

TAXATION

CHAPTER 648

HOUSE BILL NO. 1218
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TAX RETURN ADMINISTRATION PROVISIONS

AN ACT to create and enact two new sections to chapter 57-01 and a new section to chapter 57-38 of the North Dakota Century Code, relating to extension of the period of time for the tax commissioner to make an assessment if a subpoena is issued and failure of a taxpayer to complete an income tax return or supply information on changes under a federal income tax return; to amend and reenact sections 57-38-33, 57-38-38, 57-38-40, 57-39.2-15, 57-39.2-15.1, 57-39.2-25, 57-51-09, and 57-51-19 of the North Dakota Century Code, relating to failure to complete returns or supply information, failure to file a sales tax return, protest of a sales tax assessment, extension of time to perform a sales tax audit, payment of sales tax refunds, assessment of additional oil and gas production tax, and claims for credit or refund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted to read as follows:

Extension of period of time to make assessments. If the tax commissioner issues a subpoena to a taxpayer, the period of time for making an assessment against that taxpayer is automatically extended by a period equal to the time between the issuance of the subpoena to final resolution. Final resolution occurs when a court dismisses the subpoena or the taxpayer complies with the subpoena.

SECTION 2. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Failure to complete return or supply information. If the tax commissioner is of the opinion that any taxpayer has failed to include in a return as filed, or to provide during the course of an audit, information necessary to determine a North Dakota tax liability, the tax commissioner may require from the taxpayer an amended return or supplementary information as is necessary to properly and accurately determine a taxpayer's North Dakota tax liability, in the form prescribed by the tax commissioner. If the taxpayer fails to file the amended return or to furnish the supplementary information, the tax commissioner, after thirty days' notice, may determine the North Dakota tax liability from the best information available and assess any tax due, including interest and penalty. The taxpayer may protest the determination under the protest procedure provided for the type of tax assessed.

SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Requirement to report federal changes.

1. If a person's federal taxable income or federal income tax liability for any taxable year is changed or corrected by the United States internal revenue service, or other competent authority, the person shall report the changes or corrections within ninety days after the date of the final determination of them by filing an amended state income tax return or other information as required by the tax commissioner.
2. Notwithstanding the provisions of subsection 1, if a person files an amended federal income tax return for any taxable year, the person shall file an amended state income tax return and a copy of the amended federal income tax return within ninety days after the amended federal income tax return is filed.

SECTION 4. AMENDMENT. Section 57-38-33 of the North Dakota Century Code is amended and reenacted as follows:

57-38-33. Failure to complete return or supply information. If the tax commissioner shall be of the opinion that any person has failed to include in a return as filed, or to provide during the course of an audit, either intentionally or through error or for any other reason, information necessary to properly determine North Dakota taxable income, the tax commissioner may require from ~~such that~~ person an amended return or ~~such any~~ supplementary information as is necessary to properly and accurately determine a person's North Dakota taxable income, in ~~such the~~ form as the tax commissioner shall prescribe. If the person fails or refuses to file the amended return or to furnish the supplementary information requested, the tax commissioner may, after thirty days' notice, determine the North Dakota taxable income of the person from the best information available and assess any tax due, including interest and penalty. ~~The decision of the tax commissioner to assess the tax, including interest and penalty pursuant to section 57-38-45, shall be final and payment of the amount due shall be made upon demand.~~ If the tax commissioner finds that the taxpayer's failure to provide an amended return or supplementary information was unreasonable and willful, the assessment of tax is final as to the tax commissioner. A North Dakota district court may reverse the tax commissioner's assessment only if it finds that the taxpayer's failure was not willful or that the tax commissioner's request was unreasonable.

SECTION 5. AMENDMENT. Section 57-38-38 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-38. Tax commissioner to audit returns and assess tax.

1. Except as otherwise provided in 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. As For taxable years beginning before January 1, 1991, as to any corporation or other person whose principal place for managing or directing a business is outside North Dakota, the tax commissioner shall have six years after the due date of the return or six years after the return was filed, whichever period expires later, to audit the return of such the corporation or other person and assess any additional tax found due and to notify such corporation or other person in detail as to the reason for the assessment of the additional tax. Effective for the taxable years beginning after December 31, 1990, and before January 1, 1993, the tax commissioner has five years to audit the return of the corporation or other person and assess any additional tax found due. Effective for taxable years beginning after December 31, 1992, and before January 1, 1995, the time period for assessment under this subsection is four years. Effective for taxable years beginning after December 31, 1994, the time period for assessment under this subsection is three years.
- 2- 3. If there is a change in taxable income or ~~adjusted federal~~ income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or ~~adjusted federal~~ income tax liability stated in the return as filed, any additional tax determined to be due may be assessed 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- 4. If a person has failed to file a return of income as required by this chapter, the tax may be assessed pursuant to under section 57-38-33 or subsection 6 of section 57-38-45, or an action brought pursuant to under section 57-38-47 at any time within ten years after the due date of the return.
- 4- 5. 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 at any time.
- 5- 6. a. If the amount of taxable income or, federal income tax liability for any year of any person 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 taxable income or federal income tax liability; the person shall report the changed or corrected income; or the changed or corrected federal income tax liability; or the results of the renegotiation; within thirty days after the final determination of the change or correction or renegotiation; by filing an amended state income tax return; or other information as required by the tax commissioner and shall concede the accuracy of the determination or state wherein it is erroneous.
- b- Any person filing an amended return with such department as set forth above shall also file within thirty days thereafter an amended state income tax return with a copy of such federal

amended return with the tax commissioner. If the a person files an amended state income tax return or a report disclosing changes or corrections to federal taxable income or to federal income tax liability, the assessment of a deficiency may be made at any time within two years from the date such report or amended return was filed by the person, or other information as required by the tax commissioner, pursuant to section 3 of this Act, the tax commissioner has two years after the amended state income tax return, or other information as required by the tax commissioner, is filed to audit the state income tax return and assess any additional state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, or that is attributable to the amended federal income tax return, even though other time periods prescribed in this section for the assessment of tax may have expired during the thirty day period. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this subsection.

c. b. Any For taxable years beginning before January 1, 1991, any person who consents to an extension of time for the assessment of taxes with the internal revenue service shall be presumed to have consented to a similar extension of time for the assessment or refund of state income tax with the state tax commissioner. Refunds under this subdivision are limited to tax years beginning after July 1, 1983.

d. Failure to report such changed or corrected federal taxable income or federal income tax liability or to file amended state income tax returns with a copy of such amended federal return within the prescribed thirty days shall suspend the running of the period of limitation for making an additional assessment for state income tax purposes.

7. If a person fails to file an amended state income tax return, or other information as required by the tax commissioner, under section 3 of this Act, the tax commissioner may assess any additional tax found due which is attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, or which is attributable to the amended federal income tax return, at any time, even though other time periods prescribed in this section may have expired.

6- 8. Where before the expiration of the time periods prescribed for the assessment of tax in subsections 1 and 2 of this section, the tax commissioner and the a person consent in writing to an extension of time for the assessment of the tax, the tax an assessment of additional state income tax may be assessed made at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Provided: that if the If a person refuses to agree to such consent to an extension of time or a renewal thereof, the tax commissioner may issue make an assessment based on the best information available. The period agreed upon in this subsection, including

extensions, expires upon issuance of an assessment by the tax commissioner.

- 7- 9. The filing of an amended return before the expiration of the time limitation provided for in this chapter shall add an additional time period of two years for assessment of a deficiency or the issuance of a credit or refund to the time limitation still remaining as of the date of filing of the amended return. Except for an amended return required to be filed under section 3 of this Act, if a person files an amended state income tax return within the time periods prescribed in subsections 1 and 2 of this section or subsection 1 of section 57-38-40, the tax commissioner has two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax found to be due, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired at the end of the two-year period prescribed in this subsection.

SECTION 6. AMENDMENT. Section 57-38-40 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-40. Claim for credit or refund.

1. Except as otherwise provided in subsection 2 this section, a taxpayer person may apply to the tax commissioner file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires last. Refund claims properly verified and approved by the tax commissioner shall be audited and paid as are other claims against the state. As to any corporation or other person whose principal place for managing or directing a business is outside North Dakota, if the period for assessment remains open under subsection 2 of section 57-38-38, the period of time for filing of a claim for credit or refund will remain open for the same period prescribed in subsection 2 of section 57-38-38.
2. If there is a change in taxable income or income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or income tax liability stated in the return as filed, a person may file a claim for credit or refund of any tax imposed by this chapter within six years after the due date of the return or within six years after the return was filed, whichever period expires last. The provisions of this subsection do not create or increase any net operating loss otherwise recognized under this chapter for purposes of carryover to any subsequent taxable period or carryback to any prior taxable period.
3. A corporation may file a claim for credit or refund arising from an overpayment of tax resulting from the carryback of a net operating loss carryback under subsection 3 of section 57-38-01.3, or resulting from a federal capital loss carryback, can be filed up to within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss

was incurred. The provisions of this subsection are effective for all carrybacks filed for taxable loss years beginning on or after December 31, 1986.

