05. Rate of Tax.) All grain grown within the state and held in elevators, warehouses, and granaries therein shall be taxed at a fixed rate as follows:

1. Flax, soybeans, edible beans, sunflower, safflower, mustard, millet, buckwheat, field peas, canary seed, rapeseed, crambe, and sorghum grain at the rate of one-half of one cent per bushel;
2. Wheat at the rate of three-eighths of one cent per bushel; and
3. Oats, barley, corn, speltz, and rye, each at the rate of one-eighth of one cent per bushel.

Approved March 6, 1967.

CHAPTER 425

H. B. 879

(Wilkie, Dornacker)

ASSESSMENT OF RAILROAD PROPERTY

AN ACT

To amend and reenact section 57-05-01 of the North Dakota Century Code, relating to the assessment of railroad property by the state board of equalization.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-05-01. Railroad Property To Be Assessed by State Board of Equalization.) The state board of equalization, at its annual meeting in August in each year, shall assess at its actual value, the operating property, including franchises, except that if any railroad allows any portion of its railway to be used for any purpose other than the operation of a railroad thereon, such portion of its railway while so used shall be assessed in a manner provided for the assessment of other real property, of each railroad operated in this state, including any electric or other street or interurban railway. To enable said board to make a correct valuation of such property, it shall have access to all reports, estimates, and surveys of a line of railroad on file in the office of the public service commission and shall have power to summon and compel the attendance of wit-

nesses, and to examine such witnesses under oath in any matter relating to the value of such property. In fixing the value of any such railroad, and of the branches and sidetracks thereof, the board shall be governed by the rules prescribed for county and township assessors in valuing other property in this state. The board shall make a record of the value placed by it upon the property of the railroad, including the valuation per mile of main line and of branch lines and sidetracks.

Approved March 1, 1967.

CHAPTER 426

S. B. No. 159
(Sands, Torgerson)

CORRECTIONS IN ASSESSMENT BOOKS

AN ACT

To amend and reenact section 57-14-01 of the North Dakota Century Code, relating to the duty of a county auditor to make corrections in the assessment books and tax lists when the assessor has made a clerical error in valuing real or personal property.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-14-01. Duty of County Auditor Upon Discovery of Clerical Error, Omission or False Statement in Assessment.) Whenever the county auditor shall discover that:

1. Taxable real or personal property has been omitted in whole or in part in the assessment of any year or years; or
2. Any building or structure has been listed and assessed against a lot or tract of land other than the true site or actual location of such building; or
3. Any person has given the assessor a false statement of his personal property; or
4. The assessor has not returned the full amount of all property required to be listed in his district, or has omitted property subject to taxation; or

5. The assessor has made a clerical error in valuing real or personal property, provided the assessor furnishes the county auditor with a written statement describing the nature of the error, which statement the county auditor shall keep on file,

he shall proceed to correct the assessment books and tax lists in accordance with the facts in the case and shall correct such error or omission in assessment, and shall add such omitted property and assess it at its true and full value, and if a building or other structure, assessed as real estate in the assessment thereof, is described as though situated upon a lot or tract of land other than that upon which it in fact is situated, the county auditor shall correct the description and add the assessment thereof to the assessment of the lot upon which it actually is located, if the rights of a purchaser for value without actual or constructive notice of such error or omission shall not be prejudiced by such correction, addition, or assessment.

Approved February 25, 1967.

CHAPTER 427

H. B. No. 826
(Strinden, Sanstead)

REASSESSMENT OF PROPERTY

AN ACT

To amend and reenact subsections 2, 3, and 4 of section 57-14-08 of the North Dakota Century Code, relating to the general reassessment of property when ordered by the board of county commissioners or state tax commissioner and the establishment of a new board of equalization to review such reassessments when ordered.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Subsections 2, 3, and 4 of section 57-14-08 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The board of county commissioners then may appoint some competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the board, and who shall proceed in accordance with the provisions of law governing assessors. Such special assessor shall be allowed for his services a sum not to exceed forty dollars per day plus, in the discretion of the board of county commissioners, mileage expense at

the rate allowed by law for each mile actually and necessarily traveled in the performance of his duties, which shall be audited and allowed by the board of county commissioners and paid out of the county treasury upon warrant of the county auditor. If the reassessment was ordered by the tax commissioner, such commissioner shall appoint some competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the commissioner and who shall proceed in accordance with the provisions of law governing assessors. The commissioner shall audit and allow the bill, and the same shall be paid out of the county treasury. In either case, such compensation shall be charged to the political subdivision in which such reassessment was made and shall be deducted by the county treasurer from funds coming into his hands apportionable to such subdivision;

3. Upon completion of the reassessment, the assessor shall certify the same to the county auditor, who forthwith shall give notice by mail to the state tax commissioner and the board of county commissioners and the governing boards of each township, city, and school district which is wholly or partly in the reassessment district, that a reassessment has been completed in the named assessment district and that a meeting for the purpose of equalizing the assessment will be held in the county courthouse on the day and at the time specified in the notice. Each such board shall appoint one of its members to attend the equalization meeting and the tax commissioner shall attend or appoint a representative from his office to attend the meeting. Such group of persons shall comprise the special board of equalization for the reassessment. The member representing the board of county commissioners shall serve as chairman and the county auditor shall serve as secretary for such special board of equalization. Such meeting shall be held not later than thirty days from the date of the written notice of the meeting mailed by the county auditor. A notice of such special meeting and the purpose thereof shall be published at least once in the official newspaper of the county in which the reassessment was made not less than one week prior to such meeting. Each person, except the tax commissioner or his appointee, serving on this special board of equalization shall be entitled to compensation at the rate of ten dollars a day plus mileage expense and necessary expenses for meals and lodging at the rate allowed by law for attendance at such meeting. Claims therefor shall be audited and

allowed by the board of county commissioners and shall be paid, charged and deducted in the same manner as the claim of the special assessor. The claims for mileage expense and necessary expenses for meals and lodging of the tax commissioner or his appointee in attending the special equalization meeting shall be audited, allowed and paid as are other similar claims made by them.

4. At such meeting, the special board of equalization shall hear all grievances and complaints in regard to such reassessment and shall proceed to equalize the same. All tax lists thereupon shall be corrected to comply with such action.

Approved March 1, 1967.

CHAPTER 428

S. B. No. 222
(Litten, Butler)

TAX LEVY LIMITATIONS IN CITIES

AN ACT

To amend and reenact section 57-15-08 of the North Dakota Century Code, relating to tax levy limitations in cities.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-15-08 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-08. Tax Levy Limitations in Cities.) The aggregate amount levied for general city purposes shall not exceed such an amount as will be produced by a levy of thirty-one mills on the net taxable assessed valuation of property in the city, provided that in cities with a population over five thousand they be permitted to levy an additional one-half of one mill for each additional one thousand population in excess of five thousand and provided further that the maximum levy for general city purposes shall not exceed thirty-three mills, except that cities, when authorized by a majority vote of the electors of such cities upon the submission of such question at a regularly scheduled or special election called for such purpose pursuant to a resolution approved by the governing body of such cities, may increase the maximum mill levy for general city purposes by not more than five mills, and that in

a city supporting a band or public library an additional levy, not to exceed one mill on the net taxable assessed valuation of property in such city, may be made for a band, and an additional levy not to exceed four mills on the net taxable assessed valuation of property in such city may be made for a public library.

Approved March 15, 1967.

CHAPTER 429

H. B. No. 661

(E. Johnson(23), Simonson, Powers)

MILL LEVIES IN HIGH SCHOOL DISTRICTS

AN ACT

To amend and reenact subsection 3 of section 57-15-14 of the 1965 Supplement to the North Dakota Century Code, relating to mill levies in high school districts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 3 of section 57-15-14 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any school district giving four years of standard high school work may levy taxes not to exceed thirty-four mills; provided that there shall be no limitation upon the taxes which may be levied by any school district having a total population in excess of four thousand according to the last federal decennial census if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted and approved by a majority of the electors voting at any regular or special election upon such question. In the event such election is held in a reorganized district it shall be conducted and approved or disapproved in the same manner and subject to the same conditions as provided in section 15-53-14 for elections for approval of school district reorganization plans. Thereafter, the question of authorizing or discontinuing such unlimited taxing authority in any school district shall be submitted to the electorate at the next regular election upon the filing with the school board of a petition containing the signatures of not less than five percent of the electors of the district as determined by the number

voting in such school district at the most recent regular school district election. The election shall be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing an unlimited mill levy;

Approved March 14, 1967.

CHAPTER 430

H. B. No. 886

(Ganser, Peterson(5), Hensrud, Boustead)

CITY LEVY FOR ACQUIRING REAL ESTATE

AN ACT

To amend and reenact section 57-15-44 of the North Dakota Century Code, relating to the city tax levy for acquiring real estate for public buildings, and repealing sections 57-15-45 and 57-15-46 of the North Dakota Century Code.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-15-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-44. City Tax Levy for Acquiring Real Estate for Public Buildings.) The governing body of any city may levy taxes annually, not in excess of two mills in each year, for a fund which shall be used for the purpose of acquiring real estate as a site for public buildings, construction of public buildings, and the furnishing of public buildings to be constructed on such sites, or for a city's participating share in urban renewal programs, such tax to be levied, spread, and collected in the same manner as are other taxes in and for such city. Whether said levy shall be discontinued shall be submitted to the voters at the next regular election upon petition of twenty-five percent of the electors voting in the last regular city election, said petition to be filed not less than sixty days before said election. If the majority of electors vote that said levy shall not continue, it may not again be levied without a majority vote of the electors at a later regular election which question may be submitted upon petition of electors as above provided for or by decision of the governing board.

§ 2. **Repeal.)** Sections 57-15-45 and 57-15-46 of the North Dakota Century Code are hereby repealed.

Approved March 15, 1967.

CHAPTER 431

S. B. No. 338

(Nasset, Coughlin, Freed, Melland, Pyle, Sands, Decker)

SCHOOL LIBRARY FUND LEVY

AN ACT

To provide that school districts may levy for a school library fund.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. School District Levy for School Library Fund.) The school board of any school district, upon the passage of a resolution, may submit the question at the next regularly scheduled or special election in the school district of providing for an annual levy of not in excess of two mills for a school library fund. If the question submitted is approved by a majority of the electors voting thereon, the school board shall proceed to make such levy, which levy shall be over and above any mill levy limitations provided by law. Upon approval of the levy for the school library fund, the school board shall create a school library fund and establish a budget for expenditures from such fund. The fund shall be kept separate and apart from other funds of the school district and shall be used exclusively for the maintenance of the school library services. Such levy may be discontinued upon the passage of a resolution by the school board, or if a petition signed by not less than twenty-five electors or five percent of the electors of the school district as indicated by the number of persons voting at the last school district election, whichever is greater, is presented to the school board, the question of discontinuance of the levy shall be submitted to the electors of the school district at any regular or special school district election. If a majority of the electors of the school district vote in favor of discontinuing the levy, such levy shall not be included in the next budget submitted by the school district.

Approved February 28, 1967.

CHAPTER 432

S. B. No. 344

(Lips)

EXCESS MILL LEVIES OF SCHOOL DISTRICTS

AN ACT

To amend and reenact section 57-16-04 of the North Dakota Century Code, relating to excess mill levies of school districts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 57-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-16-04. Increase May Be for Five Years—Extension—Discontinuance.) The governing board of the school district may submit the question of authorizing an excess levy for the current year and not to exceed four succeeding years. The notice of election shall give the year or years for which authorization is sought for an excess levy as well as the percentage of excess which is to be voted upon. Prior to the termination of the excess levy, such levy may be extended for a term not to exceed the original term of the increase upon the unanimous approval by the governing board of the school district, and further extensions may be made for the same number of years prior to each termination date upon the unanimous approval of the governing board of the school district. The question of discontinuing such excess levy in any school district shall be submitted to the electorate at the next regular election upon the filing with the school board of a petition containing the signatures of not less than ten percent of the electors of the district as determined by the number voting in such school district at the most recent regular school district election. The election shall be held in the same manner and subject to the same conditions as provided in section 15-53-14 for elections for approval of school district reorganization plans.

Approved March 14, 1967.

CHAPTER 433

H. B. No. 695
(Kent, Ferguson, Bilden)

TAX COLLECTIONS AND PERSONAL LIABILITY

AN ACT

To amend and reenact section 57-19-07 of the North Dakota Century Code, relating to tax collections, and to amend and reenact section 57-19-08 of the North Dakota Century Code, relating to personal liability.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-19-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-19-07. Limitation on Amount Drawn from Fund — Tax Collections Used to Restore Fund.) The amount of outstanding, unredeemed vouchers shall never exceed in the aggregate a sum equal to eighty-five percent of the unencumbered uncollected taxes for the current and fifty percent for the four preceding years which are apportionable to the general fund of such school district. Such vouchers, in the hands of the county treasurer, shall be redeemed from the collections of such uncollected taxes. A tax shall be deemed to have been levied when it has been voted by the school board and certified to the county auditor. Whenever there are unredeemed vouchers in such voucher registry, the county treasurer shall first apply the proceeds of the collections of that portion of any unencumbered uncollected tax which would otherwise be apportionable to the general fund of the school district to the redemption of such vouchers in the order listed in such register, and shall deposit such sum in the special reserve fund and mark the voucher and the entry in the register as "redeemed", and thereupon shall return to the governing body of the school district such voucher, marked "redeemed", and signed by the county treasurer. Any balance of collections apportionable to the general fund of the school district remaining after redemption of all such vouchers, shall be paid to the school district in the manner now provided by law.

§ 2. **Amendment.)** Section 57-19-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-19-08. When Officers Personally Liable.) Any school district official knowingly and willfully causing to be issued a

voucher in excess of the limit provided in section 57-19-07, or any county treasurer honoring such a voucher, or transferring from such special reserve fund moneys in excess of eighty-five percent of the unencumbered uncollected taxes for the current and fifty percent for the four preceding years apportionable to the general fund of the school district, or paying over to the school district any such funds without the redemption of any outstanding vouchers, shall be personally liable for the sum involved.

Approved March 3, 1967.

CHAPTER 434

H. B. No. 704
(Ganser)

CONTRACTS FOR PERSONAL PROPERTY TAX COLLECTIONS

AN ACT

To amend and reenact section 57-22-29 of the 1965 Supplement to the North Dakota Century Code, relating to contracts for personal property tax collection and validating contracts for the collection of personal property taxes.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-22-29 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-29. Contract for Tax Collection.) In any county where for any reason personal property taxes that have been delinquent more than one year remain unpaid and uncanceled, whether put into judgment or not, the board of county commissioners may contract with the sheriff of the county, or with any elector of the state, to pay a percentage of such delinquent personal property taxes, not exceeding ten percent of the amount collected, as compensation for collecting the same, in lieu of, or in addition to, the compensation provided by law for said sheriff. When a contract is made with any person other than the sheriff, the county commissioners may in their discretion pay any reasonable salary or expenses or a percentage of the tax collected, or combination thereof, and the contract may cover all or only certain taxing districts within the county, and contracts may be made with different collectors for different portions of the county. No collection fee shall be paid to the sheriff or any other collector for any

money deducted from warrants under the provisions of section 57-22-26. In the event delinquent personal property taxes are owed by a person not residing in North Dakota the county commissioners may contract with any person, firm, or corporation, to pay a reasonable percentage of such delinquent taxes collected, as compensation for such collection. Such contractors shall execute either a personal or corporate surety bond conditioned upon satisfactory performance of the provisions of the contract and shall be in an amount and of a type approved by the county commissioners.

§ 2. Validating Contracts for the Collection of Personal Property Taxes.) All contracts heretofore made and entered into by county commissioners for the collection and recovery of personal property taxes are declared legal and valid notwithstanding the provisions of law to the contrary.

Approved February 27, 1967.

CHAPTER 435

H. B. No. 883
(Solberg(2), Opedahl)

PROPERTY TAX ABATEMENT PROCEDURES

AN ACT

To amend and reenact sections 57-23-04, 57-23-05 and 57-23-08 of the North Dakota Century Code, relating to property tax abatement procedures.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-04. County Commissioners May Abate or Refund Taxes.) Upon application filed in the office of the county auditor on or before November first of the year following the year in which the tax becomes delinquent, as in this chapter provided, the board of county commissioners, subject to the approval of the state tax commissioner, may abate or refund, in whole or in part, any assessment or tax upon real or personal property, in the following cases:

1. When an error has been made in any identifying entry or description of the property, in entering the valuation thereof, or in the extension of the tax, to the injury of the complainant;

2. When improvements on any real property were considered or included in the valuation thereof which did not exist thereon at the time fixed by law for making the assessment;
3. When the complainant, or the property, is exempt from the tax;
4. When the complainant had no taxable interest in the property assessed against him at the time fixed by law for making the assessment;
5. When taxes have been erroneously paid, or errors made in noting payment, or in issuing receipts therefor;
6. When the same property has been assessed against the complainant more than once in the same year, and the complainant produces satisfactory evidence that the tax thereon for such year has been paid; and
7. When any building, structure, or other improvement or tangible personal property has been destroyed or injured by fire, flood, or tornado; provided that proper adjustment has not been made by the assessor pursuant to subsection 4 of section 57-02-11. No abatement or refund shall be made under this subsection on account of damages covered by insurance or damages amounting to less than one hundred dollars, and the abatement or refund shall be granted only for that part of the year remaining after the property was damaged or destroyed.

§ 2. Amendment.) Section 57-23-05 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-05. Application for Abatement or Refund—Who May Make.) An application for an abatement or refund shall be in writing and shall be filed in duplicate with the county auditor. It shall state the grounds relied upon for such abatement or refund, give the post office address of the applicant, and shall be verified. The county auditor shall note the date of filing and shall file the same. He shall present the application to the board of county commissioners at its next regular meeting.