- 3- 4. A person other than a corporation may file a claim for credit or refund of an overpayment of tax resulting from the carryback of a federal net operating loss within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection are effective for loss years beginning after December 31, 1986.
5. Notwithstanding any other provision in this section, if any taxpayer, with or without intent to evade any tax imposed by this chapter, fails to file a state income tax return within three years after the due date of the return prescribed in this chapter, no credit or refund of overwithheld income tax or overpaid estimated income tax may be made.
6. If any person consents to an extension of time for the assessment of state income tax, under subsection 8 of section 57-38-38, the period of time for filing a claim for credit or refund will be similarly extended. Provided, however, if an assessment is issued, the taxpayer has sixty days from the assessment to file a claim for refund. If a claim for refund is filed in any year extended by an agreement under subsection 8 of section 57-38-38, the tax commissioner may assess additional tax for any year extended by the same agreement which has otherwise expired. The additional assessment is limited to issues raised in the claim for refund.
7. a. If a person required to file an amended state income tax return, or other information as required by the tax commissioner, under section 3 of this Act, does so within the ninety-day period prescribed therein, an overpayment of state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, must be credited or refunded to the person by the tax commissioner, even though other time periods prescribed in this section may have expired; provided the person submits a notice or other pertinent documentation as proof of the final determination of the changes or corrections by the United States internal revenue service, or other competent authority.

b. If a person required to file an amended state income tax return, or other information as required by the tax commissioner, under section 3 of this Act, does not do so within the ninety-day period prescribed therein, an overpayment of state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, must be credited or refunded to the person by the tax commissioner if the person files the amended state income tax return, or other information as required by the tax commissioner, within two years after the final determination of the changes or corrections made by the United States internal revenue service, or other competent authority, even though other time periods prescribed in this section may have expired. This provision does not limit or restrict any other time period

prescribed in this section that has not expired as of the end of the two-year period prescribed in this subsection. Any interest otherwise allowed by section 57-38-35.2 does not accrue after the ninety-day period prescribed in section 3 of this Act, if this subdivision applies.

8. a. If a return is filed by an individual or an individual and spouse and, after the death of the individual, a refund claim is filed or becomes payable, the tax commissioner shall approve the refund for payment to the legal representative of the decedent upon application and presentation of certified copies of letters testamentary or letters of administration establishing the fiduciary relationship of the legal representative.
 - b. If the legal representative of the taxpayer has not made application for the refund of the deceased taxpayer within one year from the date of the taxpayer's death, the tax commissioner may approve the refund to any person within the classifications set out herein and with the following priority: surviving spouse, children, grandchildren, parents, grandparents, and other relatives; upon proper application establishing the relationship of the claimant. Should an application be received from more than one individual in any of the classifications set out herein, the tax commissioner shall honor the earliest postmarked application which is properly filed pursuant to rules and regulations promulgated by him.
 - c. When the tax commissioner acting in good faith has approved a refund payment pursuant to the provisions of this subsection, the tax commissioner shall not be held responsible to any person or legal representative of the decedent who may have qualified to make a proper application but has failed to do so within one year from the date of death of the deceased taxpayer.
- ~~4-~~ 9. Every claim for credit or refund shall be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
- ~~5-~~ 10. If the tax commissioner disallows a claim for credit or refund, in part or in full, the tax commissioner shall notify the taxpayer accordingly. The decision of the tax commissioner denying a claim for credit or refund is final and irrevocable thirty days after the date the notice is mailed to the taxpayer unless, within this thirty-day period, the taxpayer has filed a ~~written~~ protest with the tax commissioner.
- ~~6-~~ 11. The protest shall set forth the grounds on which the protest is based, along with ~~such any~~ other information as may be required by the tax commissioner. If the taxpayer has so requested, the tax commissioner may grant the taxpayer or ~~his~~ the authorized representative of the taxpayer an informal conference.

- 7- 12. The tax commissioner shall reconsider the denial of the claim for credit or refund after the filing of a protest. The reconsideration may include the further examination by the tax commissioner or his the authorized representative of the tax commissioner of a taxpayer's books, papers, records, or memoranda, including corporate minutes and committee notes.
- 8- 13. Within a reasonable period of time after protest the tax commissioner shall notify the taxpayer of his the tax commissioner's reconsideration of claim for credit or refund. If the decision of the tax commissioner is a denial, the decision is final and irrevocable unless the taxpayer within ~~fifteen~~ thirty days following the date of the tax commissioner's decision seeks formal administrative review of the tax commissioner's reconsideration of claim for credit or refund by filing a complaint and requesting an administrative hearing. The complaint must be personally served on the tax commissioner or sent by certified mail. The provisions of chapter 28-32 shall apply to and govern the administrative hearing procedure, including appeals from any decision rendered by the tax commissioner. Upon written request of a taxpayer, the tax commissioner may grant a reasonable extension of time for the filing of a complaint.
- 9- 14. If the tax commissioner determines that an amount in excess of the correct amount of tax, interest, or penalty due from any person has been paid by or on behalf of such that person because of income tax withheld or ~~declaration of~~ estimated tax paid, the tax commissioner may approve a refund of the excess amount which shall be paid to that person in the manner provided for payment of other claims against the state, except that it shall not be necessary to first file a claim for refund if the amount to be refunded was paid with respect to a return or report filed by such that person with the tax commissioner in the form prescribed therefor.

SECTION 7. AMENDMENT. Section 57-39.2-15 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15. Failure to file return - Incorrect return. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the tax commissioner shall determine the amount of tax due from such any information as ~~he the~~ commissioner 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 the person, the person's stock on hand, and other factors. The commissioner shall give notice of such the determination to the person liable for the tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of such the determination shall be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever period expires later; if it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, notice of determination of tax due shall be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever is later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return shall be given not later than six years after the due date of the return; where fraudulent information is given in a return or where the failure to file a return is due to the fraudulent intent

or willful attempt of the taxpayer in any manner to evade the tax, the time limitation herein provided for giving notice of the determination of tax due shall not apply. Such ~~The~~ determination of tax due shall fix the tax finally and irrevocably unless the person against whom it is assessed, within ~~fifteen~~ thirty days after the giving of notice of ~~such the~~ determination, shall apply to the commissioner pursuant to chapter 28-32 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 pursuant to the provisions of protest the determination under rules adopted by the commissioner and under chapter 28-32.

SECTION 8. AMENDMENT. Section 57-39.2-15.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15.1. Extensions of time to perform sales tax audits.

1. Before the expiration of time prescribed in section 57-39.2-15 for the assessment of tax, the commissioner and the taxpayer may agree 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 agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. No extension may be for more than one year from the date of the extension agreement.
2. If a taxpayer agrees to an extension of time for assessment of tax, the period of time for refund claims will be similarly extended.

SECTION 9. AMENDMENT. Section 57-39.2-25 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-25. Payment of refund.

1. Wherever by any provisions of this chapter a refund is authorized, the commissioner shall certify the amount of the refund, the reason therefor, and the name of the payee to the office of management and budget, who shall thereupon draw a warrant on the general fund in the amount specified payable to the named payee. Interest of ~~seven~~ ten percent per annum shall be allowed and paid upon any overpayment of tax from sixty days after the due date of the return or after the date ~~such the~~ return was filed or after the date the tax due was fully paid, whichever comes later, to the date of the refund.
2. If the tax commissioner disallows a claim for credit or refund, the tax commissioner shall notify the taxpayer accordingly. The decision of the tax commissioner to deny a claim is final and irrevocable thirty-days after the date of notice unless within the thirty-day period the taxpayer files a written protest. A written protest must be filed under rules adopted by the tax commissioner under chapter 28-32.

SECTION 10. AMENDMENT. Section 57-51-09 of the North Dakota Century Code is amended and reenacted as follows:

57-51-09. Commissioner shall compute tax on incorrect returns.

1. The commissioner shall have the power and authority to ascertain and determine whether or not any return herein required to be filed with ~~him~~ the commissioner is a true and correct return of the gross products, and of the value thereof, of ~~such~~ that person; and if any person has made an untrue or incorrect return of the gross production or value thereof, as hereinbefore required, or shall have failed or refused to make ~~such~~ a return, the commissioner shall under rules and regulations prescribed by ~~him~~ the commissioner, ascertain the correct amount of either, and compute ~~said~~ the tax.
2. For taxable periods beginning before January 1, 1991, the tax commissioner has six years after the due date of the return or six years after the return is filed, whichever period expires later, to assess additional tax found due. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the time to assess is five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the time to assess is four years. Effective for taxable periods beginning after December 31, 1994, the time to assess is three years. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, any additional tax determined to be due may be assessed any time within six years after the due date of the return or six years after the return was filed, whichever period expired later.
3. Any person who consents to an extension of time for assessment of tax shall be presumed to have consented to a similar extension for refund.

SECTION 11. AMENDMENT. Section 57-51-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51-19. ~~Refund of overpayments, duplicate payments, and erroneous payments~~ Claim for credit or refund. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the state auditor, the state auditor shall issue a warrant for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned gross production tax in the state treasury and a pro rata share thereof must be charged against the county entitled to share in the tax. Interest at the rate of ten percent per annum must be paid on refunds of overpayments, duplicate payments, and erroneous payments.

A taxpayer may file a claim for credit or refund of an overpayment of tax. For taxable periods beginning before January 1, 1991, the claim must be filed within six years of the due date of the return or six years after the return was filed. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the taxpayer must file a claim within five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the taxpayer must file a claim within four years. For taxable periods beginning after December 31, 1994, the taxpayer must file the claim within three years. However, if there is a change in tax liability on any return by

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

SECTION 12. EFFECTIVE DATE. Sections 3, 4, 5 and 6 of this Act are effective for taxable years beginning after December 31, 1990.

Approved March 25, 1991

Filed March 26, 1991

CHAPTER 649

SENATE BILL NO. 2211
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TAX EXEMPTIONS, CREDITS, AND ASSESSMENTS

AN ACT to amend and reenact sections 57-02-08.1, 57-02-08.4, 57-02-08.5, 57-02-11, and 57-61-10 of the North Dakota Century Code, relating to the property tax credits for persons sixty-five years of age or older with limited income, to the conditional property tax exemption for owners of wetlands and the wetlands tax exemption payment, to the assessment of property that has been damaged, and to money collected and paid to the coal development fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of thirteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on the homestead as defined in section 47-18-01, except that this exemption applies to any person who otherwise qualifies under the provisions of this subsection regardless of whether the person is the head of a family. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person. The exemption to which any person may be entitled must be determined according to the following schedule:
 - a. If the person's income is not in excess of seven thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
 - b. If the person's income is in excess of seven thousand dollars and not in excess of eight thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the

person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.

- c. If the person's income is in excess of eight thousand five hundred dollars and not in excess of ten thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.
- d. If the person's income is in excess of ten thousand dollars and not in excess of eleven thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of eleven thousand five hundred dollars and not in excess of thirteen thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case may a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection may not reduce the liability of any person for special assessments levied upon any property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that the person's income, including that of any dependent, as determined in this chapter does not exceed thirteen thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars including the value of any assets divested within the last three years. ~~Any person eligible for the exemption provided in this subsection must also sign an affidavit stating that the person has not divested the property within the last three years.~~ The term "dependent" includes the spouse, if any, of the person claiming the exemption. The assessor shall attach the statement to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate upon at the end of the taxable year of the death of the applicant.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of thirteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters is eligible for refund for that part of the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances

furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred thirty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. In no case may a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund, but the tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case may this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation and is not making a payment in lieu of property taxes.

3. All forms necessary to effectuate this section must be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of them to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.
4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes.
5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may receive any property tax credit under this section.

*SECTION 2. AMENDMENT. Section 57-02-08.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.4. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section shall be exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year

* NOTE: Section 57-02-08.4 was also amended by section 96 of Senate Bill No. 2050, chapter 231.

in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would have been due on the exempt acreage for the most recent past tax year, and that the landowner has filed the required agreement. The amount of the wetlands exemption must be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section, "wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner of agriculture and the game and fish commissioner, in accordance with United States fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is terminated shall be computed, and the property owner shall pay the difference between such amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, shall not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

No property shall be exempt under this section unless the tax commissioner has certified to the county auditor of each county **before August first** by December tenth of the taxable year that funds are available in the state treasury which may be used for payment in full of any state obligations under section 57-02-08.5.

SECTION 3. AMENDMENT. Section 57-02-08.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.5. Wetlands tax exemption payment - Certification. Prior to ~~March~~ November first of each year ~~beginning in 1988~~, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the commissioner the total amount of property tax which would have been due on property exempt under section 57-02-08.4 within the county and other information as may be prescribed by the commissioner. The county auditor shall forward to the commissioner copies of all agreements described in section 57-02-08.4 in effect in the county.

The commissioner shall audit the claims for exemption, make corrections as required, and certify to the state treasurer for payment to each county on or before June ~~30, 1988, and thirtieth of each year thereafter~~, the sum of property taxes due on property exempt under section 57-02-08.4 for the county in the preceding year.

The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute it to the county and local taxing districts on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and the state tax commissioner and supplemental payments by the state treasurer may be made after the date prescribed in this section to make corrections as may be necessary.

No certifications must be made and no apportionment or distribution of payments to political subdivisions may be made under this section unless property was exempt under section 57-02-08.4 in the preceding year.

SECTION 4. AMENDMENT. Section 57-02-11 of the North Dakota Century Code is amended and reenacted as follows:

57-02-11. Listing of property - Assessment thereof. Property shall be listed and assessed as follows:

1. All real property subject to taxation shall be listed and assessed every year with reference to its value, on February first of that year.
2. Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or injured by fire, flood, or tornado, the assessor shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in the assessor's judgment fairly represents such deduction as should be made. ~~No deduction shall be made on account of damages covered by insurance or damages amounting to less than one hundred dollars.~~

SECTION 5. AMENDMENT. Section 57-61-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-61-10. Coal development fund established. Moneys collected by the state tax commissioner pursuant to the provisions of sections 57-61-01 through 57-61-09 shall be paid to the state treasurer ~~within fifteen days from the date not later than the third working day of the month following the month in which they are received~~ by the state tax commissioner and shall be credited to a special fund in the state treasury, to be known as the coal development fund. The moneys accumulated in such fund shall be allocated by the state treasurer as provided by law and as appropriated by the legislative assembly.

Approved April 17, 1991
Filed April 18, 1991

CHAPTER 650

HOUSE BILL NO. 1049
(Legislative Council)
(Interim Jobs Development Commission)

STATE PROPERTY LEASE TAXATION

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to payment of a license fee in lieu of property taxes on leasehold interests and improvements on state-owned property when used for tourism or concession purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

License fee in lieu of property taxes on leases for tourism or concession purposes. Payment of the license fee as provided in this section by the lessee of any leasehold interest in state-owned property leased from the superintendent of the state historical board or the director of state parks and recreation is a payment in lieu of all ad valorem taxes on the leasehold interest or any associated building or other improvement if the lessee uses the property, building, or other improvement primarily for tourism or concession purposes. The superintendent or the director shall establish the license fee at an annual amount not less than one dollar and not more than one percent of the gross receipts from the tourism or concession enterprise. The lessee shall pay the license fee to the treasurer of the county in which the tourism or concession enterprise is located and all fees received under this section must be deposited in the county general fund. The lease must indicate that the superintendent or the director approves use of the property primarily for tourism or concession purposes and intends the license fee paid by the lessee to be in lieu of ad valorem taxes.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved March 20, 1991
Filed March 21, 1991

CHAPTER 651

SENATE BILL NO. 2400
(Thane)

RAILROAD ASSESSMENT CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 57-05 of the North Dakota Century Code, relating to confidentiality of certain information provided for the purpose of assessment of railroad property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-05 of the North Dakota Century Code is created and enacted as follows:

Information deemed confidential. It is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge or to make known in any manner 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 set forth or disclosed in any report, or to permit any report or copy or any book containing any abstract of particulars to be seen or examined by any person except as provided by law. Notwithstanding the provisions of this section, hearings held by the state board of equalization under chapter 57-05 or 57-13 must be open to the public under section 44-04-19. The commissioner may authorize examination of such reports by other state officers, and may furnish to the tax officials of another state, the multistate tax commission, or the United States any information contained in the reports and related schedules and documents filed under this chapter, and in the report of an audit or investigation made with respect to an audit, provided that that information be furnished solely for tax purposes. The multistate tax commission may make that information available to the tax officials of any other state and the United States for tax purposes.

Approved March 26, 1991
Filed March 26, 1991

CHAPTER 652

SENATE BILL NO. 2249
(Senators Streibel, Naaden, DeKrey)
(Representatives Brown, Rennerfeldt, Whalen)

CARBON DIOXIDE PIPELINES

AN ACT to create and enact two new sections to chapter 57-06 of the North Dakota Century Code, relating to a property tax exemption for certain centrally assessed pipeline and associated property used to promote enhanced recovery of oil or natural gas and to provide for payments in lieu of taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

Carbon dioxide pipeline exemption. Property, not including land, is exempt from taxation for the first ten full taxable years after commencement of construction if it consists of a pipeline and necessary associated equipment for the transportation or storage of carbon dioxide to an oilfield in this state for use in enhanced recovery of oil or natural gas.

SECTION 2. A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

Payments in lieu of taxes. Carbon dioxide pipeline property described in section 1 of this Act is subject to payments in lieu of property taxes during the time it is exempt from taxation under section 1 of this Act. For the purpose of these payments, carbon dioxide pipeline property described in section 1 of this Act must be valued annually by the state board of equalization in the manner that other pipeline valuations are certified. The county auditor shall calculate taxes on the carbon dioxide pipeline property described in section 1 of this Act in the same manner that taxes are calculated on other pipeline property. Not later than December twenty-sixth of each year, each county auditor shall submit a statement of the amount of taxes that would have been assessed against carbon dioxide pipeline property, exempted under section 1 of this Act, to the state treasurer for payment. The state treasurer shall make the required payment to each county not later than March first of the following year, and the county auditor shall distribute the payments to the political subdivisions in which the exempt pipeline property is located.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 11, 1991
Filed April 12, 1991

CHAPTER 653

HOUSE BILL NO. 1027
(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

OPTIONAL TAX LEVY INCREASES

AN ACT providing optional property tax levy increase authority of political subdivisions and providing limitations on that authority; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section, "base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year and "budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy at most four percent more in the budget year than the amount levied in dollars in the base year. Any levy of a percentage increase under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before adding the increase, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.

4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other increase under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrepealable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to increase its levy authority under this section may apply the allowable percentage increase only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply the allowable percentage increase to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to the allowable percentage increase under this section.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1990, and is thereafter ineffective.

Approved April 3, 1991
Filed April 4, 1991

CHAPTER 654

SENATE BILL NO. 2377
(Senator O. Hanson)
(Representatives Gorder, Brokaw)

LONG-DISTANCE LEARNING TECHNOLOGY LEVY

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to a levy for long-distance learning technology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Long-distance learning technology levy - Voter approval.