Any person having any estate, right, title or interest in or lien upon any real or personal property who claims that the assessment made or the tax levied against the same is excessive or illegal, in whole or in part, shall be entitled to make an application for abatement, refund, or compromise, as the case may be, and have such application granted if the facts upon which the application is based bring it within the provi-

sions of this chapter for abatement, refund or compromise. In addition, if an abatement is based upon any of the grounds specified in section 57-23-04 and if the application for abatement will not result in a refund of tax or a compromise of a tax, the abatement application may be signed and submitted by either the county auditor or the assessor who made the assessment resulting in the tax specified in the abatement application.

§ 3. Amendment.) Section 57-23-08 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-08. When Action Effective.) Except as hereinafter provided the granting of any application for abatement or refund shall be effective when approved by the state tax commissioner, and when so approved the county auditor shall correct all tax lists in accordance with the order of abatement, and the applicant shall be relieved of further liability for the tax abated. The following applications for abatement or refund, however, need not be approved by the tax commissioner and they shall become effective when approved by the board of county commissioners:

1. An abatement or refund of any special assessment;
2. An abatement or refund with respect to a reduction of not more than one hundred dollars of net assessed valuation.

With respect to any application for abatement that is not required to be submitted for approval to the state tax commissioner, as provided in this section, the county auditor at the close of each calendar year shall certify to the director of the state department of accounts and purchases the amount of state taxes canceled by such action of the board of county commissioners and same shall be credited to the county.

Approved March 3, 1967.

CHAPTER 436

S. B. No. 339
(Sands, Redlin)

SALE OF COUNTY TAX DEED REAL ESTATE

AN ACT

To amend and reenact section 57-28-17 of the North Dakota Century Code, relating to the sale of county tax deed real estate by the county auditor.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-28-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-17. Sale Between Annual Sales.) All parcels of real estate not sold at the annual November sale may be sold by the county auditor at private sale at any time before the next annual November sale, but no sale shall be made by the county auditor at a price less than the minimum sale price fixed prior to the November sale. Provided, however, that a parcel of real estate against which one or more unpaid installments of any special assessment continue as a lien pursuant to section 57-28-09 may be sold by the county auditor free of any part or all of such lien if the governing body of the city in which the parcel is located finds that the minimum sale price fixed by law for the parcel together with the special assessment lien or liens against it exceed the market value of the parcel; in such a case the governing body of the city is hereby authorized to cancel all or such part of any special assessment lien against the parcel to an amount which, when added to the minimum sale price, will be equal to the market value of the parcel; the action of the governing body shall be certified by the city auditor or clerk to the county auditor, after which the county auditor may sell the parcel at private sale at any time before the next annual November sale for not less than the minimum sale price fixed by law; the parcel shall pass to the purchaser free from any encumbrance for that part of any lien for special assessment that was canceled by the governing body of the city.

Notwithstanding the provisions of this section or other provisions of law, any such parcel of real estate that is subject to a special assessment lien for improvements made by a city may be sold between annual sales by the county auditor for

cash to the city at whatever price less than the minimum sales price that is agreed upon by the board of county commissioners and the governing body of the city.

Approved March 14, 1967.

CHAPTER 437

H. B. No. 882
(Wilkie, Dornacker, Backes)

TELEPHONE COMPANY TAX REPORTS

AN ACT

To amend and reenact sections 57-34-02 and 57-34-03 of the 1965 Supplement to the North Dakota Century Code, relating to reports of telephone companies of taxes to be assessed against them.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-34-02 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-02. Reports of Telephone Companies.) Each telephone company required to be assessed under the provisions of this chapter, annually, under oath of the president, secretary, or other official of such company, shall make and file with the tax commissioner, on or before May first, on such form as the tax commissioner may prescribe, a report containing a statement of its telephone operating receipts in this state during the preceding calendar year, the number of stations in service on December thirty-first preceding, the number of miles of telephone line operated in providing telephone service, and such other information as the tax commissioner may require except that any telephone company having thirty telephone stations or less in service on December thirty-first preceding shall not be required to furnish a statement of its telephone operating receipts. Each report shall contain a statement of the number of stations located in each county served and each school district within such counties and the number of stations maintained per mile of telephone line in this state. Each telephone company subject to the provisions of this chapter, at the time of submitting its report to the tax commissioner, shall forward a copy of such report to the county auditor of each county in which it maintains a station or stations.

§ 2. Amendment.) Section 57-34-03 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-03. Computation of Taxes by Tax Commissioner.)

On or before August first of each year, the tax commissioner shall compute the total tax to be assessed against each telephone company in this state in the following manner:

1. Telephone companies maintaining an average of one and twenty-five hundredths telephone stations or less per mile of telephone line operated in this state shall be taxed at the rate of one-half of one percent of their telephone operating receipts;
2. Telephone companies maintaining an average of not less than one and twenty-six hundredths and not more than one and seventy-five hundredths telephone stations per mile of telephone line operated in this state shall be taxed at the rate of one percent of their operating receipts;
3. Telephone companies maintaining an average of not less than one and seventy-six hundredths and not more than two and twenty-five hundredths telephone stations per mile of telephone line operated in this state shall be taxed at the rate of one and one-half of one percent of their operating receipts;
4. Telephone companies maintaining an average of more than two and twenty-five hundredths telephone stations per mile of telephone line operated in this state shall be taxed at the rate of two percent of their operating receipts.

Notwithstanding the provisions of subsections 1 through 4 of this section, if the tax due from any telephone company taxed under the provisions of this chapter shall be less than fifty cents per station maintained in this state, such company shall be subject to a tax of fifty cents per station, and, further, notwithstanding the provisions of subsection 1 through 4 of this section, any telephone company having thirty telephone stations or less on December thirty-first preceding the year for which the tax computed under this section is assessed shall be subject to a tax of fifty cents per station.

Approved February 24, 1967.

CHAPTER 438

H. B. No. 729

(Fossum, Freeman, Aamoth)

TAXATION OF BANKS, TRUST COMPANIES, AND
BUILDING AND LOAN ASSOCIATIONS

AN ACT

To amend and reenact sections 57-35-04 and 57-35.1-02 of the North Dakota Century Code, relating to the taxation of banks, trust companies, and building and loan associations.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-35-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35-04. Basis of Tax.) The liability for the tax imposed by this chapter shall arise upon the first day of each calendar year, and shall be based upon and measured by the net income of each bank or trust company for the preceding calendar year, including the amount of its income from tax exempt securities for such year as returned to the tax commissioner and county auditor, and the tax thereon shall be computed at the rate of five percent, but the minimum tax assessable to any one taxpayer shall be fifty dollars.

§ 2. Amendment.) Section 57-35.1-02 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35.1-02. Imposition and Basis of Tax.) An annual tax is hereby imposed upon each building and loan association, for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year, commencing January 1, 1961. This tax is in lieu of all other taxes or impositions, state, county, and local, except taxes upon the real property of any association, and shall be based upon and measured by the net income of each association for the preceding calendar year. The amount of the tax shall be computed by the tax commissioner at the rate of five percent of such net income. Regardless of such computation, the minimum tax assessable hereunder to any association shall be fifty dollars. The liability for the tax imposed by this chapter shall arise upon the first day of each calendar year following the year for which the net income is used as the base for measuring the tax.

Approved March 1, 1967.

CHAPTER 439

H. B. No. 583
(Boustead, Wagner)

ADMINISTRATION OF CIGARETTE AND TOBACCO TAX

AN ACT

To create and enact subsection 3 of section 57-36-11 of the 1965 Supplement to the North Dakota Century Code and to amend and reenact section 57-36-24, subsection 2 of section 57-36-26 and subsection 2 of section 57-36-29 of the 1965 Supplement to the North Dakota Century Code, relating to the administration of the taxation of cigarettes and other tobacco products.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Subsection 3 of section 57-36-11 of the 1965 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

3. In instances where it is inappropriate, for any reason, for the tax commissioner to designate the county auditor of any county of this state as his representative for the setting of tax meter machines for any particular distributor and for the collection of the cigarette tax due upon each such setting the tax commissioner may delegate such responsibility to an individual or a corporate setting agent within or without this state. Any individual or corporation as designated shall transmit each amount of tax collected and report each meter machine's setting to the tax commissioner on or before the next business day, provided that a business day shall not include Saturday; the setting agent shall perform such duties in accordance with the procedure prescribed by the tax commissioner. Before commencing the duties of a setting agent, the setting agent shall submit to the tax commissioner a bond in the amount to be set by the tax commissioner. Any setting agent when designated by the tax commissioner pursuant to this section shall receive from the distributor for his services for setting a meter machine a fee to cover the cost of that portion of a bond which shall be attributable to any particular distributor plus a reasonable fee for the setting of the tax meter as determined by agreement between the setting agent, the distributor and the tax commissioner.

§ 2. **Amendment.)** Section 57-36-24 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-24. Exemptions.) All gift cigarettes, snuff, cigars and other tobacco products, not for resale, which are given

to the North Dakota soldiers' home or the North Dakota state hospital for distribution to the occupants thereof, shall be exempt from the excise taxes levied under the provisions of this chapter.

§ 3. Amendment.) Subsection 2 of section 57-36-26 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If cigars or snuff or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section shall apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in such other state is eleven percent of the wholesale purchase price or more, then no tax shall be due on such article. The provisions of this subsection shall apply only if such other state allows a tax credit with respect to the excise tax on cigars, snuff and other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

§ 4. Amendment.) Subsection 2 of section 57-36-29 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Whenever a distributor destroys cigarettes, cigars, snuff and other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund shall be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

Approved March 3, 1967.

CHAPTER 440

S. B. No. 243

(Chesrown, Longmire, Holand)

GROSS ESTATE OF RESIDENT DECEDENT

AN ACT

To amend and reenact subsection 3 of section 57-37-02 of the North Dakota Century Code, relating to gross estate of resident decedent.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 3 of section 57-37-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. All intangible personal property wherever located, except that the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement other than as insurance under policies on the life of the decedent shall be included in the gross estate of any decedent dying after June 30, 1967, only to the extent that it is or would be includible for federal estate tax purposes pursuant to the provisions of section 2039 of the United States Internal Revenue Code of 1954, as amended, through December 31, 1966;

Approved March 8, 1967.

CHAPTER 441

S. B. No. 80

(Longmire)

DEFINITION OF INTERNAL REVENUE CODE

AN ACT

To amend and reenact subsection 2 of section 57-37-07 of the 1965 Supplement to the North Dakota Century Code, relating to the definition of powers of appointment for estate tax purposes.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 2 of section 57-37-07 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. For the purposes of this section, the term "United States Internal Revenue Code of 1954, as amended" means the United States Internal Revenue Code of 1954 as amended to and including December 31, 1966.

Approved February 3, 1967.

CHAPTER 442

S. B. No. 193
(Holand, Meschke)

ADMINISTRATION OF ESTATE TAX LAWS

AN ACT

To amend and reenact subdivision k of subsection 2 of section 57-37-11, sections 57-37-15 and 57-37-17, subdivisions c of subsection 3 of section 57-37-21 of the North Dakota Century Code, relating to the administration of the estate tax law.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subdivision k of subsection 2 of section 57-37-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- k. If under this subsection an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for the purposes of this subsection, be considered as passing to the surviving spouse.

§ 2. Amendment.) Section 57-37-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-15. Court to Furnish Report to Tax Commissioner and Give Notice of Assessment.) The county court shall furnish to the tax commissioner:

1. An original and one copy of the application for determination of estate taxes in the gross estate of each decedent;
2. A copy of the inventory and appraisement;

3. A statement of all taxable transfers made by the decedent that have come to the court's knowledge;
4. A copy of the order of the court assessing the tax;
5. A copy of the decedent's will, if any, in a probate proceeding; and
6. Such other information contained in the records and files of the court as the tax commissioner shall require.

The court at the same time, shall notify the executor, administrator, trustee or other person interested in the estate of the amount of such assessment, but failure to receive such notice from the county court shall not excuse the non-payment of the tax nor invalidate the tax in any way.

§ 3. Amendment.) Section 57-37-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-17. Preliminary Appraisal Where No Probate Commenced.) In all cases wherein the county court has reason to believe that a decedent's estate may be subject to assessment under the provisions of this chapter, and no probate proceeding has been instituted within sixty days following the death of the decedent, the court shall cite one or more of the probable beneficiaries to appear and show cause why estate taxes should not be imposed under the provisions of this chapter, and in its discretion may appoint one or more appraisers who immediately shall appraise the property of any resident decedent within the county. Such appraisal shall be preliminary and may be amended by adding thereto any property found to be the property of decedent, during the administration of decedent's estate, or by deducting therefrom any property listed which is found not to be the property of the decedent. Such appraisal, in the discretion of the court, may be made final and may serve all purposes for the administration of the estate. The appraisers so appointed shall be paid out of the funds of the estate and the amount to be paid for each estate examined or appraised shall be determined by the county court, together with the actual and necessary traveling expenses.

§ 4. Amendment.) Subdivision c of subsection 3 of section 57-37-21 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. The election provided for in this subsection shall be exercised by the executor, administrator, trustee, or other person responsible for obtaining a determina-

tion of the tax imposed by this chapter, on his return if filed within fifteen months after the date of the decedent's death.

Approved March 14, 1967.

CHAPTER 443

S. B. No. 99
(Longmire)

ASSETS IN DECEDENT'S ESTATE

AN ACT

To amend and reenact section 57-37-29 of the 1965 Supplement to the North Dakota Century Code, relating to the retention and condition for transfer of assets in a decedent's estate.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-37-29 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-29. Depositories — Retention of Decedent's Assets — Conditions for Transfer or Release.) 1. No safe deposit company, trust company, corporation, band, or other institution or person having possession, control, custody, or partial control or custody of any securities, deposits, or other assets, including shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank, or other institution, standing in the name of a resident or nonresident decedent, or belonging to or standing in the joint name of such decedent and one or more other persons, shall deliver or transfer the same to the executor, administrator, or other legal representative, agent, deputy, attorney, trustee, legatee, heir, surviving joint owner, or any other successor in interest of such decedent, without retaining a sufficient amount of such assets to pay any tax which thereafter may be assessed thereon under this chapter, unless notice of the time and place of a proposed delivery or transfer of the assets is filed in the county court at least thirty days prior to delivery. The county court, however, by order, may direct a delivery of such assets, and such order shall relieve such safe deposit company, trust company, corporation, bank, or other institution or person from the obligation of retaining any portion of such assets and of giving notice of the delivery thereof. The county court may appoint appraisers as provided in section 57-37-17 to examine and appraise such assets at the time of the delivery thereof.

2. In the case of joint bank or savings accounts, or joint building and loan or savings and loan association share or savings accounts, the amount of assets required to be retained under this provision need in no event exceed an amount equal to the total amount of the deposit or shares divided by the number of joint owners. Such bank or building and loan or savings and loan association may and shall, upon demand, pay the remainder of such account or shares to the surviving joint owners and shall thereafter be absolved of any liability to the state for any amount so paid or any tax assessed under this chapter in excess of the amount required to be retained. In the instance of bank or savings accounts, or building and loan shares standing in the name of one or more persons, no fine, penalty or tax liability shall be assessed on account of any excess payment thereof to the survivor or survivors unless it is shown that such payment was knowingly and willfully made in violation of the terms and provisions hereof.

3. In the case of an insurer paying proceeds of a life insurance contract in which the decedent had an incident of ownership, determined pursuant to the provisions of section 57-37-02 of this chapter, no notice or order of the county court shall be required. The insurer may pay the proceeds of the life insurance contract to the stated beneficiary in the contract immediately, however, the insurer shall give the tax commissioner notice of the amount paid pursuant to the contract and any other information required by the tax commissioner regardless of the amount of the contract. Such notice shall be filed with the tax commissioner within thirty days from the date of payment.

Approved March 14, 1967.

CHAPTER 444

S. B. No. 176
(Becker)

DEFINITION OF "TAXABLE INCOME"

AN ACT

To amend and reenact subsection 20 of section 57-38-01 of the North Dakota Century Code, relating to definitions for income tax purposes.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 20 of section 57-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- *20. "Taxable income" in the case of individuals, estates, trusts and corporations shall mean the taxable income as computed for an individual, estate, trust or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954 as amended, plus or minus such adjustments as may be provided by this chapter or other provisions of law;

Approved February 21, 1967.

*Note: Subsection 20 of section 57-38-01 was also amended by section 2 of chapter 446, 1967 S.L.

CHAPTER 445

S. B. No. 139
(Becker, Torgerson)

INCOME TAX DEFINITIONS

AN ACT

To amend and reenact subsection 21 of section 57-38-01 of the 1965 Supplement to the North Dakota Century Code, relating to income tax definitions, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 21 of section 57-38-01 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21. a. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended" and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1954, as amended to and including December 31, 1966.
- b. Those provisions of the United States Internal Revenue Code of 1954, as amended, which are adopted for the purposes of this chapter and which apply to returns required to be filed under that Code for the calendar year 1966 and for fiscal years ended during 1966 shall also apply to returns required to be filed under the provisions of this chapter for the same periods.

§ 2. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 22, 1967.