1. The school board of a public school district may, upon approval by a majority vote of the electors of the school district at any regular or special election, dedicate a tax levy for purposes of this section not to exceed five mills on the dollar of taxable valuation of property within the district.
2. All revenue accruing from the levy under this section must be used only for purposes of establishing and maintaining long-distance learning.
3. If the need for the fund terminates, the governing board of the public school district shall order the termination of the levy and shall transfer the remaining balance to the general fund of the school district.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 655

SENATE BILL NO. 2272
(Senators Robinson, Thane, Yockim)
(Representatives Byerly, Kolbo, Myrdal)

SENIOR CITIZEN SERVICES FUNDING

AN ACT to amend and reenact section 57-15-56 of the North Dakota Century Code, relating to state matching funds for services and programs for senior citizens; and to provide an appropriation from the state aid distribution fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-56 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-56. Authorization of tax levy for services and programs ~~and activities~~ for senior citizens - Elections to authorize or remove the levy - State bonding fund coverage - State matching program for senior citizen services and programs ~~and activities~~.

1. The board of county commissioners of any county is hereby authorized to levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city in the county is authorized to levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining services and programs ~~and activities~~ for senior citizens including the expansion maintenance of existing senior citizen centers which will provide recreational and other leisure-time activities, informational, health, welfare, counseling, and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city in the county shall become void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax may not exceed the limitation in subsection 25 of section 57-15-06.7 or subsection 26 of section 57-15-10. The proceeds of the tax must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy shall be in addition to any moneys expended by the board of county commissioners pursuant to section 11-11-58 or by the governing body of any city pursuant to section 40-05-16.
2. The levy authorized by this section may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation. Governing bodies may enter into contracts with county councils on aging or comparable representative groups in counties or cities that do not have a council on aging to determine jointly

and to administer distribution of funds in accordance with the contract and the provisions of this section. To receive any funds under this section, an organization or agency must file with the governing body from which funds are being requested a report of its program for the fiscal year for which the funds are requested. The report must show all financial resources available to the organization or agency and its program, how those resources are budgeted or intended to be used in that fiscal year or in the future, and the purposes for which funds being requested under this section are to be used. An organization or agency and its program which receives funds under the provisions of this section must be reviewed or approved annually by the board of county commissioners or the governing body of the city to determine its eligibility to receive funds under the provisions of this section.

3. The levy authorized by this section shall be imposed or removed only by a vote of a majority of the qualified electors of the county or city directing the governing body to do so. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election is presented to said governing body.
4. The officers or employees of a nonprofit corporation under contract with the board of county commissioners or the governing body of the city, in regard to the manner in which the funds shall be expended and the services are to be provided, are authorized to receive, and shall be eligible for, bonding coverage through the state bonding fund.
5. The department of human services shall match provide matching funds for the amounts levied by counties and cities for senior citizen services and programs ~~and activities~~ operated pursuant to this section. The grants must be made on or before March first of each year and must be equal to the amount levied for the previous taxable year by each county or city within the limitations of legislative appropriations, provided that no such grant may be made to any county or city which has not filed with the department of human services a required written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the department of human services on or before February first of each year following a year in which the reporting county or city received grant funds under this subsection.

SECTION 2. APPROPRIATION. Notwithstanding the provisions of section 57-39.2-26.1, there is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of \$900,000, or so much thereof as may be necessary, to the department of human services for the purpose of providing matching funds under section 57-15-56 for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 11, 1991
Filed April 12, 1991

CHAPTER 656

HOUSE BILL NO. 1608
(Representatives Larson, Pyle)
(Senator Lindgren)
(Approved by the Committee on Delayed Bills)

SCHOOL SPECIAL RESERVE FUNDS

AN ACT to amend and reenact section 2 of chapter 701 of the 1989 Session Laws of North Dakota, relating to an expiration date for withdrawals from school district special reserve funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2 of chapter 701 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, ~~1991~~ 1993, and after that date is ineffective.

Approved April 3, 1991
Filed April 4, 1991

CHAPTER 657

SENATE BILL NO. 2343
(Senators Yockim, Robinson)
(Representatives Schmidt, Nelson)

COLLECTION OF RENTS FOR SPECIAL ASSESSMENTS

AN ACT to amend and reenact sections 57-21-01, 57-21-03, 57-21-04, 57-21-08, 57-21-09, 57-21-10, and 57-21-12 of the North Dakota Century Code, relating to collection of rents for payment of taxes and special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-21-01 of the North Dakota Century Code is amended and reenacted as follows:

57-21-01. Application to district court. At any time after any taxes or special assessments or any installment thereof, heretofore or hereafter levied and assessed upon any real property within this state, shall have been delinquent for more than twelve months, and shall remain due and unpaid, the county treasurer, if the said property produces rents, may petition, and, by direction of the board of county commissioners, shall petition, the district court, in the name of the county, for an order directed to the tenant or subtenant, if any, and to the owner of said property, directing that said rents be paid to the county treasurer.

SECTION 2. AMENDMENT. Section 57-21-03 of the North Dakota Century Code is amended and reenacted as follows:

57-21-03. Order of court. After hearing, the court may issue an order directing the tenant to pay to the county treasurer all rents payable under the terms of the lease of the property, either due or to become due, and also directing the county treasurer to apply the said payments of rent to the delinquent and current taxes and special assessments, including penalty and interest, and the costs and expenses of the proceeding as determined and taxed by the court. In such order, or thereafter, upon application and hearing, the court, in its discretion, may allow to the taxpayer a percentage of rents, property, and crops, as to the court may seem just, up to and including fifty percent thereof, and may order the treasurer to pay such percentage to such taxpayer at such times and under such circumstances as to the court may seem just and equitable.

SECTION 3. AMENDMENT. Section 57-21-04 of the North Dakota Century Code is amended and reenacted as follows:

57-21-04. Duty of tenant and owner. A tenant, pursuant to an order made as provided in section 57-21-03, shall pay to the county treasurer all of the rent for the property described in such order, and in cases where the owner reserves title to property as security for rent, the tenant or owner shall pay said taxes and special assessments out of the owner's portion of

such crops or other property, or the proceeds thereof, and a failure to comply with the provisions of the order of the court shall constitute contempt and shall be punishable as such.

SECTION 4. AMENDMENT. Section 57-21-08 of the North Dakota Century Code is amended and reenacted as follows:

57-21-08. Vacation of order requiring payment of rents for taxes and special assessment. Whenever the delinquent and current taxes and special assessments, including penalty and interest, and the costs and expenses of the proceeding, have been fully satisfied out of the rents, property, and crops as provided in this chapter, the treasurer shall apply to the court for an order vacating the order directing the payment of rents, which shall be served upon the tenant and upon the owner in the manner provided for the service of the original notice.

SECTION 5. AMENDMENT. Section 57-21-09 of the North Dakota Century Code is amended and reenacted as follows:

57-21-09. Tax and special assessment receipts. Whenever the payments of rents shall result in the payment of any year's taxes or special assessments, with penalties, interest, and costs thereto attached, the county treasurer shall issue his receipt for such year's tax or special assessment in the usual manner. In like manner, the county auditor shall issue a certificate of redemption for any taxes or special assessments which have been sold.

SECTION 6. AMENDMENT. Section 57-21-10 of the North Dakota Century Code is amended and reenacted as follows:

57-21-10. Payments under protest. Nothing in this chapter shall be construed to prevent any taxpayer from availing himself of the right provided by law as to the payment of taxes or special assessments under protest.

SECTION 7. AMENDMENT. Section 57-21-12 of the North Dakota Century Code is amended and reenacted as follows:

57-21-12. Remedy cumulative. The remedy provided in this chapter is in addition to any other remedy which may be provided by law for the collection of taxes or special assessments levied and assessed against real property.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 658

SENATE BILL NO. 2140

(Committee on Finance and Taxation)

(At the request of the Office of Management and Budget)

OFFICE OF MANAGEMENT AND BUDGET FILINGS

AN ACT to amend and reenact section 57-23-08 of the North Dakota Century Code, relating to duties of county auditors after abatement actions; and to repeal section 54-27-03 of the North Dakota Century Code, relating to the requirement that county auditors furnish the office of management and budget with abstracts of tax lists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-23-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-23-08. Duties of county auditor and county commissioners after abatement action. After the granting of any application for abatement or refund or compromise of any tax, the county auditor shall correct all tax lists in accordance with the order of abatement or compromise, and the applicant is relieved of further liability for the tax abated or compromised. If the board of county commissioners disapproves any application for abatement or refund or compromise, in whole or in part, the reasons for disapproval must be stated thereon and the applicant may appeal the rejection of the application for abatement or refund or compromise as provided by law. The county auditor, at the close of each calendar year, shall certify to the director of the state office of management and budget the amount of state taxes canceled by action of the board of county commissioners and the same must be credited to the county.

SECTION 2. REPEAL. Section 54-27-03 of the North Dakota Century Code is repealed.

Approved March 11, 1991

Filed March 11, 1991

CHAPTER 659

HOUSE BILL NO. 1427
(Henegar, Ritter)

PROCEEDINGS FOR UNREDEEMED TAX LANDS

AN ACT to amend and reenact sections 57-27-01, 57-27-02, 57-27-03, 57-27-04, 57-27-05, 57-27-07, 57-27-10, 57-28-01, 57-28-02, 57-28-03, 57-28-04, 57-28-05, 57-28-06, 57-28-08, 57-28-09, 57-28-10, 57-28-11, 57-28-12, 57-28-13, 57-28-14, 57-28-15, 57-28-17, 57-28-17.1, 57-28-18, 57-28-19, 57-28-19.1, 57-28-20, 57-28-21, 57-28-22, 57-28-23, 57-28-24, 57-28-25, 57-28-26, and 57-28-27 of the North Dakota Century Code, relating to rights and procedures when property is not redeemed from tax sale.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-27-01 of the North Dakota Century Code is amended and reenacted as follows:

57-27-01. Rights of purchaser when lands not redeemed. Any owner of a
an original or subsequent unredeemed tax sale certificate, original or
subsequent, shall be who has complied with the provisions of this chapter is
entitled, if there is no redemption, to receive a tax deed for the property
and the possession, rents, and profits of the land property involved, at the
expiration of the period of redemption, and if on demand of such owner the.
If a party in possession refuses or neglects to does not surrender
possession, he may be proceeded against as one holding over after the
determination of his estate, the holder of the tax deed may proceed to remove
the party by an action of eviction, but all rights of the owner of such.

A tax sale certificate shall cease and shall be deemed forfeited and
extinguished, and the auditor of the county wherein such premises are
situated must cancel such lien from his becomes void and must be canceled
from the records of the county auditor, unless the owner of such the tax sale
certificate shall present the same presents it to the county auditor and
request requests the giving of notice of the expiration of the period of
redemption within ten years from and after the date of the tax sale to which
such the certificate relates.

* SECTION 2. AMENDMENT. Section 57-27-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-27-02. Notice of expiration of period of redemption - Contents and
service of notice. The procedure upon presentation of a tax sale certificate
shall be as follows:

1. Every person holding a tax sale certificate, at any time after the
expiration of After three years and before ten years from the date
of the tax sale to which such a tax sale certificate relates, and
before ten years from such date have expired, the holder of the tax
sales certificate may present the certificate it to the county

* NOTE: Section 57-27-02 was also amended by section 3 of Senate Bill No. 2345, chapter 661.

auditor, who thereupon shall prepare under his hand and seal, a notice for service of notice of expiration of the period of redemption. The notice must be directed to the person in whose name the lands property described in the certificate are is assessed, to all lienholders of record, and to all mortgagees or assignees of mortgages holding unsatisfied recorded mortgages, specifying in such notice the description of such lands, the amount for which the same were sold, the amount required to redeem the same from sale, inclusive of delinquent installments of special assessments, exclusive of the costs to accrue on such notice, and the time when the redemption period will expire. The notice must include:

- a. The description of the property.
 - b. The amount for which the property was sold at tax sale.
 - c. The amount of delinquent property taxes, with penalties and interest, for each year.
 - d. The amount of delinquent special assessments, with penalties and interest, for each year.
 - e. The total amount required to redeem the property from tax deed proceedings, not including costs yet to accrue.
 - f. The time when the redemption period will expire.
2. A If the current assessment records show that a residential building is located on the property, the county auditor shall deliver the notice of expiration of the period of redemption ~~shall be delivered~~ to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state; but if. If the owner is a nonresident of this state, the sheriff shall serve the notice ~~shall be served~~ by registered or certified mail addressed to the owner at his the owner's last known post-office address and by determine whether personal service upon any person is required under subsection 4. If the current assessment records show that no residential building is located on the property, the auditor shall serve the notice by registered mail addressed to the owner at the owner's last known post-office address. If service is made by registered mail under this subsection, service must also be made by publication once in each week for three consecutive weeks in some the official county newspaper printed and published in the county where the lands to which the notice relates are located; and if no newspaper is published therein; then in some newspaper printed and published at the capital of the state.
3. Within ten days after a request by the county auditor, the register of deeds and the clerk of the district court shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property, upon whom the notice of the expiration of the period of redemption must be served.

4. The notice shall must be served personally upon any person actually residing upon the property covered by a tax sale certificate and upon any tenant or other person entitled to the possession of said the property as may appear from the records of the register of deeds.
- ← 5. The county auditor shall serve the notice of the expiration of the period of redemption upon each mortgagee, lienholder, and other person interested therein as may appear from with an interest in the property, and upon whom personal service is not required by this section, as shown by the records of the register of deeds and or the clerk of the district court of the county. The notice must be served by registered mail and a registry and return receipt must be demanded and filed with proof of service.
6. The expense of service by registered mail shall of the notice under this section must be added to the amount required to redeem and must be paid by the person making the redemption in addition to the amounts stated in the notice. The auditor or sheriff shall make proof of service by mail by affidavit showing the names and addresses of all parties upon whom the notice was served with the date of mailing in each case, and the auditor shall attach the registry, certification, and return receipts and file the affidavit and receipts with the original notice of the expiration of the period of redemption. Within ten days after a request by the county auditor the register of deeds and the clerk of the district court shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the real estate, upon whom the notice of the expiration of the period of redemption must be served. Service by publication under this section must be shown of record by filing of an affidavit of publication.

SECTION 3. AMENDMENT. Section 57-27-03 of the North Dakota Century Code is amended and reenacted as follows:

57-27-03. Proof of service of notice - Fees - County not liable for expense. Proof of service of the notice of the expiration of the period of redemption must be filed in the office of the county auditor, and no deed shall issue may be issued until such proof it has been filed. The fees for serving, and the printer's fee for publishing, such notice shall costs of service and publication of the notice must be added to the amount required to redeem the land to which the notice relates, and shall property and must be paid by the party offering to redeem the same before any making the redemption can be effected. The county shall is not be liable for any expense incurred under the provisions of this chapter, and whenever. When a tax sale certificate is presented to, the county auditor, he shall estimate the fees costs for serving and publishing the notice of expiration and the cost of publication thereof and shall require the holder of such the tax sale certificate to deposit that amount with the auditor the amount of such estimated fees and costs, and if such. If the amount afterwards is later found to be excessive or the property is redeemed, the excess shall must be refunded to the holder of the certificate.

SECTION 4. AMENDMENT. Section 57-27-04 of the North Dakota Century Code is amended and reenacted as follows:

57-27-04. Redemption period after notice - Interest. The time for redemption of lands from tax sale ~~shall expire~~ expires ninety days after the completed service of the notice of expiration of the period of redemption. The tax sale certificate and any subsequent tax sale certificates ~~shall~~ continue to draw interest until the certificates are redeemed or the taxes are paid.

SECTION 5. AMENDMENT. Section 57-27-05 of the North Dakota Century Code is amended and reenacted as follows:

57-27-05. Tax deed to be issued. ~~At If no redemption has been made at the expiration of the period of redemption, and after the filing of the proof of service of the notice of expiration of such the period, the county auditor, if no redemption has been made, on surrender of redemption has been filed, the owner of the certificate of tax sale to him, shall surrender the certificate to the county auditor. The county auditor shall execute to the owner of the certificate, his heirs and assigns, in the name of the state, a deed of the land remaining unredeemed, which shall vest in the said property, giving the certificate owner, his heirs and assigns, an absolute estate in fee simple in such lands, the property. The ownership acquired by the certificate owner is subject to the claims of the state or other taxing districts on account of taxes or other liens or encumbrances, including installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of after the service of the notice of expiration of the period of redemption. Such deed shall be executed by the county auditor under his hand and seal. Such The deed shall be issued under this section is prima facie evidence of the truth and regularity of all facts therein recited and of the regularity of all the and proceedings from the assessment and valuation of the land by the assessor up to before the execution of the deed.~~

SECTION 6. AMENDMENT. Section 57-27-07 of the North Dakota Century Code is amended and reenacted as follows:

57-27-07. Assignment of certificate for land bid in by county. At any time after any piece or parcel of land shall have property has been bid in for the county, and before it shall become forfeited to the county, and while it shall remain unredeemed, and not subject to a tax deed to the county, the county auditor may assign and convey the same and all of the rights of the county in such piece or parcel of land the property to any person, other than the county auditor, county treasurer, or any their deputy or clerk of either such officer, who. The assignee shall pay the amount that was bid for which the same shall have been bid in; together with property, interest thereon from the date of the tax sale at the rate of six percent per annum, and the amount of all subsequent any later delinquent taxes, if any, and. The county auditor shall ~~execute to him~~ an assignment, for each certificate, which may be in substantially the following form:

I, -----, auditor of the county of -----, state of North Dakota, hereby do certify that at the sale of real estate for the delinquent taxes thereon for the county of ----- and state aforesaid, which sale was held at the ----- in said county of ----- on the ----- day of -----, A.D. 19--, for the taxes of the year -----, the following described piece or parcel of land situated in said county of -----, state of North Dakota, to wit: (insert description) was offered for sale to the best bidder, and no one bidding upon such offer, the same then was bid in for the county

for the sum of ----- and the same still remaining unredeemed, and -----, on this day, having paid into the treasury of said county, the amount for which the same was bid in with interest thereon, and all subsequent delinquent taxes, amounting in all to ----- dollars, therefore, in consideration thereof, and pursuant to law, I hereby do assign and convey all the right, title, and interest of said county to said piece or parcel of land acquired therein at said sale to the said -----, his heirs and assigns, subject to redemption as provided by law.

And I further certify that unless redemption of said real estate is made in the manner provided by law, the said ----- or his assigns, will be entitled to a deed therefor on and after the expiration of the time for redemption, as provided by law, and upon the surrender of this certificate.