CHAPTER 446

S. B. No. 393
(Meschke, Rait)

INCOME TAX LAW REVISION AND SIMPLIFICATION

AN ACT

Declaring legislative intent to simplify income tax and to eliminate certain interstate tax problems; to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to adjustments to taxable income for individuals and fiduciaries; to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to adjustments to taxable income for corporations; to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to the recognition of an election made under subchapter S of the Internal Revenue Code of 1954, as amended; to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to an optional card income tax return; to amend and reenact subsection 20 of section 57-38-01 of the North Dakota Century Code, relating to definitions for income tax purposes; to amend and reenact section 57-38-06 of the North Dakota Century Code, relating to nonresidents; to repeal sections 57-38-15, 57-38-15.1, 57-38-15.2, 57-38-15.3, 57-38-16, 57-38-17, 57-38-17.1, 57-38-18, 57-38-19, 57-38-20, 57-38-21, 57-38-22, 57-38-22.1, 57-38-24, 57-38-26, 57-38-27, and 57-38-28 of the North Dakota Century Code; and providing an effective date.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Declaration of Legislative Intent.) It is the intent of the legislative assembly to simplify the state income tax laws and to demonstrate that federal legislation is not necessary to deal with certain interstate tax problems, by adopting the federal definition of taxable income as the starting point for the computation of state income tax by all taxpayers and providing the necessary adjustments thereto to substantially preserve and maintain existing exemptions and deductions.

It is the further intent of the legislative assembly to eliminate double taxation of the earnings of small corporations by recognizing a subchapter S election when made for federal income tax purposes.

§ 2. Amendment.) Subsection 20 of section 57-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- *20. "Taxable income" in the case of individuals, estates, trusts and corporations shall mean the taxable income

***Note:** Subsection 20 of section 57-38-01 was also amended by section 1 of chapter 444, 1967 S.L.

as computed for an individual, estate, trust or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this Act and chapter or other provisions of law;

§ 3. Amendment.) Section 57-38-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

***57-38-06. General Provisions Applicable to Nonresidents.)** The provisions of law applicable to the assessment, levy, and collection of income taxes from resident individuals, as to income, taxable income, adjustments to taxable income, and the allocation or proration of any such items, and all other provisions not inconsistent with the provisions of this chapter especially made applicable to nonresidents, shall govern the levy and collection of income taxes from nonresident individuals.

§ 4. Amendment.) Chapter 57-38 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Adjustments to Taxable Income for Individuals and Fiduciaries.) 1. The taxable income of an individual, estate or trust as computed pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall be:

- a. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return.
- b. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation by this state because of the provisions of the Constitution of this state or the United States.
- c. Reduced by the amount of federal income taxes, but not social security and self-employment taxes, plus income taxes of foreign countries, paid or accrued as the case may be during the applicable tax year, adjusted by any federal or foreign tax refunds, to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income.
- d. Reduced by three hundred dollars if the return filed is a joint return by husband and wife. If separate

***Note:** Section 57-38-06 was also amended by section 1 of chapter 447, 1967 S.L.

returns are filed by husband and wife no deduction can be taken under this subsection. This subsection shall not be applicable to estates or trusts.

- e. Reduced by the actual amount of the medical expenses that were incurred but not allowed on the federal return by reason of the federal medical deduction limitation.
- f. Increased by the amount of any income taxes, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
- g. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any of its political subdivisions shall not be included.
- h. Reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.
- i. Reduced by any dividends or income received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes where the income of such corporation has been assessed and tax paid by the corporation under this chapter and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year, provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted. The commissioner is hereby authorized to prescribe rules and regulations to implement this subdivision to avoid injustice to taxpayers, to prevent duplication of deductions and to eliminate taxation of income not fairly and properly taxable under this chapter.

Provided, however, that each adjustment in the above subdivisions authorized under law shall be allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

2. The tax commissioner is hereby authorized to prescribe rules and regulations to prevent requiring income that had been previously taxed under this chapter from being taxed again because of the provisions of this Act and to prescribe rules and regulations to prevent any income from becoming exempt from taxation because of the provisions of this Act if it would otherwise have been subject to taxation under the provisions of this chapter.

§ 5. Amendment.) Chapter 57-38 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Adjustments to Taxable Income for Corporations.) 1. The taxable income of a corporation as computed pursuant to the provisions of the Internal Revenue Code of 1954, as amended, shall be:

- a. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return.
- b. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return, which is exempt from taxation by this state because of the provisions of the Constitution of this state or the United States.
- c. Reduced by the amount of federal income taxes, but not social security and self-employment taxes, plus income taxes of foreign countries, paid or accrued as the case may be during the applicable tax year, adjusted by any federal or foreign tax refunds, to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income.
- d. Increased by the amount of any income taxes, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
- e. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any of its political subdivisions shall not be included.

- f. Reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.
- g. Reduced by dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this chapter, received by the taxpayer and included in the gross income within the income year if such corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation shall have been assessed and income tax paid under this chapter, only a corresponding part of the dividends or income received therefrom shall be deducted.

Provided, however, that each adjustment in the above subdivisions authorized under law shall be allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

2. The tax commissioner is hereby authorized to prescribe rules and regulations to prevent requiring income that had been previously taxed under this chapter from being taxed again because of the provisions of this Act and to prescribe rules and regulations to prevent any income from becoming exempt from taxation because of the provisions of this Act if it would otherwise have been subject to taxation under the provisions of this chapter.

§ 6. Amendment.) Chapter 57-38 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Optional Card Income Tax Return.) The tax commissioner is hereby authorized to prescribe an optional card income tax return to permit taxpayers to simplify the filing of income tax returns required by this chapter.

§ 7. Amendment.) Chapter 57-38 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Recognition of Subchapter S Election.) For the purposes of this Act and chapter, any person as defined in section 57-38-01 and required to file a North Dakota income tax return

who makes an election under subchapter S of the Internal Revenue Code of 1954, as amended, for federal income tax purposes shall have such status recognized and such person's taxable income shall be computed as provided in subchapter S of the Internal Revenue Code of 1954, as amended, with the adjustments allowed by this Act or chapter or other provisions of law.

§ 8. Repeal.) Sections 57-38-15, 57-38-15.1, 57-38-15.2, 57-38-15.3, 57-38-16, 57-38-17, 57-38-17.1, 57-38-18, 57-38-19, 57-38-20, *57-38-21, 57-38-22, 57-38-22.1, 57-38-24, 57-38-26, 57-38-27, and 57-38-28 of the North Dakota Century Code are hereby repealed.

§ 9. Effective Date.) The provisions of this Act shall apply to all taxable years beginning on or after January 1, 1967.

Approved March 14, 1967.

***Note:** Section 57-38-21 was amended by section 1 of chapter 451, 1967 S.L.

CHAPTER 447

S. B. No. 178
(Becker)

APPLICATION OF INCOME TAX LAWS TO NONRESIDENTS

AN ACT

To amend and reenact section 57-38-06 of the North Dakota Century Code, relating to application of income tax law to nonresident.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-38-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

***57-38-06. General Provisions Applicable to Nonresidents.)** The provisions of law applicable to the assessment, levy, and collection of income taxes from resident individuals, as to income, taxable income, adjustments to taxable income, and the allocation or proration of any of such items, and all other provisions not inconsistent with the provisions of this chapter

***Note:** Section 3 of chapter 446, 1967 S.L., also amended section 57-38-06.

especially made applicable to nonresidents, shall govern the levy and collection of income taxes from nonresident individuals.

Approved February 21, 1967.

CHAPTER 448

H. B. No. 867
(Backes)

INCOME TAX EXEMPTIONS FOR NONRESIDENTS

AN ACT

To create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to exemption for nonresident individual.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) A new section to chapter 57-38 of the North Dakota Century Code is hereby created and reenacted to read as follows:

Exemptions for Nonresident Individual.) Notwithstanding any other provisions of law, nonresident individuals shall be permitted to deduct from net income the exemptions provided in section 57-38-26 as prorated by the ratio that the North Dakota income bears to the total income of the nonresident individual.

Approved February 27, 1967.

CHAPTER 449

S. B. No. 177
(Becker)

INCOME TAX ON FIDUCIARIES

AN ACT

To amend and reenact section 57-38-07 of the North Dakota Century Code, relating to income tax on fiduciaries.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-38-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-07. Tax Imposed on Fiduciaries—A Charge Against Estate or Trust.) The tax imposed by this chapter shall apply to and become a charge against estates and trusts with respect to their taxable income as defined in this chapter, and the rates shall be the same as those applicable to individuals. The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereof. Fiduciaries required to make returns shall be subject to all of the provisions of this chapter which apply to individuals.

Approved February 27, 1967.

CHAPTER 450

H. B. No. 768
(Aas)

FILING OF EXEMPTION CERTIFICATES

AN ACT

Relating to the filing of exemption affidavits with the tax commissioner by organizations exempt from income tax.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Organizations Exempt from Income Tax—File Affidavit.)** Any organization exempt from taxation pursuant to section 57-38-09 must on or before April 15 of each year file an affidavit with the tax commissioner in such form and man-

ner as may be prescribed by the tax commissioner containing such information as is necessary to enable him to determine the exempt status of the organization.

Approved February 24, 1967.

CHAPTER 451

S. B. No. 135

(Lips)

COMPUTATION OF NET INCOME

AN ACT

Amending and reenacting section 57-38-21 of the 1963 Supplement to the North Dakota Century Code, relating to the definition of and computation of net income.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-38-21 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

***57-38-21. "Net Income" Defined — Computation.)** In the case of corporations other than regulated investment companies as defined in section 851 of the Federal Internal Revenue Code of 1954, as amended, the phrase "net income" means the gross income of corporations as defined in this chapter, less the allowable deductions; in the case of regulated investment companies as defined in section 851 of the Federal Internal Revenue Code of 1954, as amended, the phrase "net income" means investment company taxable income as defined in section 852 of the Federal Internal Revenue Code of 1954, as amended; in the case of individuals, the phrase "net income" means the adjusted gross income as computed for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, with adjustments; in the case of estates or trusts the phrase "net income" means the taxable income as computed for federal income tax purposes, plus the federal personal exemption deduction, and with adjustments. Adjustments for individuals and estates or trusts shall be as follows:

1. Subtract interest and dividends from federal securities.

***Note:** Section 57-38-21 was repealed by section 8 of chapter 446, 1967 S.L. This repeal is effective for taxable years commencing on January 1, 1967.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any political subdivision thereof shall not be added.
3. Where the adjusted gross income includes capital gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1919, an adjustment may be made under rules and regulations prescribed by the state tax commissioner to reflect the difference resulting from the use of a basis of cost or January 1, 1919, fair market value, less depreciation allowed or allowable, whichever is higher. Provided, however, that the basis shall be fair market value as of January 1, 1959, less depreciation allowed or allowable in case of property acquired prior to that date if use of a pre-1919 basis is declared to be invalid.
4. Where an individual is permitted to file as a corporation under the provisions of the Internal Revenue Code of 1954, as amended, such fictional status shall not be recognized and such individual's taxable income shall be computed as required under the provisions of the Internal Revenue Code of 1954 as amended, relating to individuals not filing as corporations, with the adjustments, deductions, and exemptions allowed by this chapter.
5. Where the federal adjusted gross income includes gains from property dealings in an earlier year, on which gains a North Dakota income tax return was made for such earlier year, adjustments shall be made under rules and regulations of the tax commissioner where necessary to prevent multiple state taxation with respect to the taxable event.
6. Where the federal adjusted gross income has not been reduced by depreciation allowances available on state returns under prior law but exhausted on federal returns due to differences in depreciation plans or schedules, adjustments shall be made under rules and regulations of the tax commissioner to prevent inequitable state taxation.
7. Where the federal adjusted gross income has not been reduced by losses available on state returns under prior law previously exhausted on federal returns due to differences in carry-back and carry-over provisions,

adjustments shall be made under rules and regulations of the tax commissioner to prevent inequitable state taxation.

8. Subtract any dividends or income received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes where the income of such corporation has been assessed and tax paid by the corporation under this chapter and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year, provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted.

The commissioner is hereby authorized to prescribe rules and regulations to implement this section to avoid injustice to taxpayers, to prevent duplication of deductions and to eliminate taxation of income not fairly and properly taxable under this chapter.

Approved February 22, 1967.

CHAPTER 452

S. B. No. 175
(Becker)

TAX RATE ON CORPORATIONS

AN ACT

To amend and reenact section 57-38-30 of the North Dakota Century Code, relating to the rate of tax on corporations.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-38-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-30. Rate of Tax on Corporations.) A tax is hereby imposed upon the taxable income of every domestic and foreign corporation received from the sources described in

sections 57-38-12, 57-38-13, and 57-38-14, which shall be levied, collected, and paid annually as in this chapter provided, and which shall be computed at the following rates:

1. For the first three thousand dollars of taxable income, at the rate of three percent;
2. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four percent;
3. On all taxable income above eight thousand dollars and not in excess of fifteen thousand dollars, at the rate of five percent;
4. On all taxable income above fifteen thousand dollars, at the rate of six percent.

Approved February 27, 1967.

CHAPTER 453

S. B. No. 276
(Becker)

INCOME TAX RETURNS

AN ACT

To amend and reenact section 57-38-31 and 57-38-32 of the North Dakota Century Code, relating to the duty of individuals and corporations to make return.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-38-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-31. Duty of Individuals and Fiduciaries to Make Return.) 1. Every resident individual, every fiduciary for a resident individual, estate or trust, and every individual or fiduciary who receives income derived from sources in this state, who is required by the provisions of the United States Internal Revenue Code of 1954, as amended, to file a federal income tax return, shall file an income tax return with the state tax commissioner in such form as he may prescribe. Any person required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, with respect to income that is exempt from taxation under this chapter either because it cannot be constitution-

ally taxed or because it is exempt by any provision of law shall file a return prescribed by the tax commissioner in such form as will permit computation of the tax liability under this chapter on only that part of the income which is subject to taxation pursuant to the provisions of this chapter, provided that such person elects to use that form of return rather than any other form of return that may be prescribed. The return shall be signed by the person required to make it and shall contain a written declaration that it is made and subscribed under penalties of perjury.

2. A husband and wife each having separate income may include their income in a single joint return, or if they have separate income from personal or professional services or from business or property in which the other has no ownership and if they file a joint federal income tax return in which such income is reported, they may file separate returns in which the separate income of each and the deductions and exemptions for themselves or their dependents are reported in the same way that they would have been required to report them in separate federal returns if they had filed separate federal returns.

A husband and wife who have income from property or business in which both have an ownership interest may file a single joint return in which the income of both, along with any other income they may be required to report, is included, or they may file separate returns in the same way as provided in the preceding paragraph, provided that the income from the property or business in which both have an ownership interest shall be allocated between them according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such property or business, pursuant to rules and regulations promulgated by the tax commissioner for the reasonable allocation thereof.

3. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. Every fiduciary subject to taxation under the provisions of this chapter shall make a return for the individual, estate or trust for which he acts, if he is required to make a return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended; the return shall be signed by the person required to make it and shall contain a written declaration that it is made and subscribed under penalties of perjury.

5. The return made by a fiduciary shall state such facts as the tax commissioner may prescribe.

6. A fiduciary required to make a return under this chapter shall be subject to all of the provisions of the chapter which apply to an individual.

7. The return shall be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information on forms furnished and under regulations promulgated by the state tax commissioner if required by the tax commissioner, or a true copy of the federal income tax return of the taxpayer or equivalent information shall be furnished to the tax commissioner by the taxpayer or fiduciary at any time after he has filed the return required by this chapter if so required by the tax commissioner.

§ 2. Amendment.) Section 57-38-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-32. Duty of Corporations to Make Returns.) Each corporation that receives income from the sources designated in section 57-38-30 and which is required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a return in such form as the tax commissioner may prescribe, stating specifically such facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Any foreign loan and investment company engaged in business in this state, and whose income in this state consists solely of income exempt from taxation under this chapter, need not file an annual report unless specially requested to do so by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this chapter. The return shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act and it and any other declaration, statement or document required to be made shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Approved February 21, 1967.

CHAPTER 454

S. B. No. 347

(Meschke, Berube, Christensen, Larson(17), Rait)

PAYMENT OF INCOME TAX IN QUARTERLY INSTALLMENTS

AN ACT

To amend and reenact section 57-38-36 of the North Dakota Century Code, relating to the payment of income tax in quarterly installments.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-38-36 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-36. When Payment of Tax May Be Made in Quarterly Installments.) If the total tax exceeds one hundred dollars it may be paid in quarterly installments, and if paid in such installments, the first installment shall be paid at the time fixed by this chapter for filing the return, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month after the time fixed by law for filing the return. Interest at the rate of six percent per annum shall be charged on all unpaid installment balances during the period from the date fixed by this chapter for filing the return and the date payment of the installment is due. If a taxpayer elects under the provisions of this section to pay the tax in installments, any installment may be paid prior to the date prescribed for its payment. If an installment is not paid in full on or before the date fixed for its payment the whole amount of the unpaid tax shall be paid upon notice and demand from the tax commissioner, and penalty and interest, as provided in sections 57-38-43 and 57-38-45, shall attach, from and after the time of the failure to make such timely payment, to the whole amount of the unpaid tax.

Approved February 27, 1967.

CHAPTER 455

H. B. No. 778
(Aas)

INCOME TAX AUDITS

AN ACT

To amend and reenact section 57-38-38 of the 1965 Supplement to the North Dakota Century Code, relating to notice of federal audit of return, consent for future audit, penalties, and to provide for an effective date.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-38-38 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-38. Tax Commissioner to Audit Returns and Assess Tax.) 1. Except as provided in subsections 2, 3, 4, 5, 6 and 7 of this section, the tax commissioner shall proceed to audit the returns of taxpayers and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, assess the tax and, if any additional tax is found due, shall notify the taxpayer in detail as to the reason for the increase;

2. If a taxpayer omits from net income an amount properly includable therein which is in excess of twenty-five percent of the amount of net income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later;

3. If the taxpayer has failed to file a return of income as required by this chapter, the tax may be assessed, or a proceeding in court for the collection of the tax due may be begun without such assessment, at any time within ten years after the due date of the return; provided that no limitation of time shall apply if at the effective date of this amendment a lien has been filed and recorded pursuant to section 57-38-49;

4. Where false or fraudulent information is given in the return, or where the failure to file a return is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, the time limitations in this section shall not apply, and the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without such assessment, at any time;

5. If the amount of net income for any year of any taxpayer as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract within the United States results in a change in net income, such taxpayer shall report such changed or corrected income, or the results of such renegotiation, within ninety days after the final determination of such change or correction or renegotiation, or as required by the tax commissioner and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter a copy of such amended return with the tax commissioner. Any taxpayer who consents to an extension of time for the assessment of taxes with the internal revenue service shall within thirty days notify the tax commissioner of the execution of such consent. Failure to report such changed or corrected federal net income or to file a copy of such amended federal return or notify the tax commissioner of the execution of such consent as set forth above and within the time stated shall suspend the running of the period of limitation until such report or copy has been furnished to the tax commissioner, or until six months following the expiration of the federal period of limitation where no change is made or amended return is filed;

6. Where before the expiration of the time prescribed in subsections 1, 2, and 3 for the assessment of tax, the tax commissioner and the taxpayer consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon;

7. The provisions of subsections 5 and 6 shall be effective for all income tax returns filed by all individuals, corporations, fiduciaries, estates and trusts for every taxable year beginning after December 31, 1966.

Approved March 1, 1967.

CHAPTER 456

S. B. No. 310

(Rait)

INFORMATION AND PARTNERSHIP RETURNS

AN ACT

To amend and reenact section 57-38-42 of the North Dakota Century Code, relating to information and partnership returns.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 57-38-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-42. Information at the Source.) Information as to income shall be furnished at the source in the manner following:

1. Every individual, partnership, corporation, joint stock company, or association, or insurance company, a resident of, or having a place of business in, this state, in whatever capacity acting, including lessees and mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any state institution, or of any political subdivision within the state, having control, receipt, custody, disposal, or payment of interest, other than interest coupons payable to bearer, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, amounting to six hundred dollars or over in salaries or wages, and ten dollars or over of dividends or interest if an information return for such amount is also required to be filed for federal income tax purposes, and six hundred dollars or over in other payments mentioned in this chapter, whether paid or payable during any year to any taxpayer, shall make a complete return thereof to the tax commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by the tax commissioner;
2. Every partnership, having a place of business in this state, shall make a return, stating specifically the items of its gross income and the deductions allowed by this chapter, and shall include in the return the names and addresses of the individuals who would be entitled to

share in the net income if distributed, and the amount of the distributive share of each individual;

3. All information returns required under subsection 1 of this section shall be made on the basis of a calendar year for payments made or accrued during the calendar year and shall be filed with the tax commissioner on or before April fifteenth of the year following the calendar year for which made. All partnership returns required under subsection 2 of this section shall be made on or before the fifteenth day of the fourth month following the close of the fiscal year of the partnership required to make the return, or if the return is made on the basis of a calendar year, then the return shall be made on or before the fifteenth day of April in the year following the calendar year for which such return is made;
4. Each information return required under subsection 1 of this section and each partnership return required under subsection 2 of this section shall be signed and shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Approved March 14, 1967.

CHAPTER 457

S. B. No. 262
(Torgerson)

WAIVER OF CIVIL PENALTIES

AN ACT

To amend and reenact subsection 5 of section 57-38-45 of the North Dakota Century Code, relating to the waiver of civil penalties.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 5 of section 57-38-45 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The tax commissioner may for good cause shown waive all or any part of any civil penalty that attached pursuant to the provisions of this chapter. The provisions of this subsection shall be effective for all returns filed prior to and after December 31, 1966;

Approved March 4, 1967.

CHAPTER 458

H. B. N. 833

(Brown)

NONRESIDENT WITHHOLDING OF INCOME TAXES

AN ACT

Creating and enacting sections 57-38-58, 57-38-59, 57-38-60, 57-38-61, 57-38-62, 57-38-63, 57-38-64 and 57-38-65 of the North Dakota Century Code, relating to withholding of income taxes from wages of nonresident employees, declaration and payment of estimated income, amendment of declaration, and providing an effective date and penalties.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Section 57-38-58 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-58. Definitions.) As used in sections 57-38-59 through 57-38-64 unless the context or subject matter otherwise requires:

1. "Employer" means a person or organization transacting business in or deriving any income from sources within the state of North Dakota for whom an individual performs or performed any services, of whatever nature, and who has control of the payment of wages for such services, or an officer, agent or employee of the person or organization having control of the payment of wages. It includes any officer or department of state or federal governments, or any political subdivision or agency thereof.
2. "Employee" means and includes every individual, except persons employed as domestic or farm workers, performing services for an employer, the performance of which constitutes, establishes and determines the relationship between the parties as that of employer and employee, and includes officers of corporations, individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof, or the state of North Dakota or any county, city, municipality or political subdivision thereof.
3. "Wages" means "wages" as defined in the Internal Revenue Code of 1954, as amended, for the purpose of collection of income tax at the source, on wages.

4. "Nonresident" means any person who did not file an individual income tax return with the state tax commissioner for or during the preceding year and who has not continuously maintained a domicile in North Dakota for a period of one full calendar year from January first to December thirty-first, and such person shall be deemed a nonresident of North Dakota until he has filed an individual income tax return with the state tax commissioner for the preceding year and until he has continuously maintained a domicile in North Dakota for a full calendar year.

§ 2.) Section 57-38-59 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-59. Withholding from Wages of Nonresident Employees—Penalty.) 1. Every employer making payment of wages to nonresident employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of 1954 as amended, as will approximate the income taxes due the state; provided that no employer shall be required to deduct and withhold any amount on the first four hundred dollars of annual wages paid to a nonresident employee unless such employee is employed for a period of thirty days or more within any one year. The amount of tax withheld shall be computed without regard to any other amount required to be withheld thereunder, but the tax withheld shall as closely as possible pay any tax liability imposed by this chapter.

2. In the event that the tax deducted and withheld under the provisions of subsection 1 of this section should prove to be disproportionate to the tax liability, the tax commissioner may adjust the percentage which, when withheld, will, as closely as may be possible, pay the income tax liability imposed by this chapter.

3. The tax commissioner may, in lieu of the requirement above for deducting and withholding tax based upon a percentage of federal income tax withheld, adopt by regulation tax tables which, when the tax provided for in the tables is withheld, will, as closely as possible, pay the income tax liability imposed by this chapter. When adopted by the tax commissioner said tables shall be followed by every employer required to deduct and withhold any tax imposed by this chapter.

4. Every employer shall deduct and withhold from every nonresident employee's wages the amounts required to be deducted and withheld from a nonresident employee's wages

until such time as the employee has filed with his employer a certificate under oath, in such form as the tax commissioner shall prescribe, that such employee entitled to wages is a resident of the state of North Dakota as defined for withholding purposes. Any employee willfully submitting a falsified statement shall be guilty of perjury and punished in accordance with chapter 12-14.

Employers shall be required to make the certificates of residence available to the tax commissioner upon request.

§ 3.) Section 57-38-60 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-60. Employer's Returns and Remittances.) 1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all nonresident employees during the preceding calendar quarter under the provisions of section 57-38-59; provided that the tax commissioner may alter the time or period for making reports and payment when in his opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under the provisions of this section which shall show the total amount of wages paid to his nonresident employees, the amount of federal income tax deducted and withheld during the period covered by the return, the amount of tax imposed under the provisions of this chapter that was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.

3. Every employer shall make an annual return to the tax commissioner on forms provided and approved by him, summarizing the total compensation paid, the federal income tax deducted and withheld and the state tax deducted and withheld for each nonresident employee during the calendar year and shall file the same with the tax commissioner on or before the thirty-first day of January of the year following that for which the report is made. Every employer shall also, in accordance with such regulations as may be prescribed by the tax commissioner, provide each nonresident employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance with the provisions of section 57-38-59, and

said statement shall be made available to the employee on or before the thirty-first day of January of the year following that for which the report is made.

4. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts he shall be considered the taxpayer.

5. Every employer who deducts and withholds any amounts under the provisions of section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.

6. As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this state for a period of one full year from January first to December thirty-first, shall be required, and any other employer, at the discretion of the tax commissioner may be required to either make a cash deposit or post with him a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota in such amount as is reasonably calculated to insure the payment to the state of taxes deducted and withheld from wages, but not to exceed five thousand dollars.

§ 4.) Section 57-38-61 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-61. Provisions of Chapter Applicable.) The provisions of sections 57-38-34, 57-38-38 through 57-38-40, 57-38-43 through 57-38-47, and 57-38-52 through 57-38-57 shall, insofar as consistent therewith, govern the administration of sections 57-38-58, 57-38-59, and 57-38-60. The term "employer" as used in sections 57-38-58, 57-38-59, and 57-38-60 shall also mean "taxpayer" as used in this chapter. No refund shall be made by the tax commissioner to a taxpayer unless the amount to be refunded shall exceed three dollars. In addition the authority

of the tax commissioner to prescribe rules and regulations shall include the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in the state of North Dakota.

§ 5.) Section 57-38-62 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-62. Declaration of Estimated Income.) All nonresident taxpayers shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by rules and regulations, if their estimated tax due the state from sources other than wages, salaries, bonuses or other emoluments can reasonably be expected to exceed forty dollars.

§ 6.) Section 57-38-63 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-63. Payment of Estimated Tax.) No later than April fifteenth of the taxable year the taxpayer shall file the declaration of estimated tax and make payment of no less than one-quarter of the amount of tax due thereon with the tax commissioner. If at this time a payment of at least one-quarter but less than the entire amount of tax due is made by the taxpayer the balance of the tax shall then be paid in three equal installments on the fifteenth days of the following months of June, September, and January.

§ 7.) Section 57-38-64 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-64. Amendment of Declaration.) An individual may amend a declaration of estimated income and make the adjusted payments of tax due thereon under the regulations of the tax commissioner.

§ 8.) Section 57-38-65 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-65. Exemption.) No transportation company shall be required to deduct and withhold with respect to wages paid to nonresident employees for work performed within North Dakota but whose total work during any one payroll period is performed within more than one state; provided, however, that any such employee furnish a certificate to the state tax commissioner that he will be taxable with respect to all such wages earned in North Dakota pursuant to chapter 57-38 of the North Dakota Century Code.

§ 9. Effective Date.) The provisions of sections 57-38-59, 57-38-62, and 57-38-63 shall become effective for wages paid and income received after June 30, 1967.

Filed March 16, 1967.

Not approved or disapproved by the governor.

CHAPTER 459

H. B. No. 731

(Brown, Johnson(23), Strinden, Kingsbury, Erickson(26),)
(Seibel, Mathiason)

THE 1967 SALES AND USE TAX ACT

AN ACT

To provide for the imposition of a two and one-quarter percent sales tax and use tax, exemptions thereto, manner of collection and administration, appeals, penalties, refunds, and allocation of revenues; and to repeal chapters 57-39 and 57-40 of the North Dakota Century Code, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Legislative Intent.) This Act shall be known as "The 1967 Sales and Use Tax Act" and shall specifically repeal and replace chapters 57-39, 57-40, and 57-40.1 of the North Dakota Century Code and any or all parts of such chapters that are or may be in effect prior to the effective date of this Act.

§ 2. Definitions.) The following words, terms, and phrases, when used in sections 2 through 25 of this Act, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
2. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration, and includes the furnishing or service of steam, gas, electricity, water, or communication, 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

subscriptions to magazines and other periodicals regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscription; provided that the words "magazines and other periodicals" as used herein shall not include newspapers nor shall they include 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.

3. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, electricity, water, and communication service to retail consumers or users; the ordering, selecting or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, 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 the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to other real or personal property otherwise exempt from the sales tax shall be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated outside of North Dakota shall not be considered a taxable sale. As used in this subsection the word "consumer" shall include any hospital, infirmary, sanatorium, nursing home, home for the aged or similar institution that furnishes services to any patient or occupant.

4. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.
5. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, electricity, water and communication services, or tickets or admissions to places of amusement, entertainment and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in manner provided in this Act; and shall include the state or any municipality furnishing steam, gas, electricity, water, or communication service to members of the public in its proprietary capacity.
6. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purposes allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. Provided further, however, that when tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to the sales tax imposed by this Act when sold, the credit or trade-in value allowed by the retailer shall not be regarded as gross receipts. Provided further, however, that on all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty

days from the date of sale thereof that only such portion of the sale amount thereof shall be accounted for, for the purpose of imposition of tax imposed by this Act, as has actually been received in cash by the retailer during each quarterly period as defined herein. "Gross receipts" shall also mean, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only such tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. "Gross receipts" shall also mean, with respect to subscriptions to magazines and other periodicals, the amount of consideration, valued in money, whether received in money or otherwise, received from the sale of such subscriptions regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscription.

7. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
8. "Commissioner" means the tax commissioner of the state of North Dakota.
9. "Local governmental unit" means incorporated cities, counties, school districts and townships.

§ 3. Sales Tax Imposed.) Except as otherwise expressly provided by sections 2 through 25 of this Act, there is hereby imposed a tax of two and one-quarter percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as hereinafter provided in this section, within the state of North Dakota of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares, or merchandise.
2. The furnishing or service of steam, gas, electricity, water, or communication services.
3. 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 playing of any machine for amusement or entertainment in response to the use of a coin.
4. Magazines and other periodicals, including subscriptions thereto.

5. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month.
6. 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 Act or a use tax under the provisions of this Act.

Any contract awarded prior to the effective date of this Act, 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.

§ 4. Exemptions.) There are specifically exempted from the provisions of sections 2 through 25 of this Act and from computation of the amount of tax imposed by them 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 this state.
2. Gross receipts from the sales, furnishing or service of transportation service.
3. Gross receipts from sales of tangible personal property processed from agricultural products, when such property is sold in exchange for like agricultural products produced by the purchaser and is for the purchaser and his family.
4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, where the entire amount of such receipts is expended for educational, religious, or charitable purposes.
5. Gross receipts from sales of instructional supplies to regularly enrolled students of a private or public school.
6. Gross receipts from all sales otherwise taxable under section 3 of this Act made to the United States or any state thereof, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions thereof.
7. Gross receipts from the sale, by any drugstore, of drugs sold under a doctor's prescription.
8. Gross receipts from sales of commercial fertilizers, fungicides, herbicides and insecticides used to promote

the growth of plants and cereals and chemicals used to preserve agricultural crops being stored, and from the sale of seeds, roots, bulbs, and small plants to users or consumers for planting or transplanting for vegetable gardens or agricultural purposes.

9. Gross receipts from sales of oxygen sold to any person who purchases it upon the written order of a doctor for his own use for medical purposes.
10. Gross receipts from the sale of gasoline, cigarettes, snuff, insurance premiums, or any other article or product upon which the state of North Dakota imposes a special tax.
11. 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 and other generally recognized animal feeds. The term "feed" does not include drugs, medicants, disinfectants, wormers, tonics and like items.
12. Gross receipts from all sales otherwise taxable under section 3 of this Act when made to persons who are residents of adjoining states which do not impose or levy a retail sales tax; provided that such persons are in the state of North Dakota for the express purpose of making such purchases, and not as tourists; and provided further that any such person furnish to the North Dakota retailer a certificate signed by him in such form as the tax commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless such certificate is furnished it shall be presumed, until the contrary is shown, that such person was not in the state of North Dakota for the express purpose of making such purchases; provided further that this exemption shall not apply to any sale to any person if the sales price is ten dollars or less. The deduction for this exemption shall not exceed one and one-half of the amount of the deduction for exempt sales in interstate commerce which the retailer was legally entitled to deduct on his sales tax returns for the calendar year 1964. If no deduction was taken for interstate commerce sales on returns filed for the calendar year 1964 or if no returns were required to

- be filed for the calendar year 1964, the deduction for this exemption shall not exceed the average interstate commerce deduction legally allowed by retailers conducting similar business, as determined by the tax commissioner.
13. Gross receipts from the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota.
 14. Gross receipts from the sale of tangible personal property when sold through a coin operated vending machine.
 15. Gross receipts from sales in which a contractor furnishes to the retailer a certificate which includes the contractor's license number assigned to him under the provisions of chapter 43-07 and the use tax account number assigned to him by the tax commissioner pursuant to section 43-07-04. Such certificate shall be in the form prescribed by the tax commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. Any contractor furnishing such certificate must report and remit the tax to the state tax commissioner on purchases taxable under this Act made by him in the same manner as retailers remit such tax under this Act.
 16. Gross receipts from the sale of newsprint and ink used in the publication of a newspaper.
 17. Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, home for the aged or similar institution to any patient or occupant.

§ 5. Credit or Refund for Taxes Paid on Worthless Accounts and Repossessions.) 1. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax shall be paid upon the amount so collected.

2. If a retailer has remitted the sales tax due on the full amount of an installment sales contract rather than on only the installment payments received as provided in subsection 6 of section 2 of this Act, he may deduct as a credit against his sales tax liability on the next return that he is required to file the amount of sales tax he paid on the installment contract payments which were not made by the purchaser of the merchandise sold under such contract; such credit may be

deducted by the retailer regardless of whether or not said retailer has assigned the contract, provided, however, that if the retailer has assigned the contract he must have assigned it subject to an agreement to repurchase the contract in the event of default by the purchaser under the contract or subject to a guarantee that the payments under the contract would be made. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess shall be allowed as credit against future sales tax due from the retailer. If in any case the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

§ 6. Credit to Relief Agency and Local Governmental Units.)