In witness whereof I hereunto have set my hand and seal this ----- day of -----, 19--.

County Auditor of -----
County, North Dakota.

SECTION 7. AMENDMENT. Section 57-27-10 of the North Dakota Century Code is amended and reenacted as follows:

57-27-10. County auditor to acknowledge tax deeds. All ~~such~~ tax deeds ~~shall must~~ be acknowledged by the county auditor before someone authorized by law to take acknowledgments of deeds. For ~~said the~~ deed, the county auditor ~~shall be entitled to~~ may charge a fee of fifty cents to be paid by the grantee ~~in such deed~~.

SECTION 8. AMENDMENT. Section 57-28-01 of the North Dakota Century Code is amended and reenacted as follows:

57-28-01. Notice of expiration of period of redemption to be given. On or before June first in each year, the county auditor shall give notice of the expiration of the period of redemption ~~as to all tracts of real estate sold to the county, where~~ for all property for which three or more years have expired from the date of the original, or any subsequent, passed since tax sale certificates were issued or deemed to have been issued to the county, which have not been redeemed or assigned.

SECTION 9. AMENDMENT. Section 57-28-02 of the North Dakota Century Code is amended and reenacted as follows:

57-28-02. When redemption period expires. The period of redemption ~~shall expire~~ for property bid in by the county expires on October first after the service of the notice of the expiration of the period of redemption ~~prescribed by this chapter~~.

SECTION 10. AMENDMENT. Section 57-28-03 of the North Dakota Century Code is amended and reenacted as follows:

57-28-03. ~~Amount of delinquent taxes to be included in Contents of notice of expiration of period of redemption. The county auditor shall include in the notice~~ Notice of the expiration of the period of redemption all real estate taxes, including delinquent installments of special assessments, where three or more years have expired from the date of the

original, or any subsequent, tax sale certificate, issued or deemed to have been issued at the time of the service of such notice, but such notice shall show separately the amount of delinquent taxes and delinquent installments of special assessments, with penalties and interest, due for each year, and the total amount which is required to be paid to effect a redemption of the real estate from such tax deed proceedings must include:

1. The description of the property.
2. The amount for which the property was sold at tax sale.
3. The amount of delinquent property taxes, with penalties and interest, for each year.
4. The amount of delinquent special assessments, with penalties and interest, for each year.
5. The total amount required to redeem the property from tax deed proceedings, not including costs yet to accrue.
6. The time when the redemption period will expire.

SECTION 11. AMENDMENT. Section 57-28-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-04. Service of notice of the expiration of the period of redemption. The county auditor shall serve the notice of the expiration of the period of redemption upon the owner of the record title of the real estate for property sold to the county for taxes, and upon each mortgagee, lienholder, and other interested person as may appear from the records of the register of deeds and the clerk of the district court of the county. Except for property upon which there is a homestead, the notice must be served by certified mail, and a return receipt must be demanded and filed with proof of service. For property upon which there is a homestead, the notice must be served as provided in subsection 2 of section 57-27-02. The expense of the service must be added to the amount required to redeem, and must be paid by the person making the redemption in addition to the amounts stated in the notice. The auditor shall make proof of service by affidavit showing the names and addresses of all parties upon whom the notice was served, with the date of mailing in each case, and must attach the registry, certification, and return receipts, and must file the affidavit and receipts with the original notice of the expiration of the period of redemption. The register of deeds and the clerk of the district court, upon request by the county auditor, and within ten days thereafter, shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the real estate, upon whom the notice of the expiration of the period of redemption must be served in the manner prescribed in subsections 2 through 6 of section 57-27-02.

SECTION 12. AMENDMENT. Section 57-28-05 of the North Dakota Century Code is amended and reenacted as follows:

57-28-05. Form of notice for service by registered mail. The notice of the expiration of the period of redemption which the county auditor is required to serve by registered or certified mail shall must be substantially in the following form:

NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION

To -----, the owner of the record title of the real estate hereinafter described, and to all mortgagees, lienholders, and other persons interested in said real estate:

I, -----, county auditor of ----- County, North Dakota, hereby give notice that the real estate hereinafter described, at the annual tax sale held in the county on the ----- of December, 19--, was offered for sale for delinquent taxes against it for the year ----- and was sold to the county, that subsequent tax sale certificates have been issued to the county for the years hereinafter set forth, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, and that the same still are the property of such county, and unless redemption is made from each of said tax sale certificates on or before October first, after the date of this notice, tax deeds will be issued to the county, granting to and vesting in it, the absolute title in fee to said real property, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and foreclosing all rights of redemption, and all other rights of the owner, mortgagees, lienholders, and other persons interested therein, as may appear from the records of the register of deeds and the clerk of the district court of said county. There is given herewith the description of such parcels of real estate, and set opposite each description is the amount which will be required upon the date of the expiration of the period of redemption to redeem such real estate from such original and each subsequent tax sale certificate issued to the county, exclusive of the cost of service of this notice.

Said property is described as follows, with the amount required to redeem set out opposite each description, to wit: -----

Given pursuant to authority of law this ----- day of -----, 19--.

County auditor of ----- County, North Dakota.

* SECTION 13. AMENDMENT. Section 57-28-06 of the North Dakota Century Code is amended and reenacted as follows:

57-28-06. Service of notice by publication. The county auditor, ~~on or before August first of each year,~~ shall serve notice of the expiration of the period of redemption by publication as to all ~~tracts of real estate upon property sold to the county for taxes for which such notice is served upon the owner~~ by registered ~~or certified~~ mail. ~~Such~~ The notice may include any number of parcels of ~~real estate, property~~ and only one heading ~~shall be is~~ necessary for the entire list. ~~The auditor shall include in the amounts stated in such notice must include a statement of the cost of publication of the notice. Such~~ The notice ~~shall must~~ be published once ~~on or~~ before August first in the official newspaper of the county ~~wherein such real estate is situated.~~

SECTION 14. AMENDMENT. Section 57-28-08 of the North Dakota Century Code is amended and reenacted as follows:

* NOTE: Section 57-28-06 was also amended by section 4 of Senate Bill No. 2345, chapter 661.

57-28-08. Effect of failure to redeem. The failure of the owner ~~or~~, any mortgagee, or other lienholder, to redeem ~~such lands property bid in by~~ the county before the period of redemption expires, ~~shall operate operates:~~

1. To pass ~~all of the right, title, and any~~ interest of the owner, mortgagee, or lienholder in ~~and to said premises, the property to~~ the county ~~by operation of law.~~ The interest acquired by the county is subject only to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of after the service of the notice of expiration of the period of redemption.
2. To foreclose all rights ~~and equities~~ of redemption.
3. To waive all errors, irregularities, or omissions which do not affect the substantial rights of the parties, ~~in tax deed proceedings,~~ except jurisdictional defects.

SECTION 15. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the expiration of the period of redemption for property that was sold to the county for taxes, and which has not been assigned or redeemed, the county auditor shall issue a tax deed to the county, ~~in the usual form, for all real estate which was not redeemed within the period of redemption. Such.~~ The tax deed shall pass passes the absolute property in fee to the county, free from all encumbrances whatsoever, except installments of special assessments certified or to be certified to the county auditor or what which may become due subsequent to the time of after the service of the notice of expiration of the period of redemption, provided, that so long as. While the county holds title under a tax deed to such property, it ~~shall~~ is not be liable for the payment of any such installments of special assessments which may become due unless the board of county commissioners has leased or contracted to sell such the property. Such deeds shall be A deed issued under this section is prima facie evidence of the truth and regularity of all the facts therein recited and of the regularity of all the and proceedings from the assessment and valuation of the land by the assessor up to before the execution of the deed.

SECTION 16. AMENDMENT. Section 57-28-10 of the North Dakota Century Code is amended and reenacted as follows:

57-28-10. Appraisal for annual sale - Minimum sale price. All ~~real estate property~~ acquired by the county by tax deed ~~shall must~~ be appraised by the board of county commissioners at least thirty days ~~prior to before~~ the annual sale ~~provided by~~ under this chapter. The appraised price ~~shall must~~ be sufficient to cover all ~~general taxes, installments of special assessments, hail indemnity taxes,~~ penalties, interest, and costs, which were ~~extended and~~ due against the property at the time of the service of the notice of expiration of the period of redemption, plus an amount equal to the estimated taxes and special assessments for the current assessment year. If the fair market value of the property is more than the total amount due against the property, the minimum sale price of the property must be at least equal to the total amount due against the property. If the fair market value of ~~such the~~ property is less than ~~such the~~ total amount due against the property, the board shall fix a fair and ~~just~~ minimum sale price for ~~such the~~ property.