A relief agency may apply to the commissioner for refund of the amount of tax imposed under section 3 of this Act and paid upon sales to it of any goods, wares, or merchandise used for free distribution to the poor and needy. Such refunds may be obtained only in the following amount and in the manner and only under all of the following conditions:

1. On forms furnished by the commissioner, and during the time herein provided for the filing of quarterly tax returns by retailers, the relief agency shall report to the commissioner the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, or merchandise used for free distribution to the poor and needy.
2. On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.
3. The relief agency must prove to the satisfaction of the commissioner that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by section 3 of this Act, based upon such computation of gross receipts.

If the commissioner is satisfied that the foregoing conditions and requirements have been complied with, he shall refund the amount claimed by the relief agency.

§ 7. Tax To Be Added to Purchase Price and Be a Debt.)

Retailers shall add the tax imposed under section 3 of this Act, or the average equivalent thereof, to the sales price or charge and when added such taxes shall constitute a part of such price or charge, shall be a debt from the consumer or user to

the retailer until paid, and shall be 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 to \$0.19.....	no tax
.20 to .59.....	1¢ tax
.60 to .99.....	2¢ tax
1.00 to 1.49.....	3¢ tax
1.50 to 1.99.....	4¢ tax
2.00 to 2.49.....	5¢ tax
2.50 to 2.99.....	6¢ tax
3.00 to 3.49.....	7¢ tax
3.50 to 3.99.....	8¢ tax

An additional tax of 1¢ for each 50¢, or fraction thereof, over \$3.99 except that for each full \$4.00 there shall be collected a tax of 9¢.

§ 8. Unlawful Act.) No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by section 3 of this Act shall be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer or, if added, that it or any part thereof will be refunded.

§ 9. Records Required.) Every retailer required to make a report and pay any tax under sections 2 through 25 of this Act, shall preserve such records of the gross proceeds of sale as the commissioner may require and every retailer shall preserve for a period of six years all invoices and other records of goods, wares, or merchandise purchased for resale. All such books, invoices, and other records shall be open to examination at any time by the commissioner or any of his duly authorized agents.

§ 10. Return of Gross Receipts.) 1. On or before the last day of the month following the close of the first quarterly period as defined in the following section, 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 such 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 such return, and such further information as the commissioner may require to enable him 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 such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any such retailer, the time in which he is required to make payment as provided for in section 11 of this Act shall be extended for the same period;

2. The commissioner, if he deems it necessary or advisable in order to insure the payment of the tax imposed by section 3, or if he deems it practical, may require returns and payment of the tax to be made for annual periods or other than quarterly periods, the provisions of this Act to the contrary notwithstanding.

3. Returns shall be signed by the retailer or his duly authorized agent.

§ 11. Payment of Tax—Bond—Creation of Lien.) 1. The tax levied under section 3 of this Act shall be due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that when there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax shall become due immediately prior to the sale or discontinuance of such business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided in section 16 of this Act.

2. Every retailer, at the time of making the return required hereunder, shall compute and pay to the commissioner the tax due for the preceding period.

3. The commissioner, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under section 3 of this Act, may require any person subject to such tax to file with him a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility in such amount as the commissioner may fix, to secure the payment of any tax and penalties due or which may become due from such person. In lieu of such bond, securities approved by the commissioner in such amounts as he may prescribe, may be deposited with him, which securities shall be kept in the custody of the commissioner and may be sold by him at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax and penalties due. All moneys deposited as security with the state tax commissioner under the provisions of this subsection shall be paid by the state tax commissioner to the state treasurer and shall be credited by the state treasurer

into a special fund to be known as the "Retail Sales and Use Tax Security Trust Fund." If any tax, penalty or costs imposed by this Act are not paid when due, by the person depositing moneys with the state tax commissioner as security for the payment of tax, penalty or costs imposed by this Act, the state tax commissioner shall certify that information to the director of accounts and purchases who shall transmit the money to the tax commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the tax and penalties due. The state tax commissioner, when in his judgment it is no longer necessary to require the deposit to be maintained by the person, shall certify that information to the director of accounts and purchases who shall pay the unused money to the person entitled thereto.

4. Remittances on account of tax due under section 3 of this Act shall not be deemed or considered payment thereof unless or until the commissioner shall have collected or received the amount due for such tax in cash or equivalent credit.

§ 12. Lien of Tax — Collection — Action Authorized.) 1. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of his death, the lien shall continue as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest shall be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.

2. The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied; for the purposes of this provision the words "due" and "due and payable" shall mean the first instant at which the tax becomes due.

3. In order to preserve the aforesaid lien against subsequent mortgages, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the tax commissioner shall file with the register of deeds of the county in which said property is located, a notice of said lien.

4. The register of deeds of each county shall prepare and keep in his office a book known as "Index of Tax Liens," so ruled as to show in appropriate columns all of the following data, under the names of taxpayers, arranged alphabetically:

- a. The name of the taxpayer.
- b. The name "State of North Dakota" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The register of deeds shall endorse on each notice of lien the day, hour and minute when received and preserve the same, and forthwith shall index said notice in said index book and forthwith shall record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

5. The tax commissioner shall be exempt from the payment of the recording and filing fees as otherwise provided by law for the recording and filing of such lien, or for the satisfaction thereof.

6. Upon the payment of a tax as to which the tax commissioner has filed notice with the register of deeds, the tax commissioner forthwith shall file with said register of deeds a satisfaction of said tax and the register of deeds shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

7. The attorney general, upon the request of the tax commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action he shall have the assistance of the attorney of the county in which the action is pending.

8. It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the tax commissioner or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to insure payment of the taxes, including penalties, interest and other costs, are self-explanatory.

§ 13. Permits—Application Fee for Reissuance.) 1. No person shall engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to him as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

2. Upon determining that each applicant for a sales tax permit is a bona fide retailer the commissioner shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued. Any transient merchant who is in the business of soliciting or making sales at retail to consumers shall, before soliciting such a sale from a consumer, exhibit to the consumer or prospective consumer the retail sales tax permit required by this section; for the purposes of this sentence the term "transient merchant" shall include any person, individual, copartnership, or corporation, either as principal or agent, who solicits, engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares, and merchandise, who does not intend to become and does not become a permanent merchant of such place, and who, for the purpose of carrying on such business, hires, leases, occupies, or uses, a building, structure, lot, tract, railroad car, motor vehicle, or display case or sample case of any kind for the exhibition and sale of such goods, wares, and merchandise.

3. Permits issued under the provisions of this section shall be valid and effective until revoked by the commissioner.

4. Whenever the holder of a permit fails to comply with any of the provisions of sections 2 through 25 or any rules or regulations prescribed by the commissioner and adopted under this Act, or whenever the holder of a permit shall file

returns showing no tax due for four consecutive quarters, the commissioner upon hearing after giving ten days' notice of the time and place of the hearing to show cause why his permit should not be revoked, may revoke the permit. The commissioner also shall have the power to restore licenses after such revocation.

5. The commissioner shall charge a fee of five dollars for the issuance of a permit to a retailer whose permit has been previously revoked.

6. All permits in effect at the time this Act takes effect are hereby continued and shall remain in full force and effect unless revoked as herein provided; provided that the commissioner may issue a new form of permit to replace, at no charge to the permit holders, all permits previously granted and issued that have not been revoked or surrendered.

§ 14. Failure to File Return—Incorrect Return.) If a return required by this Act is not filed, or if a return when filed is incorrect or insufficient the commissioner shall determine the amount of tax due from such information as he may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and other factors. The commissioner shall give notice of such determination to the person liable for the tax. Such determination shall fix the tax finally and irrevocably unless the person against whom it is assessed, within fifteen days after the giving of notice of such determination, shall apply to the commissioner for a hearing or unless the commissioner of his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the commissioner shall give notice of his decision to the person liable for the tax.

§ 15. Appeals.) 1. An appeal may be taken by the taxpayer to the district court of the county in which he resides, or in which his principal place of business is located, within thirty days after he shall have received notice from the commissioner of his determination as provided for in section 14 of this Act.

2. The appeal shall be taken by a written notice to the commissioner and served as an original notice. When said notice is so served it shall be filed with the return thereon in the office of the clerk of said district court, and docketed as other cases, with the taxpayer as plaintiff and the commissioner as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by such clerk, in penalty at least double the amount of tax ap-

pealed from and in no case shall the bond be less than fifty dollars, conditioned that the plaintiff shall perform the orders of the court.

3. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commissioner. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the commissioner to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved.

§ 16. Service of Notice.) 1. Any notice, except notice of appeals, authorized or required under the provisions of this Act may be given by mailing the same to the person for whom it is intended by registered or certified mail addressed to such person at the address given in the last return filed by him pursuant to the provisions of this Act, or if no return has been filed, then such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this Act by giving of notice shall commence to run from the date of registration and posting of such notice.

2. If any tax imposed by this Act remains unpaid, a proceeding in court for the collection of such tax may be begun at any time within six years after the due date of such tax; provided that no limitation of time to collect such tax shall apply if the failure to pay such tax was due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax. The limitations provided by this Act in regard to a commencement of court proceedings shall not apply to any assessment of tax made by the tax commissioner prior to July 1, 1963.

§ 17. Penalties, Offenses.) 1. Any person failing to file a return or corrected return or to pay any tax within the time required by this Act shall be subject to a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, plus one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due. The commissioner, if satisfied that the delay was excusable, may remit all or any part of the five dollar or five percent penalty, whichever was imposed. Such penalty shall be paid to the commissioner and disposed of in the same manner as other receipts

under this Act. Unpaid penalties may be enforced in the same manner as the tax imposed by section 3 of this Act.

2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement, and athletic events, or steam, gas, water, electricity, and communication service at retail in this state after his license shall have been revoked, or without procuring a license within sixty days after the effective date of this Act, as provided in section 13 of this Act, or who shall violate the provisions of section 8 of this Act, and the officers of any corporation who shall so act, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment, in the discretion of the court.

3. Any person required to make, render, sign or verify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the assessment required by law to be made, shall be guilty of a misdemeanor and, for each such offense, shall be fined not to exceed five hundred dollars or shall be imprisoned in the county jail not exceeding one year, or shall be subject to both a fine and imprisonment, in the discretion of the court.

4. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this Act, shall be prima facie evidence thereof.

5. Any person failing to comply with any of the provisions of this Act, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to said sales tax, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months or by a fine of not exceeding five hundred dollars, or by both such fine and imprisonment, in the discretion of the court. This criminal liability shall be cumulative and in addition to the civil liability for penalties hereinbefore provided.

§ 18. Tax Commissioner to Administer Act.) The tax commissioner is hereby charged with the administration of this Act and the taxes imposed thereby. Such commissioner may prescribe all rules and regulations not inconsistent with the provisions of this Act, necessary and advisable for its detailed administration and to effectuate the purposes, including the right to provide for the issuance and sale by the state of coupons covering the amount of tax or taxes to be paid under this Act, if such method is deemed advisable by said commissioner.

§ 19. Tax, Penalties and Other Charges Paid to Commissioner — Disposition.) All fees, taxes, penalties and other charges imposed and collected under this Act shall be paid to the commissioner in the form of a remittance payable to the commissioner who shall transmit each payment monthly to the state treasury to be deposited in the state treasury to the credit of the general fund.

§ 20. General Powers.) 1. The commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income and receipts of any taxpayer, shall have power to examine or cause to be examined by any agent or representative designated by him, books, papers, records, or memoranda; to require by subpoena the attendance and testimony of witnesses; to issue and sign subpoenas; to administer oaths; to examine witnesses and receive evidence; to compel witnesses to produce for examination books, papers, records, and documents relating to any matter which he shall have the authority to investigate or determine.

2. Where the commissioner finds the taxpayer has made a fraudulent return, the costs of said hearing shall be taxed to the taxpayer. In all other cases the cost shall be paid by the state.

3. The fees and mileage to be paid witnesses and taxed as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be taxed in the manner provided by law in proceedings in civil cases. Where the costs are taxed to the taxpayer, they shall be added to the taxes assessed against said taxpayer and shall be collected in the same manner. Costs taxed to the state shall be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of said costs.

4. In cases of disobedience to a subpoena the commissioner may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the commissioner and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as contempt thereof.

5. Testimony on hearings before the commissioner may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as herein-before provided.

§ 21. Commissioner May Appoint Agents and Employees—Compensation — Bond.) 1. The commissioner may appoint such agents, auditors, clerks, and employees as he may deem necessary, fix their salaries and compensation and prescribe their duties and powers, and may remove such persons so appointed by him. Each auditor appointed by the commissioner shall have had to least three years' experience, or the education equivalent thereof, in the auditing and checking of books of account.

2. All such agents and employees shall be allowed such reasonable and other necessary traveling expenses as may be incurred in the performance of their duties not to exceed, however, such amounts as are now or may hereafter be fixed by law.

3. The commissioner may require such of the officers, agents, and employees as he may designate to give bond for the faithful performance of the duties in such sum and such sureties as he may determine and the state shall pay the premiums on such bonds.

4. The commissioner may utilize the office of the treasurer of the various counties in order to administer this Act and effectuate its purposes and may appoint the treasurers of the various counties his agents to collect any or all of the taxes imposed by this Act. No additional compensation shall be paid to said treasurer by reason thereof.

§ 22. Information Deemed Confidential—Penalty.) It shall be unlawful for the commissioner, or any person having an administrative duty under this Act, to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law. The commissioner may authorize examination of such returns by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state, or the federal government. Any person violating the provisions of this section shall be guilty of a misdemeanor and punishable by a fine of not to exceed one thousand dollars.

§ 23. Correction of Errors.) If it shall appear that, as a result of a mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this Act, then such amount shall be credited against any tax due, or to

become due, under this Act from the person who made the erroneous payment, or such amount shall be refunded to such person by the commissioner.

§ 24. Payment of Refund.) Wherever by any provisions of this Act a refund is authorized, the commissioner shall certify the amount of the refund, the reason therefor and the name of the payee to the department of accounts and purchases, who shall thereupon draw a warrant on the general fund in the amount specified payable to the named payee.

§ 25. Allocation of Revenue.) All moneys collected and received under sections 2 through 25 of this Act shall be paid into the state treasury and shall be credited by the state treasurer to the general fund. Moneys deposited with the tax commissioner as security for the payment of tax, penalties or costs due shall be deposited and accounted for as provided in subsection 3 of section 11.

§ 26. Definitions.) In sections 26 through 41, unless the context and subject matter otherwise require:

1. "Persons," "sale," "retail sale," "business," "gross receipts," "relief agency," "commissioner," "local government unit," each shall have the meaning given to it in section 2 of this Act.
2. "Use" shall mean the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, except that it shall not include processing, or the sale of that property in the regular course of business. "Use" shall also mean the severing of sand or gravel from the soil of this state.
3. Property used in "processing," as that term is used in subsection 2, shall mean any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to other real or personal property otherwise exempt from the sales or use tax laws of the state of North Dakota shall be considered as a purchase of tangible personal property for a purpose other than for processing.
4. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

"Purchase" shall also mean the severing of sand or gravel from the soil of this state.

5. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts and trade-ins allowed and taken on sales shall not be included. "Purchase price" shall also mean, in those instances where sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it shall be presumed until the contrary is shown by the tax commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds. Where records are not kept as to the tonnage of sand or gravel severed from the soil it shall be presumed for the purpose of this Act that one cubic yard of sand or gravel shall be equal to one and one-half tons of sand or gravel.
6. "Tangible personal property" means:
 - a. Tangible goods, wares, and merchandise, and gas, electricity, and water, when furnished or delivered to consumers or users within this state;
 - 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 subscriptions to magazines or other periodicals regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscriptions; provided that the words "magazines and other periodicals" as used herein shall not include newspapers nor shall they include 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.
7. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of sections 26 through 41 of this Act, but, when in the opinion of the commissioner, it is necessary for the efficient administration of sections 26 through 41 to

regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom he operates or from whom he obtains the tangible personal property sold by him, whether he is making sales in his own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard him as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of sections 26 through 41.

8. "Retailer maintaining a place of business in this state", or any like term, shall mean any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state.
9. "Purchased at retail" shall include, but shall not be 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 subscriptions to magazines or other periodicals regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscriptions; provided that the words "magazines and other periodicals" as used herein shall not include newspapers nor shall they include 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.

§ 27. Sales for Resale—Exempt When.) Whenever a retailer accepts in good faith a resale certificate at the time of making a sale, which sale would otherwise be subject to the sales tax,

and such resale certificate contains the sales tax permit number of the purchaser, such retailer making the sale shall be relieved from submitting the sales tax upon the purchase price of the merchandise sold. Whenever a person submits a false resale certificate to a retailer, the person submitting the certificate shall be personally liable for the tax on the sale.

§ 28. Tax Imposed.) An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of two and one-quarter percent of the purchase price of such property. Except as limited by section 36 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 two and one-quarter percent of the fair market value of such property at the time it was brought into this state. Any contract awarded prior to the effective date of this Act, the contractor receiving the award, shall be liable only for the use tax at the rate of tax in effect on the date of contract.

§ 29. Exemptions.) Sections 26 through 41 hereby are declared to be an independent and separate tax law but complementary to the retail sales tax laws of this state provided for by sections 2 through 25 and shall not apply to:

1. Any tangible personal property or taxable service upon the sale of which the retail sales tax imposed by section 3 has been collected by a retailer holding the permit prescribed by section 13.
2. Tangible personal property brought into this state by a nonresident thereof for his own storage, use, or consumption while temporarily within this state, except that such property shall not be exempt if brought into this state for storage, use, or consumption in the conduct of a trade, occupation, business, or profession.
3. Any motor vehicle, mobile home, trailer or semitrailer which is registered for a license under the motor vehicle laws of this state.
4. Tangible personal property upon which the state now imposes and collects a special tax, whether in the form of license tax, stamp tax, or otherwise.
5. Railway cars and locomotives used in interstate commerce, and tangible personal property which becomes a component part thereof.
6. Newsprint and ink actually used in the publication of a newspaper.

§ 30. Evidence of Use.) For the purpose of the proper administration of sections 26 through 41, and to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state.

§ 31. Payment of Tax.) The tax imposed by section 28 shall be paid in the following manner:

1. The tax upon tangible personal property which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the tax commissioner shall authorize pursuant to subsection 2 of section 32, shall be collected by the retailer and remitted to the commissioner as provided by section 32, provided, that any such retailer shall not collect the tax on any purchases made by a contractor who furnishes to the retailer a certificate which includes the contractor's license number assigned to him under the provisions of chapter 43-07 and the use tax account number assigned to him by the tax commissioner pursuant to section 43-07-04. Such certificate shall be in the form prescribed by the tax commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. Any contract awarded prior to the effective date of this Act, the contractor receiving the award, shall be liable only for the use tax at the rate of tax in effect on the date of the contract.
2. The tax, when not paid in conformity with subsection 1 of this section, shall be paid to the tax commissioner directly by any person storing, using, or consuming such property within this state, pursuant to the provisions of section 32.

§ 32. Collection of Use Tax.) The tax imposed by section 28 shall be collected in the following manner:

1. Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of section 29, before making any sales shall obtain a permit from the commissioner to collect the tax imposed by section 29, which permit shall be subject to all of the requirements, conditions and fees for its issuance that apply with respect to a retail sales tax permit, and at the time of making such sales, whether within or without the state, shall except as otherwise provided in subsec-

tion 1 of section 31 collect the tax imposed by section 28 from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the tax commissioner, if the commissioner, by regulation, shall require such receipt. Each such retailer shall list with the tax commissioner the name and address of all his agents operating in this state, and the location of each of his distribution or sales houses or offices or other places of business in this state.

2. The tax commissioner, upon application, may authorize the collection of the tax imposed by section 28 by any retailer not maintaining a place of business within the state, who, to the satisfaction of the commissioner, furnishes adequate security to insure collections and payment of the tax. To such retailer shall be issued a permit to collect the tax in such manner and subject to such regulations and agreements as the commissioner shall prescribe. When so authorized, such retailer shall, except as otherwise provided in subsection 1 of section 31, collect the tax upon all tangible property sold to his knowledge for use within this state, as a retailer maintaining a place of business within this state collects such tax. Such authority and permit may be canceled at any time, if the commissioner considers the security inadequate, or believes that such tax can be collected more effectively from the person using such property in this state.
3. The tax required to be collected, and any tax collected, by any retailer under subsections 1 and 2 of this section shall constitute a debt owed by the retailer to this state.
4. Each retailer required or authorized, pursuant to this section, to collect such tax shall pay the tax in quarterly installments on or before the last day of the month, next succeeding each quarterly period ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Except that when there is a sale of any business by any retailer required or authorized, pursuant to this section, to collect such tax or when any business is discontinued by such retailer, the tax shall become due immediately prior to the sale or discontinuance of such business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided in section 40. Every retailer, at the time of making the return required by this chapter, shall compute and pay to the commissioner the tax due for the preceding period.

5. The retailer, on or before the last day of the month following the close of the first quarterly period as defined in subsection 4 of this section, and on or before the last day of the month following each subsequent quarterly period of three months, shall make out a return for the preceding quarterly period in such 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 such return, and such further information as the tax commissioner may require to enable him correctly to compute and collect such tax, but the tax commissioner, upon receipt of a proper showing by any retailer of the necessity therefore, may grant unto such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any retailer, the time in which he is required to make payment shall be extended for the same period. The commissioner, if he deems it necessary or advisable in order to ensure the payment of the tax, or if he deems it practical, may require returns and payment of the tax to be made for annual periods or other than quarterly periods, the provisions of this Act to the contrary notwithstanding. A return shall be signed by the taxpayer or his duly authorized agent and must be verified by oath.
6. Any person who uses any property upon which the said tax has not been paid, either to the retailer or directly to the tax commissioner, shall be liable therefor, and, on or before the last day of the month next succeeding each quarterly period, shall pay the tax upon all such property used by him during the preceding quarterly period, in such manner and accompanied by such returns as the commissioner shall prescribe.
7. The commissioner, when in his judgment it is necessary and advisable to do so in order to secure the collection of such tax, may require any person subject to the tax to file with him a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the commissioner may fix, to secure the payment of any tax or penalties due or which may become due from such person. In lieu of such bond, securities approved by the tax commissioner, in an amount which he may prescribe, may be deposited with him, and such securities shall be kept in the custody of the commissioner, and may be sold by him at public or private sale, without notice to the

depositor thereof, if it becomes necessary so to do in order to recover any tax or penalties due. Upon such sale, the surplus, if any remains above the amounts due, shall be returned to the person who deposited the securities.

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

§ 33. Unlawful Advertising—Penalty.) It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer, or user, directly or indirectly, that the tax or any part thereof imposed by section 28 will be assumed or absorbed by the retailer, or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any provision of this section within this state is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars for each offense or by imprisonment for not to exceed thirty days, or by both such fine and imprisonment.

§ 34. Records Required.) Each retailer required or authorized to collect the tax imposed by section 28, and each person using in this state tangible personal property purchased on or after July 1, 1967, shall keep such records, receipts, invoices, and other pertinent papers as the tax commissioner shall require and each such retailer or person shall preserve for a period of six years all invoices and other records of such tangible personal property purchased for resale or for use. The commissioner, or any duly authorized agent, may examine the books, papers, records, and equipment of any person who sells tangible personal property or who is liable for such tax, and may investigate the character of the business of any such person to verify the accuracy of any return made, or if no return was made, to ascertain and determine the amount due. Any such books, papers, and records shall be made available within this state for such examination upon reasonable notice if the tax commissioner shall make an order to that effect.

§ 35. Revocation of Permit and Authority To Do Business.) If any retailer maintaining a place of business in this state, or authorized to collect the tax imposed by section 28, fails to comply with any of the provisions of sections 26 through 41, or with any order or regulation of the tax commissioner, the

commissioner, by order, may revoke the permit, if any was issued to such retailer, or if the retailer is a corporation authorized to do business in this state, the commissioner may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules, or regulations. The secretary of state, upon receipt of such certified copy, may revoke the certificate authorizing such corporation to do business in this state, and shall issue a new certificate only when the corporation shall have obtained from the commissioner an order finding that the corporation has complied with its obligations under sections 26 through 41. Any order shall be made under this section only after a retailer has had an opportunity, upon ten days' notice of the time, place, and purpose of a hearing, to show cause why such order should not be made. The tax commissioner may issue a new permit after revocation.

§ 36. Articles Taxed in Other States or Political Subdivisions of Other States.) If any article or tangible personal property has been subjected already to a tax by any other state or political subdivision thereof in respect to its sale or use in an amount less than the tax imposed by section 28, the provisions of sections 26 through 41 shall apply, but at a rate measured by the difference only between the rate fixed in section 28 and the rate by which the previous tax upon the sale or use was computed. If the tax imposed in such other state is the same or more, then no tax shall be due on such article. The provisions of this section shall apply only if such other state or political subdivision thereof allows a tax credit with respect to the retail sales and use taxes imposed by this state which is substantially similar in effect to the credit allowed by this section.

§ 37. Unlawful Sale or Soliciting — Penalty.) No agent, canvasser, or employee of any retailer, not authorized by permit from the tax commissioner of this state, shall collect the tax as prescribed by sections 26 through 41, nor sell, solicit orders for, nor deliver, any tangible personal property in this state. Any such agent, canvasser, or employee violating the provisions of sections 26 through 41 is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars for each offense, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

§ 38. Provisions of Sales Tax Law Applicable.) The provisions of sections 2 through 25, pertaining to the administration of the retail sales tax, including provisions for refund or credit provided therein, not in conflict with the provisions of sections 26 through 41, shall govern the administration of the tax levied in sections 26 through 41.

§ 39. Contractor's Performance Bonds for Payment of Use Tax.) For the purposes of this section the term "surety" shall mean a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota; "surety company" means any person, firm, or corporation executing such surety; "contractor" includes any individual, firm, copartnership, association, corporation, or other group or combination thereof acting as a unit, and the plural as well as the singular number; and "subcontractor" includes any individual, firm, copartnership, association, corporation, or other group or combination thereof acting as a unit, and the plural as well as the singular number, who undertakes to perform all or any part of work covered by the original contract entered into by the contractor, including the furnishing of any supplies, materials, equipment, or any other tangible personal property.

Whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement or repair of real property in this state and the contractor or subcontractor furnishes surety for the faithful performance of such contract, there is hereby imposed the additional obligation upon the surety company to the state of North Dakota that said contractor or subcontractor shall promptly pay all use taxes which may accrue to the state of North Dakota under the provisions of this Act. In the case of a contractor and his surety company this additional obligation shall include liability to pay to the tax commissioner on purchases made by either the contractor or the subcontractor all such use taxes which have not been paid to a retailer authorized or required to collect such taxes; and the contractor or his surety company is hereby authorized to recover from the subcontractor the amount of any use taxes accruing with respect to purchases made by the subcontractor which the contractor or the surety company may be required to pay to the tax commissioner, or to withhold from the amount due the subcontractor under the subcontract an amount equal to any use taxes accruing with respect to purchases of the subcontractor which have not been paid by the subcontractor to the tax commissioner or to a retailer authorized or required to collect such taxes. Such liability on the part of the surety company shall be limited to three percent of the amount of the contract price.

The surety company within sixty days after executing such surety shall send written notice of the same to the state tax commissioner, which notice shall give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to be performed. After the completion of the contract and the acceptance of

the improvement by the owner of the real property improved, the surety company shall give written notice of such completion and acceptance to the state tax commissioner.

Six months after the completion of the contract and the acceptance of the improvement by the owner thereof, the additional obligation imposed upon said surety company shall cease unless written notice, within such period of time, of unpaid use taxes, is given to the surety company by the state tax commissioner.

This section shall not be construed to modify or repeal in any way any of the provisions of sections 48-01-05 and 48-01-06 of the North Dakota Century Code.

§ 40. Penalties—Offenses.) 1. Any person failing to file a return or corrected return or to pay any tax imposed pursuant to section 28, within the time required by this Act, shall be subject to a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, plus one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due. The commissioner, if satisfied that the delay was excusable, may remit all or any part of the five dollar or five percent penalty, whichever was imposed. Such penalty shall be paid to the commissioner and disposed of in the same manner as the tax with respect to which it is attached. Unpaid penalties may be enforced in the same manner as is the tax.

2. Any person required to make, render, sign or verify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the assessment required by law to be made, shall be guilty of a misdemeanor and, for each such offense, shall be fined not to exceed five hundred dollars or shall be imprisoned in the county jail not exceeding one year, or shall be subject to both a fine and imprisonment, in the discretion of the court.

3. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of sections 26 through 41, shall be prima facie evidence thereof.

4. Any person failing to comply with any of the provisions of sections 26 through 41, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to the tax imposed under the provisions of section 28, shall be guilty of a misdemeanor and shall be punished by imprisonment in the

county jail not exceeding six months or by a fine of not exceeding five hundred dollars, or by both such fine and imprisonment, in the discretion of the court. This criminal liability shall be cumulative and in addition to the civil liability for penalties hereinbefore provided.

§ 41. Lien of Tax — Collection — Action Authorized.) 1. Whenever any person liable for payment to the tax commissioner of the tax imposed by section 28 or for any penalties in respect thereto refuses or neglects to pay the same the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of his death, the lien shall continue as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest shall be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.

2. The lien aforesaid shall attach at the time the tax first becomes payable, as provided by section 32, and shall continue until the liability for such amount is satisfied.

3. In order to preserve the aforesaid lien against subsequent mortgages, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the tax commissioner shall file with the register of deeds of the county in which said property is located, a notice of said lien.

4. The register of deeds of each county shall prepare and keep in his office a book known as "Index of Tax Liens", so ruled as to show in appropriate columns all of the following data, under the names of taxpayers, arranged alphabetically:

- a. The name of the taxpayer.
- b. The name "State of North Dakota" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The register of deeds shall endorse on each notice of lien the day, hour and minute when received and preserve the same,

and forthwith shall index said notice in said index book and forthwith shall record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

5. The tax commissioner shall be exempt from the payment of the recording and filing fees as otherwise provided by law for the recording and filing of such lien, or for the satisfaction thereof.

6. Upon the payment of a tax as to which the tax commissioner has filed notice with the register of deeds, the tax commissioner forthwith shall file with said register of deeds a satisfaction of said tax and the register of deeds shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

7. The attorney general, upon the request of the tax commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action he shall have the assistance of the state's attorney of the county in which the action is pending.

8. It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the tax commissioner or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to ensure payment of the taxes, including penalties, interest and other costs, are self-explanatory.

10. Remittances on account of tax due under sections 26 through 41 shall not be deemed or considered payment thereof unless or until the commissioner shall have collected or received the amount due for such tax in cash or equivalent credit.

§ 42. Repeal.) Chapters 57-39 and 57-40 of the 1965 Supplement to the North Dakota Century Code and the permanent volume of the North Dakota Century Code are hereby repealed and shall be replaced in the North Dakota Century Code by the provisions of this Act.

§ 43. Effective Date of Certain Sections.) The provisions of sections 1 through 42 of this Act shall become effective April 1, 1967.

§ 44. **Emergency Clause.**) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 27, 1967.

CHAPTER 460

H. B. No. 943

(Committee on Delayed Bills)

AMENDMENT OF 1967 SALES AND USE TAX ACTS

AN ACT

To amend and reenact section 3, subsections 5 and 8 of section 4, sections 9 and 28, subsection 3 of section 29, and section 34 of House Bill Number 731 as approved by the Fortieth Legislative Assembly, and to amend and reenact sections 1 and 3 of Senate Bill Number 403 as approved by the Fortieth Legislative Assembly, relating to the imposition sections of the sales and use tax laws, exemptions from the sales and use taxes, records and resale certificates of retailers, to repeal section 27 of House Bill Number 731 as approved by the Fortieth Legislative Assembly, providing an effective date, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 3 of House Bill Number 731 as approved by the Fortieth Legislative Assembly is hereby amended and reenacted to read as follows:

§ 3. **Sales Tax Imposed.**) Except as otherwise expressly provided by sections 2 through 25 of this Act, there is hereby imposed a tax of two and one-quarter percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as hereinafter provided in this section, within the state of North Dakota of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares, or merchandise.
2. The furnishing or service of steam, gas, electricity, water, or communication services.
3. 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 playing of any machine for amusement or entertainment in response to the use of a coin.

4. Magazines and other periodicals, including subscriptions thereto.
5. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month.
6. 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 Act or a use tax under the provisions of this Act.

In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to the effective date of this Act, 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.

§ 2. Amendment.) Subsections 5 and 8 of section 4 of House Bill Number 731 as approved by the Fortieth Legislative Assembly are hereby amended and reenacted to read as follows:

5. Gross receipts from sales of text books to regularly enrolled students of a private or public school.
8. Gross receipts from sales of commercial fertilizers, fungicides, herbicides and insecticides to agricultural or commercial vegetable producers and chemicals used to preserve agricultural crops being stored, and from the sale of seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

§ 3. Amendment.) Section 9 of House Bill Number 731 as approved by the Fortieth Legislative Assembly is hereby amended and reenacted to read as follows:

§ 9. Records Required—Sales for Resale Exempt.) 1. Every retailer required to make a report and pay any tax under sections 2 through 25 of this Act, shall preserve such records of the gross proceeds of sale as the commissioner may require and every retailer shall preserve for a period of six years all invoices and other records of goods, wares, or merchandise purchased for resale. All such books, invoices, and other records shall be open to examination at any time by the commissioner or any of his duly authorized agents.

2. Whenever a retailer accepts in good faith a resale certificate at the time of making a sale, which sale would otherwise be subject to the sales tax, and such resale certificate contains the sales tax permit number of the purchaser, such retailer

making the sale shall be relieved from submitting the sales tax upon the purchase price of the merchandise sold. Whenever a person submits a false resale certificate to a retailer the person submitting the certificate shall be personally liable for the tax on the sale.

§ 4. Amendment.) Section 28 of House Bill Number 731 as approved by the Fortieth Legislative Assembly is hereby amended and reenacted to read as follows:

§ 28. Tax Imposed.) An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of two and one-quarter percent of the purchase price of such property. Except as limited by section 36 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 two and one-quarter percent of the fair market value of such property at the time it was brought into this state. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to the effective date of this Act, the contractor receiving the award shall be liable only for the use tax at the rate of tax in effect on the date of contract.

§ 5. Amendment.) Subsection 3 of section 29 of House Bill Number 731 as approved by the Fortieth Legislative Assembly is hereby amended and reenacted to read as follows:

3. The sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota.

§ 6. Amendment.) Section 34 of House Bill Number 731 as approved by the Fortieth Legislative Assembly is hereby amended and reenacted to read as follows:

§ 34. Records Required.) Each retailer required or authorized to collect the tax imposed by section 28, and each person using in this state tangible personal property purchased shall keep such records, receipts, invoices, and other pertinent papers as the tax commissioner shall require and each such retailer or person shall preserve for a period of six years all invoices and other records of such tangible personal property purchased for resale or for use. The commissioner, or any duly authorized agent, may examine the books, papers, records, and equipment of any person who sells tangible personal property or who is liable for such tax, and may investigate the character of the business of any such person to verify the accuracy of any return made, or if no return was made, to ascertain and determine the amount due. Any such books, paper, and records

shall be made available within this state for such examination upon reasonable notice if the tax commissioner shall make an order to that effect.