SECTION 17. AMENDMENT. Section 57-28-11 of the North Dakota Century Code is amended and reenacted as follows:

57-28-11. Hearing on appraisal. After making the appraisal of ~~lands~~ property acquired by tax deed, the board of county commissioners shall set a date for hearing objections to the minimum sale price ~~so determined; and. At least ten days before the hearing, the county auditor; at least ten days previous to such hearing;~~ shall mail to the auditor of any city, or the clerk of the board of supervisors of any township ~~wherein such lands are; in which appraised property is located;~~ a written notice in writing stating the time when objections to the established minimum sale price ~~so fixed~~ will be heard. At such hearing, ~~any~~ Any member or representative of the governing body of any taxing district, ~~or any representative thereof, shall be heard may appear at the hearing with reference to the fair market value of such lands appraised property, and the board thereupon shall may make such appropriate changes in the minimum sale price of such property as it shall deem fair and just; In fixing values, the board of county commissioners may classify all lands, except city lots, according to their suitability for farming, grazing, forage, or irrigational purposes, conforming as nearly as practicable to the classification of such lands adopted by the county, state, and federal agencies in connection with the land use program, and such classification shall be considered in determining the value thereof.~~

SECTION 18. AMENDMENT. Section 57-28-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-12. Appeal. ~~The governing body of any taxing district, if If~~ dissatisfied with the determination of the board of county commissioners, ~~under section 57-28-11, the governing body of any taxing district may appeal to the district court in accordance with the procedure provided in under section 28-34-01. All determinations of minimum values, on appeal, Appeals under this section must be heard by the court without a jury. The county auditor shall make such any changes, if any, as may be in minimum sale price ordered by the court upon appeal and shall offer such lands for sale at the minimum sale price, determined by the final judgment of the court.~~

SECTION 19. AMENDMENT. Section 57-28-13 of the North Dakota Century Code is amended and reenacted as follows:

57-28-13. Time and place of annual sale. The annual sale of land acquired by tax deed ~~shall must~~ be held at the county auditor's office or the usual place of holding district court in ~~each the county; beginning on the third Tuesday of November of each year, and shall continue from day to day until completed.~~

* SECTION 20. AMENDMENT. Section 57-28-14 of the North Dakota Century Code is amended and reenacted as follows:

57-28-14. Notice of annual sale - Contents. Notice of the annual sale ~~shall must~~ include a description of ~~all real estate~~ and minimum sale price for each parcel of property to be sold, ~~with the minimum sale price thereof, and shall.~~ Notice ~~must be given in both of the following manners:~~

1. By posting a notice at the front door of the courthouse at least fifteen days ~~prior to before~~ the date of sale, ~~and.~~

* NOTE: Section 57-28-14 was also amended by section 6 of Senate Bill No. 2345, chapter 661.

2. By publishing a notice in the official newspaper of the county once, not less than ten days ~~prior to~~ before the date of sale.

SECTION 21. AMENDMENT. Section 57-28-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-15. Annual sale at auction - Sale price - Terms of payment. The annual sale ~~shall must~~ be conducted in the following manner:

1. Each parcel of land ~~shall must~~ be sold at auction to the highest bidder ~~therefor, but not for a sum no less than the minimum sale price as fixed prior to before the sale, and such.~~ The sale may be made either for cash or one-fourth of the purchase price in cash, and the balance in such equal annual installments as the purchaser and auditor may agree upon; not to exceed over a period of not more than ten years; and the. The purchaser ~~shall have the right to may~~ pay any or all annual installments with interest at any time prior to the maturity thereof before the agreed due date of the installments.
2. If the sale is for cash, the purchaser ~~forthwith~~ shall promptly pay the amount bid to the county treasurer.
3. If the ~~sale is for part cash and the balance purchase price is to be paid in equal~~ installments, the purchaser shall pay the ~~amount of the first installment to the county treasurer, and shall be given a contract for deed setting forth the terms of the sale, which shall.~~ The contract for deed must be executed by the purchaser and, the chairman of the board of county commissioners, and the county auditor. Such The contract ~~shall must~~ be in such a form as prescribed by the state tax commissioner may prescribe, and shall. The contract must give the county the right, upon any default of the purchaser, to cancel the contract by resolution and due notice to upon default by the purchaser.
4. The original contract ~~shall for deed must be filed with the county treasurer, who shall endorse thereon record upon it all payments made by the purchaser, and the unpaid balance shall draw interest at the rate established by the board of county commissioners. The interest rate for the contract must be established by the board of county commissioners may not exceed at no more than twelve percent.~~
5. Upon ~~the payment of the purchase price in cash, or the payment in full of all installments, with interest to the date of payment completion of a cash sale or payments under a contract for deed,~~ the county auditor shall execute and deliver to the purchaser a deed conveying to him all right, title, and the purchaser the entire interest of the county in and to such the property.
6. Upon the execution and delivery of such the deed or contract for deed or such deed, as the case may be; the real estate described therein shall be subject to taxation and shall be placed upon the assessment roll for taxation in the same manner as other private property, the property becomes taxable to the purchaser.

SECTION 22. AMENDMENT. Section 57-28-17 of the North Dakota Century Code is amended and reenacted as follows:

57-28-17. Sale between annual sales. All parcels of real estate Any property 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 for not less than the property's minimum sale price fixed prior to the November sale. Provided, however, that a. A parcel of real estate against which one or more unpaid installments of any special assessment continue continues as a lien pursuant to under section 57-28-09 may be sold by the county auditor free of any part or all of such the lien if the governing body of the city in which the parcel property is located finds that the sum of the minimum sale price fixed by law for the parcel together with and the unpaid special assessment lien or liens against it exceed exceeds the market value of the parcel; in such a case property. If the governing body of the city is hereby authorized to makes this finding, it may cancel all or such part of any the special assessment lien against the parcel property to reduce the lien to an amount which, when added to the minimum sale price, will be equal to the market value of the parcel; the property. The action of the governing body shall be certified by the city auditor or clerk to the county auditor, after which the. The county auditor may then sell the parcel property 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 resulting amount. The purchaser acquires the property free from any encumbrance for that part of any lien for special assessment that which was canceled by the governing body of the city, and the county auditor shall remove from the record those any canceled special assessments against the premises that have been so canceled.

Notwithstanding the provisions of this section or other provisions of law, any such parcel of real estate that property acquired by the county which 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 to that city for cash at any price that is agreed upon by the board of county commissioners and the governing body of the city.

SECTION 23. AMENDMENT. Section 57-28-17.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-17.1. Private sale between annual sales by nonexclusive listing agreements. The board of county commissioners may by resolution engage licensed real estate brokers to attempt to sell parcels of real estate property not sold at the annual November sale. The resolution must authorize sale by way of nonexclusive listing agreements; describe the real property to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the county reserves the right to reject any and all offers determined to be insufficient. Real estate Property that is subject to a special assessment lien for improvements made by a city shall must first be offered for sale to the city.

SECTION 24. AMENDMENT. Section 57-28-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-18. Terms of private sale and redemption and distribution of proceeds. Any private sale of real property made between the annual November sales must be made upon the same terms and conditions as a sale is authorized to may be made at the November sale, except that when. The sale or redemption of farmland acquired by the county by tax deed is sold after the first of January such sale will be made subject to any existing farm lease of

said land the property for the year in which such of the sale is made, and if such property is sold at private sale to any person other than the former owner, his executor or administrator, or any member of his immediate family, such sale must be held in abeyance for a period of thirty days from the date of notice to the former owner, his executor or administrator, or any member of his immediate family, given by registered or certified mail by the county auditor, to his last known post-office address, or, if the post-office address is not known, then to the post office nearest the land, during which time the former owner, his executor or administrator, or any member of his immediate family, may make redemption by payment in full of the delinquent taxes, penalty, and interest charged against such real estate or the proposed sale price, whichever may be the lesser. If no redemption is made by the former owner, his executor or administrator, or any member of his immediate family, during said period of thirty days, then the sale is final and the purchaser is entitled to a deed as provided in this chapter. When farmlands are so redeemed after the first of January, such redemption will be made subject to any existing farm lease of said lands for the year in which such redemption is made or redemption. If the farmland is to be sold by private sale to any person other than the former owner or other interested person, a deed or contract for deed may not be delivered to the purchaser until thirty days after service by registered mail upon the former owner or other interested party of the pending sale, the date when the sale will become final, and the amount required to redeem the property. For the purposes of this section, "other interested party" means the executor, administrator, parent, spouse, or child of the former owner who has notified the county auditor in writing of that status, the address at which service may be made, and that the person should be notified of the expiration of the period of redemption in connection with any private sale of the property.

In case of the sale or, contract for sale, or redemption of tax deed land before the first of February, such land property during January, the property must be assessed and taxed for the current that year, and the purchaser or vendee or redemptioner is entitled to the rental and landlord's share of crops on such land the property for such the year. In case of the sale or, contract for purchase sale, or redemption of tax deed land after January thirty first, the land property must not be assessed and taxed for the current that year, and the county shall retain is entitled to the rental and landlord's share of the crops thereon on the property for that the year. The proceeds realized from such a sale between annual November sales must be apportioned in the same manner in which as the proceeds of the annual November sale are distributed. The proceeds realized from any rental and landlord's share of the crops must be apportioned in the manner in which other rental proceeds are distributed under the present law.

SECTION 25. AMENDMENT. Section 57-28-19 of the North Dakota Century Code is amended and reenacted as follows:

57-28-19. Rights of former owner to repurchase. The former owner, the former owner's executor or administrator, or any member parent, spouse, or child of the immediate family, shall have the right to former owner may repurchase all real estate any property forfeited to the county under tax deed proceedings, so long as the tax title thereto to the property remains in the county. However, in the event If any city or town has theretofore made a special assessment for public improvements against any such tract, piece, or parcel of land, which the property and the special assessment has become delinquent and remains unpaid, such the city or town shall have has a right to purchase the property for cash, at the appraised value, prior to that of

the former owner. The county auditor of any county, immediately upon any party. Upon appraisal of such the property, the county auditor shall give notice thereof to the auditor of any such city or town and such the city or town shall have has thirty days within which to exercise its priority right to purchase said the property under this section. The purchase by a former owner A repurchase by a private party under this section may be for cash or upon contract for deed made by and between the board of county commissioners and the former owner; the executor or administrator, of the former owner; or any member parent, spouse, or child of the immediate family former owner. The consideration of such the repurchase contract shall with a private party must include:

1. The total amount required to be paid in the notice to effect a redemption.
2. The total amount of all subsequent taxes with interest, penalties, and costs.