§ 7. Amendment.) Section 1 of Senate Bill Number 403 as approved by the Fortieth Legislative Assembly is hereby amended and reenacted to read as follows:

§ 1. Separate and Additional Tax on Retail Sales.) There is hereby imposed a tax of three-quarters of one percent, which tax shall be in addition to any other provided for by law, upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as hereinafter provided in this section within the state of North Dakota of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares, or merchandise.
2. The furnishing or service of steam, gas, electricity, water, or communications services.
3. 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 playing of any machine for amusement or entertainment in response to the use of a coin.
4. Magazines and other periodicals, including subscriptions thereto.
5. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month.
6. 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 Act or a use tax under the provisions of this Act.

In the case of any contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to the effective date of this Act, the contractor receiving the award shall be liable only for the sales tax at the rate of tax in effect on the date of contract.

All definitions of terms, provisions for collection and delinquency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in sections 1 through 25 of House Bill No. 731 of the Fortieth Legislative Assembly, and any other provisions of law

now in effect or which may become effective relating to the retail sales tax, shall apply and are hereby made applicable to the tax imposed under the provisions of this section.

§ 8. Amendment.) Section 3 of Senate Bill Number 403 as approved by the Fortieth Legislative Assembly is hereby amended and reenacted to read as follows:

§ 3. Separate and Additional Use Tax.) An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of three-quarters of one percent of the purchase price of such property, which tax shall be in addition to any other tax provided for by law. 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 three-quarters of one percent of the fair market value of such property at the time it was brought into this state. In the case of any contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to the effective date of this Act, the contractor receiving the award, shall be liable only for the use tax at the rate of tax in effect on the date of the contract. All definitions of terms, provisions for collection and delinquency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in sections 26 through 41 of House Bill Number 731 of the Fortieth Legislative Assembly, and any other provisions of law now in effect or which may become effective relating to the use tax, shall apply and are hereby made applicable to the tax imposed under the provisions of this section.

§ 9. Repeal.) Section 27 of House Bill Number 731 as approved by the Fortieth Legislative Assembly is hereby repealed.

§ 10. Effective Date.) The provisions of this Act shall become effective April 1, 1967.

§ 11. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 14, 1967.

CHAPTER 461

S. B. No. 403
(Committee on Delayed Bills)

ADDITIONAL SALES AND USE TAX

AN ACT

To provide an additional sales and use tax of three-quarters of one percent, providing a method of collection and administration, providing a penalty, and providing effective dates and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Separate and Additional Tax on Retail Sales.) There is hereby imposed a tax of three-quarters of one percent, which tax shall be in addition to any other tax provided for by law, upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as hereinafter provided in this section, within the state of North Dakota of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares, or merchandise.
2. The furnishing or service of steam, gas, electricity, water, or communication services.
3. 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 playing of any machine for amusement or entertainment in response to the use of a coin.
4. Magazines and other periodicals, including subscriptions thereto.
5. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month.
6. 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 Act or a use tax under the provisions of this Act.

Upon any contract awarded prior to the effective date of this Act, the contractor receiving the award, shall be liable only for the sales tax at the rate of tax in effect on the date of contract.

All definitions of terms, provisions for collection and delinquency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in sections 1 through 25 of House Bill No. 731 of the Fortieth Legislative Assembly, and any other provisions of law now in effect or which may become effective relating to the retail sales tax, shall apply and are hereby made applicable to the tax imposed under the provisions of this section.

§ 2. Tax To Be Added to Purchase Price and Be a Debt.)

Retailers shall add the tax imposed under section 1 of this Act, or the average equivalent thereof, to the sales price or charge and when added such taxes shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts.

In adding such tax to the price or charge, and when such tax is applied and collected at the same time, in the same manner and in addition to but as a part of the sales tax imposed by House Bill No. 731 of the Fortieth Legislative Assembly, retailers shall adopt the following bracket system for the application of the tax, which system shall supersede the bracket system provided for in House Bill No. 731 of the Fortieth Legislative Assembly:

\$0.01 to \$0.14.....	no tax
.15 to .33.....	1¢ tax
.34 to .67.....	2¢ tax
.68 to 1.00.....	3¢ tax

Each additional \$1.00—3¢ additional tax or each additional 33¢ or fraction thereof over \$1.00—1¢ additional tax.

§ 3. Separate and Additional Use Tax.) An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of three-quarters of one percent of the purchase price of such property, which tax shall be in addition to any other tax provided for by law. 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 three-quarters of one percent of the fair market value of such property at the time it was brought into this state. Upon any contract awarded prior to the effective date of this Act, the contractor receiving the award, shall be liable only for the use tax at the rate of tax in effect on the date of the contract. All definitions of terms, provisions for collection and delin-

quency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in sections 26 through 41 of House Bill No. 731 of the Fortieth Legislative Assembly, and any other provisions of law now in effect or which may become effective relating to the use tax, shall apply and are hereby made applicable to the tax imposed under the provisions of this section.

§ 4. Effective Date.) The provisions of sections 1 through 3 of this Act shall become effective April 1, 1967.

§ 5. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Filed March 13, 1967.

Note: Chapter 461 was vetoed by the governor on February 27, 1967. This veto was subsequently overridden by the senate and the house of representatives on March 1, 1967.

CHAPTER 462

S. B. No. 230

(Redlin, Trenbeath, Melland)

MOTOR VEHICLE EXCISE TAX

AN ACT

To create and enact a new chapter to the North Dakota Century Code, imposing a two and one-quarter percent motor vehicle excise tax, exemptions thereto, manner of collection, penalties, allocation of revenue and to repeal chapters 57-39.1 and 57-40.1 of the North Dakota Century Code, and declaring an effective date and an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Definitions.) The following words, terms and phrases, when used in this Act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
2. "Motor vehicle registrar" shall mean the registrar of motor vehicles who is the officer in charge of the motor

vehicle department of this state and who shall act as the agent of the state tax commissioner in administering the provisions of this chapter.

3. "Vehicle" shall include every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.
4. "Motor vehicle" shall include every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and every trailer and semitrailer for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, but not including house trailers, or mobile homes.
5. "Trailer" shall include every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it shall not include a "house trailer" or "mobile home".
6. "Semitrailer" shall include every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it shall not include a "house trailer" or "mobile home".
7. "Use" shall mean the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business.
8. "Sale", "sells", "selling", "purchase", "purchased" or "acquired" shall include any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration except that these terms shall not include acquisition by inheritance from, or by bequest of, a decedent who owned it, nor shall these terms include the transfer of a motor vehicle which was previously titled or licensed in the names of two or more joint tenants and subsequently transferred

without monetary consideration to one or more of the joint tenants, nor shall these terms include the transfer of a motor vehicle by way of gift between a husband and wife or parent and child.

9. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise, provided, however, that when a motor vehicle is taken in trade as a credit or as part payment on a motor vehicle taxable under this Act, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller shall constitute the purchase price of the motor vehicle accepted as a trade-in. "Purchase price" is those instances where the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration, shall also include the average value of similar motor vehicles, established by standards and guides as determined by the motor vehicle registrar. "Purchase price" in those instances where a motor vehicle is manufactured by a person who registers it under the laws of this state, shall mean the manufactured cost of such motor vehicle and manufactured cost shall mean the amount expended for materials, labor and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured costs shall mean the reasonable value of the completed motor vehicle. The term "purchase price" shall not include the transfer of a motor vehicle by way of gift between a husband and wife or parent and child and shall not include the transfer of a motor vehicle between a lessee and lessor pursuant to the exercise of a right to purchase under a lease agreement, provided that the lessee has been in continuous possession of such vehicle for a period of one year or longer and further, provided, that the lessor has paid either the tax imposed under section 2 of this Act at the time of titling or licensing the vehicle in this state or the excise tax imposed by chapter 57-39.1 or chapter 57-40.1 of the North Dakota Century Code.
10. "Purchaser" shall mean any person owning or in possession of a motor vehicle who makes application to the motor vehicle registrar for registration plates or a certificate of title for such vehicle.

§ 2. Tax Imposed.) There is hereby imposed an excise tax at the rate of two and one-quarter 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.

§ 3. Exemption.) There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

1. Motor vehicles acquired by disabled veterans under the provisions of Public Law 663 of the 79th Congress of the United States as codified into section 1901 of title 38 of the United States Code and any passenger motor vehicle or pickup truck not exceeding ten thousand pounds gross weight subsequently purchased or acquired by such a disabled veteran, provided that this exemption shall be allowed only with respect to one such motor vehicle owned by such a disabled veteran at any one time.
2. Any motor vehicle which is expressly exempt from the title registration provisions of chapter 39-05.
3. Common carrier vehicles engaged in interstate commerce.

§ 4. Purchaser to Furnish "Motor Vehicle Purchaser's Certificate" to Motor Vehicle Registrar.) Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife or from a parent or child shall complete a "Motor Vehicle Purchaser's Certificate" in such form and manner as may be prescribed by the motor vehicle registrar, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance, if any, whether the vehicle was the subject of a gift, and any other information that the motor vehicle registrar may require.

§ 5. Presentation of "Motor Vehicle Purchaser's Certificate" to Motor Vehicle Registrar.) No title or license registration shall be issued by the motor vehicle registrar for a motor vehicle purchased or acquired by way of gift from a husband or wife or from a parent or child unless and until the applicant therefor shall attach a properly executed "Motor Vehicle Purchaser's Certificate" to the application for title or license registration. If a license application is made for a motor vehicle that has been previously licensed in this state and the applicant for license is the same person in whose name the license registration had previously been issued the "Motor Vehicle Purchaser's Certificate" need not be submitted to the motor vehicle registrar.

§ 6. Title or License Registration Not To Be Issued Unless Tax Paid.) No title or license registration shall be issued by the motor vehicle registrar for the ownership or operation of any motor vehicle to any applicant for title or license registration other than for those vehicles which have been previously licensed and the applicant for license registration is the same person in whose name the license registration had previously been issued or other than for those vehicles transferred by way of gift between a husband and wife or parent and child unless the tax imposed by section 2 of this Act shall be paid by the applicant to the motor vehicle registrar.

§ 7. Presumption.) For the purpose of the proper administration of this Act and to prevent evasion of the tax, the following presumptions shall apply:

1. Evidence that a motor vehicle was sold for delivery in this state shall be prima facie evidence that it was sold for use in this state.
2. When an application for registration plates or for a certificate of title for a motor vehicle is received by the motor vehicle registrar within thirty days of the date it was purchased or acquired by the purchaser, it shall be presumed, until the contrary is shown by the purchaser, that it was purchased or acquired for use on the streets and highways of this state. This presumption shall apply whether or not such vehicle was previously titled or registered in another state.

§ 8. Credit for Excise Tax Paid in Other States—Reciprocity.) If any motor vehicle has been subjected already to a tax by any other state in respect to its sale or use in an amount less than the tax imposed by this Act, the provisions of this Act shall apply, but at a rate measured by the difference only between the rate fixed in this Act and the rate by which the previous tax paid in the other state upon the sale or use was computed. If the rate of tax imposed in such other state is the same or more than the rate of tax imposed by this Act, then no tax shall be due on such motor vehicle. The provisions of this section shall apply only if such other state allows a credit with respect to the excise tax imposed by this Act which is substantially similar in effect to the credit allowed by this section.

§ 9. Allocation of Revenue.) All moneys collected and received under this Act shall be transmitted monthly by the motor vehicle registrar to the state tax commissioner and by him shall be paid to the state treasurer to be transferred and credited as follows:

1. Fifty percent of the tax accruing under this Act on motor vehicles purchased or acquired outside of this state for use in this state, shall be credited to the motor vehicle registration fund.
2. The remaining fifty percent of the tax accruing under this Act on motor vehicles purchased or acquired outside of the state for use in this state shall be credited to the general fund.
3. All moneys accruing under this Act on motor vehicles purchased in this state shall be credited to the general fund.

§ 10. Penalties.) 1. Any person who shall complete or submit a false or fraudulent "Motor Vehicle Purchaser's Certificate" with intent to defeat or evade the tax imposed under this Act shall be guilty of a misdemeanor, and for each such offense, shall be fined not to exceed five hundred dollars or shall be imprisoned in the county jail not to exceed one year, or shall be subject to both such fine and imprisonment, in the discretion of the court.

2. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than twenty days nor more than thirty days, or both such fine and imprisonment.

§ 11. Motor Vehicle Registrar to Act as Agent of Tax Commissioner in Administration of Motor Vehicle Use Tax.) The state tax commissioner is charged with the administration of this Act. The tax commissioner may prescribe all rules and regulations, not inconsistent with the provisions of this Act, necessary and advisable for the proper and efficient administration of this Act. The collection of this motor vehicle excise tax shall be carried out by the motor vehicle registrar who shall act as the agent of the state tax commissioner and who shall be subject to all rules and regulations, not inconsistent with the provisions of this Act, that may be prescribed by the tax commissioner. The provisions of this Act shall not be construed as preventing the collection of motor vehicle excise taxes by the tax commissioner in the course of any audit carried on by the tax commissioner. The motor vehicle registrar shall furnish sufficient information to the tax commissioner relating to all license or title applications for mobile homes or house trailers purchased outside of the state of North Dakota for use in this state, to enable the tax commissioner to collect use tax on such mobile homes or house trailers.

§ 12. **Effective Date.**) The provisions of this Act shall become effective April 1, 1967.

*13. **Repeal.**) Chapters 57-39.1 and 57-40.1 of the 1965 Supplement to the North Dakota Century Code are hereby repealed.

§ 14. **Emergency.**) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 27, 1967.

*Note: Section 57-40.1-07 was also amended by section 3 of chapter 304, 1967 S.L.

CHAPTER 463

H. B. No. 941
(Committee on Delayed Bills)

ADDITIONAL MOTOR VEHICLE EXCISE TAX

AN ACT

To create and enact a new chapter to the North Dakota Century Code, imposing a three-quarters of one percent motor vehicle excise tax, exemptions thereto, manner of collection, penalties, allocation of revenue and to repeal chapters 57-39.1 and 57-40.1 of the North Dakota Century Code, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Definitions.**) The following words, terms and phrases, when used in this Act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
2. "Motor vehicle registrar" shall mean the registrar of motor vehicles who is the officer in charge of the motor vehicle department of this state and who shall act as the agent of the state tax commissioner in administering the provisions of this chapter.
3. "Vehicle" shall include every device in, upon, or by which any person or property may be transported or

drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.

4. "Motor vehicle" shall include every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and every trailer and semitrailer for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, but not including house trailers, or mobile homes.
5. "Trailer" shall include every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it shall not include a "house trailer" or "mobile home".
6. "Semitrailer" shall include every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it shall not include a "house trailer" or "mobile home".
7. "Use" shall mean the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business.
8. "Sale", "sells", "selling", "purchase", "purchased" or "acquired" shall include any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration except that these terms shall not include acquisition by inheritance from, or by bequest of a decedent who owned it, nor shall these terms include the transfer of a motor vehicle which was previously titled or licensed in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants, nor shall these terms include the transfer of a motor vehicle by way of gift between a husband and wife or parent and child.

9. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise, provided, however, that when a motor vehicle is taken in trade as a credit or as part payment on a motor vehicle taxable under this Act, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller shall constitute the purchase price of the motor vehicle accepted as a trade-in. "Purchase price" is those instances where the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration, shall also include the average value of similar motor vehicles, established by standards and guides as determined by the motor vehicle registrar. "Purchase price" in those instances where a motor vehicle is manufactured by a person who registers it under the laws of this state, shall mean the manufactured cost of such motor vehicle and manufactured cost shall mean the amount expended for materials, labor and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured costs shall mean the reasonable value of the completed motor vehicle. The term "purchase price" shall not include the transfer of a motor vehicle by way of gift between a husband and wife or parent and child and shall not include the transfer of a motor vehicle between a lessee and lessor pursuant to the exercise of a right to purchase under a lease agreement, provided that the lessee has been in continuous possession of such vehicle for a period of one year or longer and further, provided, that the lessor has paid either the tax imposed under section 2 of this Act at the time of titling or licensing the vehicle in this state or the excise tax imposed by chapter 57-39.1 or chapter 57-40.1 of the North Dakota Century Code.
10. "Purchaser" shall mean any person owning or in possession of a motor vehicle who makes application to the motor vehicle registrar for registration plates or a certificate of title for such vehicle.

§ 2. Tax Imposed.) There is hereby imposed an excise tax at the rate of three-quarters of one 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. The tax herein imposed shall be in

addition to any other tax provided for by law 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.

§ 3. Exemption.) There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

1. Motor vehicles acquired by disabled veterans under the provisions of Public Law 663 of the 79th Congress of the United States as codified into section 1901 of title 38 of the United States Code and any passenger motor vehicle or pickup truck not exceeding ten thousand pounds gross weight subsequently purchased or acquired by such a disabled veteran, provided that this exemption shall be allowed only with respect to one such motor vehicle owned by such a disabled veteran at any one time.
2. Any motor vehicle which is expressly exempt from the title registration provisions of chapter 39-05.
3. Common carrier vehicles engaged in interstate commerce.

§ 4. Purchaser to Furnish "Motor Vehicle Purchaser's Certificate" to Motor Vehicle Registrar.) Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife or from a parent or child shall complete a "Motor Vehicle Purchaser's Certificate" in such form and manner as may be prescribed by the motor vehicle registrar, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance, if any, whether the vehicle was the subject of a gift, and any other information that the motor vehicle registrar may require.

§ 5. Presentation of "Motor Vehicle Purchaser's Certificate" to Motor Vehicle Registrar.) No title or license registration shall be issued by the motor vehicle registrar for a motor vehicle purchased or acquired by way of gift from a husband or wife or from a parent or child unless and until the applicant therefor shall attach a properly executed "Motor Vehicle Purchaser's Certificate" to the application for title or license registration. If a license application is made for a motor vehicle that has been previously licensed in this state and the applicant for license is the same person in whose name the license registration had previously been issued the "Motor Vehicle Purchaser's Certificate" need not be submitted to the motor vehicle registrar.

§ 6. Title or License Registration Not To Be Issued Unless Tax Paid.) No title or license registration shall be issued by the motor vehicle registrar for the ownership or operation of any motor vehicle to any applicant for title or license registration other than for those vehicles which have been previously licensed and the applicant for license registration is the same person in whose name the license registration had previously been issued or other than for those vehicles transferred by way of gift between a husband and wife or parent and child unless the tax imposed by section 2 of this Act shall be paid by the applicant to the motor vehicle registrar.

§ 7. Presumption.) For the purpose of the proper administration of this Act and to prevent evasion of the tax, the following presumptions shall apply:

1. Evidence that a motor vehicle was sold for delivery in this state shall be prima facie evidence that it was sold for use in this state.
2. When an application for registration plates or for a certificate of title for a motor vehicle is received by the motor vehicle registrar within thirty days of the date it was purchased or acquired by the purchaser, it shall be presumed, until the contrary is shown by the purchaser, that it was purchased or acquired for use on the streets and highways of this state. This presumption shall apply whether or not such vehicle was previously titled or registered in another state.

§ 8. Credit for Excise Tax Paid in Other States — Reciprocity.) If any motor vehicle has been subjected already to a tax by any other state in respect to its sale or use in an amount less than the tax imposed by this Act, the provisions of this Act shall apply, but at a rate measured by the difference only between the rate fixed in this Act and the rate by which the previous tax paid in the other state upon the sale or use was computed. If the rate of tax imposed in such other state is the same or more than the rate of tax imposed by this Act, then no tax shall be due on such motor vehicle. The provisions of this section shall apply only if such other state allows a credit with respect to the excise tax imposed by this Act which is substantially similar in effect to the credit allowed by this section.

§ 9. Allocation of Revenue.) All moneys collected and received under this Act shall be transmitted monthly by the motor vehicle registrar to the state tax commissioner and by him shall be paid to the state treasurer to be transferred and credited as follows:

1. Fifty percent of the tax accruing under this Act on motor vehicles purchased or acquired outside of this state for use in this state, shall be credited to the motor vehicle registration fund.
2. The remaining fifty percent of the tax accruing under this Act on motor vehicles purchased or acquired outside of the state for use in this state shall be credited to the general fund.
3. All moneys accruing under this Act on motor vehicles purchased in this state shall be credited to the general fund.

§ 10. Penalties.) 1. Any person who shall complete or submit a false or fraudulent "Motor Vehicle Purchaser's Certificate" with intent to defeat or evade the tax imposed under this Act shall be guilty of a misdemeanor, and for each such offense, shall be fined not to exceed five hundred dollars or shall be imprisoned in the county jail not to exceed one year, or shall be subject to both such fine and imprisonment, in the discretion of the court.

2. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than twenty days nor more than thirty days, or both such fine and imprisonment.

§ 11. Motor Vehicle Registrar to Act as Agent of Tax Commissioner in Administration of Motor Vehicle Use Tax.) The state tax commissioner is charged with the administration of this Act. The tax commissioner may prescribe all rules and regulations, not inconsistent with the provisions of this Act, necessary and advisable for the proper and efficient administration of this Act. The collection of this motor vehicle excise tax shall be carried out by the motor vehicle registrar who shall act as the agent of the state tax commissioner and who shall be subject to all rules and regulations, not inconsistent with the provisions of this Act, that may be prescribed by the tax commissioner. The provisions of this Act shall not be construed as preventing the collection of motor vehicle excise taxes by the tax commissioner in the course of any audit carried on by the tax commissioner. The motor vehicle registrar shall furnish sufficient information to the tax commissioner relating to all license or title applications for mobile homes or house trailers purchased outside of the state of North Dakota for use in this state, to enable the tax commissioner to collect use tax on such mobile homes or house trailers.

§ 12. Effective Date.) The provisions of this Act shall become effective April 1, 1967.

***§ 13. Repeal.)** Chapters 57-39.1 and 57-40.1 of the 1965 Supplement to the North Dakota Century Code are hereby repealed.

***Note:** Section 57-40.1-07 was also amended by section 3 of chapter 304, 1967 S.L.

§ 14. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Filed March 13, 1967.

Note: Chapter 463 was vetoed by the governor on February 27, 1967. This veto was subsequently overridden by the house of representatives on March 1, 1967, and by the senate on March 3, 1967.

CHAPTER 464

H. B. No. 763

(Williamson, Backes, Sanstead, Strinden)

INCOME TAX RETURNS OF ARMED FORCES MEMBERS

AN ACT

Extending the time for filing income tax returns and extending the time for payment of income tax and eliminating the attachment of interest and penalty during extension period for members of the armed forces and merchant marine serving outside of boundaries of the United States, providing a termination date and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Extension of Time for Filing Income Tax Returns and Payment of Income Tax.) A taxpayer actively serving in the armed forces or merchant marine, outside the boundaries of the United States, may defer the filing of an income tax return and the payment of income tax until:

1. The fifteenth day of the third month after his return to the United States, or
2. The fifteenth day of the third month after his discharge from the military service of the United States merchant marine, if he remains, after discharge, outside the boundaries of the United States, or

3. The fifteenth day of the third month after an administrator or executor has been appointed for the estate of the taxpayer, or
4. December 31, 1968, whichever of said dates shall first occur.

§ 2. **Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 24, 1967.

CHAPTER 465

H. B. No. 532

(Davis, Reimers)

(Recommended by Legislative Audit and Fiscal Review Committee)

MOTOR FUEL TAX REFUNDS

AN ACT

To amend and reenact section 57-50-04 of the North Dakota Century Code, relating to motor fuel tax refunds.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-50-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

***57-50-04. State Auditor to Audit and Approve Claim — Investigation of Doubtful Claims—Payment of Claims.)** The state auditor, upon the presentation of such sworn claim, shall audit said claim for refund and prepare, in duplicate, an abstract showing the claim number, the name and address and the amount due each claimant, and shall approve and submit such claims for payment within thirty days of the receipt thereof in the state auditor's office unless the auditor shall be in doubt as to the validity of any claim, in which case the auditor may withhold the approval thereof for a reasonable time for purposes of investigation. The state auditor may authorize any employee or agent of his office to investigate doubtful claims and make a report of his findings to the auditor, who shall thereupon promptly approve or reject such

***Note:** Section 57-50-04 was also amended by section 17 of chapter 376, 1967 S.L.

claim as the facts may warrant. All claims approved by the auditor shall be paid by warrant-checks prepared by the department of accounts and purchases.

Approved March 3, 1967.

CHAPTER 466

H. B. No. 632
(Johnson(23), Gackle)

MOTOR FUEL TAX REFUNDS TO INDIVIDUALS AND CORPORATIONS

AN ACT

To amend and reenact section 57-50-05.1 of the North Dakota Century Code, relating to motor fuel tax refunds to private individuals and corporations.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 57-50-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-50-05.1. Refunds to Private Individuals or Corporations Prohibited—Exception.) No tax refund shall be paid to any person, firm or private corporation on any motor vehicle fuel used, except liquefied petroleum gas used for heating purposes, if the work performed by a person, firm or private corporation is paid for from public funds of the United States, state, county, city, village, township, park district or other municipality.

Approved February 24, 1967.

CHAPTER 467

H. B. No. 631
(Johnson(23), Gackle)

SPECIAL FUEL USER

AN ACT

To amend and reenact subsection 7 of section 57-52-03 of the North Dakota Century Code and subsection 6 of section 57-53-01 of the North Dakota Century Code, relating to the definition of special fuel user.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 7 of section 57-52-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Special fuel user" means any person receiving or purchasing special fuel except that it shall not include a person purchasing or receiving special fuels when such fuel is to be used for heating, industrial, agricultural or railroad purposes nor shall it include a special fuels dealer purchasing or receiving special fuel for resale; and

§ 2. Amendment.) Subsection 6 of section 57-53-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Special fuel user" means any person receiving or purchasing special fuel to be used for agricultural, industrial, heating or railroad purposes;

Approved February 24, 1967.

CHAPTER 468

S. B. No. 153
(Becker)

NATIVE WOODLAND TAX

AN ACT

To provide for a native woodland tax, prescribing the land that may be subject to such tax, prescribing the duties of the state forester and local assessor, providing for the rate and manner of collection of said tax, the conditions for eligibility under the native woodland tax, declassification orders, and hearings and appeals from orders of the state forester.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Definitions.) As used in this Act, unless the context or subject matter otherwise clearly requires:

1. "Native woodland" means an area of land normally supporting a growth of natural forest cover;
2. "State forester" means the president of the North Dakota school of forestry or his legally constituted successor; and, where reasonable, the agents and personnel under his control.

§ 2. Eligibility To Be Taxed — Application.) Beginning January 1, 1968, the owner or his agent, having any tract of native woodland ten acres or larger in size, may file an application with the state forester setting forth a description of property which he desires to place under the woodland tax and on which land he will practice forestry. The state forester shall prescribe the form of such application blanks and make them available to all persons desiring to subject native woodlands owned by them to the provisions of this Act.

§ 3. Duties of the State Forester.) Upon the filing of the application provided for in section 2 of this Act, the state forester shall examine the land and if he finds that the native woodland will produce a forest cover, the state forester shall enter an order approving the application. A copy of such order shall be forwarded to the owner or his agent, to the local assessor of any township or district wherein the land is located, to the clerk of the township if the township is organized, and to the county auditor.

§ 4. Application and Order to Constitute a Contract.) The application of the owner or his agent and the filing of the order by the state forester shall constitute a contract, running with

the land, for a period of five years, unless terminated as provided in this Act. Any order issued on or before March first of any year shall take effect in such year, but all orders issued after March first of any year shall take effect the following year. If at the end of five years the contract is not renewed by mutual consent, the land shall be declassified and shall be removed from the provisions of this Act.

§ 5. Duty of Local Assessor.) The local assessor in preparing the tax roll shall show the acreage for each owner covered by the provisions of this Act in a column designated by the words "Native Woodland Tax Law" or the initials "N. W. T. L.".

§ 6. Liability, Rate, and Collection of the Tax—Lieu Tax.) The owner shall be liable and shall pay to the county treasurer at the same time taxes on other real property are due, a tax computed at a rate determined to be equitable by the county commissioners and the state forester on the land approved for entry under this Act. Such tax shall be a part of the total real property taxes on the land of the owner and subject to collection in the same manner as any other real property taxes. The payment of the taxes herein imposed shall be in lieu of all ad valorem taxes by the state, counties, towns, townships, school districts, and other municipalities upon any property rights attached to such native woodlands. It is expressly provided that the native woodland tax shall not be in lieu of income taxes nor excise taxes upon the sale of forest products or services that may be derived from such native woodlands. It is expressly provided that the native woodland tax rate shall not exceed the rate as determined by the state and county levy. The county commissioners and the state forester may meet to consider the native woodland tax rate at any time deemed suitable or necessary by both parties.

§ 7. Destructive Practices Prohibited — Declassification — Management and Assistance of the State Forester.) If native woodlands are cleared, grazed, burned, cut, or otherwise dealt with in a destructive manner as determined by the state forester, they may be subject to declassification and return to the regular tax rolls. At the request of the owner or his agent the state forester may assist in preparing and carrying out a forest management plan for the orderly development of these woodlands.

§ 8. Report of the State Forester—Declassification Orders.) The state forester shall make an annual written report as to the forest practices of each woodland owner or his agent covering lands enrolled under this Act. If the state forester finds that the owner or his agent has not complied with the law, or if the land is no longer used for forestry purposes, he shall

issue an order removing the land from the native woodland tax law classification. Any declassification order issued on or before March first of any year shall take effect in such year. A copy of the declassification order shall be sent to the owner or his agent, to the local assessor of the township or district wherein the land is located, to the clerk of the township if the township is organized, and to the county auditor. Any order issued under this section shall be final unless set aside pursuant to the provisions of section 9 of this Act.

§ 9. Public Hearing by Petition—Hearing Board—Presiding Officer.) The owner or his agent, board of township supervisors, or board of county commissioners may petition the state forester for a public hearing to take testimony and hear evidence on whether lands shall be entered or continued under this Act. Upon filing of such petition, the state forester shall set such matter for public hearing at such time as he sees fit in the county wherein the land is located, but not later than ninety days from the date of the filing of the petition. The state forester, the county auditor, and the local assessor of the township wherein the lands are located shall constitute the hearing board. The state forester shall be the presiding officer of the hearing and shall give thirty days written notice of the hearing to the owner or his agent, board of township supervisors, and the board of county commissioners. Such hearing may be deferred not more than sixty days after notice to the parties involved.

§ 10. Procedural Rules for Hearing — Decision — Appeal.) A written record shall be made of all testimony offered at any hearing before the hearing board. A transcript of the testimony taken by or before the hearing board shall be furnished to any party upon written request therefor. After hearing all the testimony and after making such independent investigations as they deem necessary, the hearing board shall make their findings fact and the decision of the majority will rule. The state forester as the presiding officer of the hearing board will make and enter this order accordingly within thirty days after the final adjournment of the hearing. An appeal may be taken to the district court of the county wherein the land in question is located within thirty days after notice thereof is given to each of the parties to the proceeding. Only final orders or decisions substantially affecting the rights of parties shall be appealable. A procedural order made by the state forester or the hearing board during the hearing shall not be deemed a final order nor an order affecting a substantial right. Such appeal shall be taken pursuant to the provisions of section 28-32-15. An appeal from a determination or decision of the hearing board shall not stay the enforcement of such determination or decision

unless the court to which the appeal is taken, upon application and after a hearing, shall order a stay. The court may impose such terms and conditions for a stay of the enforcement of the determination or decision appealed as it shall deem proper.

Approved March 1, 1967.

CHAPTER 469

H. B. No. 728

(Brown, Johnson(23), Strinden, Kingsbury, Erickson(26),
(Seibel, Mathiason)

PERSONAL PROPERTY TAX COMMISSION

AN ACT

Providing for the creation of a special commission on personal property taxes for the purpose of developing and presenting to the Forty-first Legislative Assembly a program for the complete elimination of remaining personal property taxes, making an appropriation, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Personal Property Tax Commission.) There is hereby created a personal property tax commission consisting of four members of the house of representatives appointed by the speaker of the house, three members of the senate appointed by the president of the senate, and twelve public members to be appointed by the legislative members of the commission. Nine of such public members shall be appointed from lists of citizens submitted by organizations selected by the legislative members of the commission representing agriculture, labor, business, the professions, and political subdivisions. Three public members of the commission shall be selected by the legislative members of the commission from the general citizenry of the state.

§ 2. Organization of Commission—Procedure—Compensation.) The legislative members of the commission shall hold an organizational meeting at a time and place designated by the speaker of the house of representatives within forty-five days after the adjournment of the Fortieth Legislative Session for the purpose of selecting a temporary chairman and a temporary secretary and for determination of the organizations that shall be invited to submit names to the legislative members of the commission for appointment as public members of

the commission and for the selection of the *two general citizen members. A subsequent meeting shall be held at the call of the temporary chairman for the selection of the public members. Thereafter, the temporary chairman shall call a general meeting of the commission at which time it shall elect a permanent chairman and vice chairman and appoint or elect a secretary who need not be a member of the commission. The commission shall, consistent with state law, adopt such rules of operation and procedure as it shall deem necessary. Offices for such commission shall be provided upon its request in the legislative wing of the state capitol building. It shall employ such consultants and clerical or other employees as it deems necessary to carry out its duties. Members of the commission shall receive compensation and reimbursement for expenses in the same manner and amount as members of the legislative research committee. All departments of the executive branch of government and state institutions shall provide such reasonable assistance and such information as the commission may from time to time request, and the commission shall call upon the attorney general for such advice, counsel, and legal or drafting assistance as it may require. The commission shall make arrangements with the legislative research committee for the furnishing of stenographic and secretarial assistance upon such basis as may be mutually agreeable.

§ 3. Duties of Commission.) It shall be the duty of the commission to make a study in depth of methods and means of eliminating the remaining balance of personal property taxes, sources of replacement revenue for political subdivisions, and formulas for the distribution of such replacement revenues to political subdivisions on an equitable and permanent basis. It shall make a report prepared by the commission and its staff containing its findings, conclusions, and recommendations to the Forty-first Legislative Assembly, accompanied by drafts of suitable legislation to carry out such recommendations. Such recommendations and legislation shall provide for the elimination of the balance of personal property taxes in North Dakota, a source of replacement revenue for the resulting tax loss to political subdivisions because of the exemption of personal property from taxation, and a permanent equitable formula for the redistribution of such replacement revenue to the political subdivisions of the state.

***Note:** Section 1 of chapter 469 was amended by the Fortieth Legislative Assembly to provide for three public members, rather than two public members. It appears that the Fortieth Legislative Assembly, through an oversight, neglected to amend section 2 of chapter 469 to provide for three public members in the same manner as provided in section 1.

§ 4. Appropriation.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000.00, or so much thereof as may be necessary, to the personal property tax commission for the purpose of carrying out the provisions of this Act during the period beginning with the effective date of this Act and ending June 30, 1969.

§ 5. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 2, 1967.