If the fair market value of such the property at the time of the repurchase thereof is less than the amount to be paid to effect a redemption, together with all subsequent taxes, interest, penalties, and costs under subsections 1 and 2, the board shall fix a fair and just sale price for such the property, and shall require the former owner, the executor or administrator, or any member of the immediate family, to. If a repurchase under this section is by contract for deed, the party making the repurchase must pay at least twenty-five percent of the total contract price in cash and the remainder shall must be payable in not to exceed no more than ten annual equal installments as the board of county commissioners may determine. Such installments shall bear interest at a rate determined by the. The board of county commissioners but shall not exceed establish the rate of interest for a contract for deed under this section, not exceeding the prime rate per annum as of interest established by the Bank of North Dakota for the month immediately preceding the month in which the contract was entered into until the contract is paid in full. Such contract shall further. A contract for deed under this section must provide that if the vendee repurchaser or the successor in interest fails to pay one or more of the installments when due, with interest, the board of county commissioners may cancel such the contract and thereupon all payments and improvements made by the vendee repurchaser or the successor in interest shall will be forfeited to the county as liquidated damages for breach of contract unless otherwise expressly provided. Upon the full performance of such completion of a cash sale or payments under a contract for deed under this section, the county auditor shall execute and deliver a deed conveying to the purchaser which shall be executed in the manner in which tax deeds are executed and shall have the legal effect prescribed by the terms of this chapter repurchaser the entire interest of the county in the property. Upon the execution and delivery of a deed or contract for deed under this section, the property becomes taxable to the repurchaser. In case of repurchase or contract for repurchase of such tax deed land before February first, such land shall property during January, the property must be assessed and taxed for the current that year, and the repurchaser shall be is entitled to the rental and landlord's share of crops on such land the property for such the year. In case of the repurchase or contract for repurchase of such tax deed land after January thirty first, the land shall property must not be assessed and taxed for the current year, and the county shall retain is entitled to the rental and landlord's share of the crops thereon on the property for that the year. In all cases wherein the The repurchase or contract for repurchase of tax deed land farmland is made

after January first, such repurchase or contract for repurchase, will be subject to an any existing farm lease of the lands so repurchased or contracted to be repurchased, property for the year in which such the repurchase or contract for repurchase is made.

SECTION 26. AMENDMENT. Section 57-28-19.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-19.1. Real estate sold to city to be marketable. Where any A city that has purchased real estate pursuant to section 57-28-17 or 57-28-19 the city shall be property under this chapter is deemed to have marketable record title to such the property if all of the following apply:

1. The county deed conveying the property has been recorded.
2. The city has entered into possession of the property and continued its possession for three months or longer.
3. No lis pendens giving notice of the pendency of an action challenging the validity of tax proceedings or of the deed has been recorded within three months of the date on which the city entered into possession of the property, or on July 1, 1985, whichever is later.

A subsequent conveyance of the property by the city shall that is deemed to have marketable record title may convey title free of any claims based on any defects a defect in the process of tax title acquisition by the county through which the city obtained title to the property. A If title of the city is deemed marketable under this section, a claimant who would be entitled to some claim on the property because of a defect in the process by which the city obtained title thereto shall, when the title of the city is deemed marketable under this section, have has instead the right to recover from the city the net value of that claim, subject to the statutory restrictions on claims against a city. For the purpose of this section, the fact of possession by the city may be shown of record by one or more affidavits which that contain the legal description of the real estate property and show that the city entered into possession of the property and continued such possession for three months or longer. The posting on the property of a sign or notice, legible from the street adjacent to the property, indicating stating that the property is owned or for sale by the city shall be deemed is an act of possession by the city, but shall is not be required.

SECTION 27. AMENDMENT. Section 57-28-20 of the North Dakota Century Code is amended and reenacted as follows:

57-28-20. Disposition of proceeds of sales. All proceeds realized from the sales of the lands, either at public or private sale, shall of property under this chapter must be apportioned as regular tax payments are apportioned among and within taxing districts in which the property is located, as follows:

1. The county treasurer shall issue a regular tax receipt in the name of the county, commencing beginning with the earliest year for which the taxes were are delinquent. Tax receipts shall must be written for the original amount of the tax, without penalty and interest. If the property was sold for an amount sufficient to

cover all outstanding taxes, including the year in which the county acquired tax title and special assessments, tax receipts shall must be written for all such years, including all special assessments, and the remainder, if any, shall and any remaining amount must be credited to the general fund of the county.

2. If the property is sold under a contract, the county treasurer shall issue a tax receipt for the oldest year's taxes receipts, beginning with the earliest year for which taxes or special assessments are delinquent, without penalty and interest, and all subsequent payments made on the contracts shall contract must be applied in a similar manner to the earliest remaining unpaid taxes or special assessments. Any payment under the contract after all taxes and special assessments are paid must be credited to the county general fund.
3. If the property is sold for less than the total amount of the taxes due, including the year in which a tax deed is issued, the treasurer shall write tax receipts beginning with the oldest earliest year, and for as many subsequent years as the proceeds realized from the sale will satisfy, and the remainder of any unpaid general taxes or special assessments shall be canceled by the board of county commissioners by general resolution at the time prescribed in this chapter.

SECTION 28. AMENDMENT. Section 57-28-21 of the North Dakota Century Code is amended and reenacted as follows:

57-28-21. Cancellations from record. After any real estate has been sold for cash or upon a contract for deed which has been fully performed and a deed has been issued and delivered to the purchaser thereof, the board of county commissioners, by general resolution, shall provide for direct by resolution the cancellation and removal from the record of all general taxes and special assessments remaining of record against the premises sold property at the date of sale, except those installments of special assessments certified or to be certified to the county auditor which that had not become due at the date of the sale. It shall be the duty of the The county auditor shall immediately to send a copy of the said resolution to the state office of management and budget and to notify the county treasurer of the cancellation and removal thereof.

SECTION 29. AMENDMENT. Section 57-28-22 of the North Dakota Century Code is amended and reenacted as follows:

57-28-22. Sale of city lots owned by county more than ten years. Where The board of county commissioners may sell property acquired by the county at tax sale without notice of the expiration of the time of redemption from the tax sale if all of the following apply:

1. An The property is within an addition to any the city which has been platted into lots for more than thirty years.
2. No streets or, sidewalks, or other improvements have been opened or graded made in such the addition.
3. No other improvements have been made, in such addition;

- 4- Lots and premises in such addition have been sold to the county for delinquent taxes;
- 5- More than ten years have elapsed since such the tax sale, at which the county acquired the property.
- 6- 4. Said lots still are owned by The property has remained under ownership of the county; and.
- 7- 5. No subsequent taxes have been paid thereon;

the board of county commissioners may sell and convey all the title and interest of the county in and to such lots or premises without giving any notice of the expiration of the time of redemption from such sale for taxes on the property since the county acquired ownership.

SECTION 30. AMENDMENT. Section 57-28-23 of the North Dakota Century Code is amended and reenacted as follows:

57-28-23. County lands may be leased. The board of county commissioners may lease all pieces or parcels of real any property acquired by the county by tax deed; other than lands leased for oil and gas purposes; and for which sale cannot be had as provided by law; as; in the judgment of the said board shall seem best suited to advance the public interests. A mineral lease in farmland acquired by the county by tax deed may not be entered until thirty days after giving the former owner or other interested party notice of the right to redeem the property from tax sale in the manner provided in section 57-28-18.

SECTION 31. AMENDMENT. Section 57-28-24 of the North Dakota Century Code is amended and reenacted as follows:

57-28-24. Terms of leases. All leases of such lands shall property under this chapter must be made subject to sale and shall be limited in duration to a term not to exceed exceeding five years. In the discretion of said county commissioners; any grazing land However, property may be leased for grazing purposes without being subject to sale and for a term of not to exceed not exceeding ten years; to any duly incorporated cooperative grazing association; any duly incorporated soil conservation district; and duly incorporated mutual aid corporation; or to any individual; within this state. Farmlands sold after January first of any year shall be sold subject to the existing lease for that year.

SECTION 32. AMENDMENT. Section 57-28-25 of the North Dakota Century Code is amended and reenacted as follows:

57-28-25. Board of county commissioners may act as leasing agents or may employ a county land agent. The board of county commissioners shall may not expend more than ten percent of the total lease revenue collected from all leases of land to defray any and all under this chapter for costs in connection with the supervision and collection of rentals. Such The board may authorize one or more of its members of that board to attend to the leasing; handling; or collection of rentals in connection with such lands in the whole or part of the county; or it may to act as the county land agent or employ a competent and experienced person county land agent to manage, lease, and collect rentals for all lands any property owned by the county; who shall be known as the. The county land agent and who shall must be bonded by the

state bonding fund, in such an amount as determined by the board of county commissioners shall determine, to secure the faithful discharge of his official duties, and conditioned that such. The agent shall deposit all rentals and fees amounts collected by him with the county treasurer and take his obtain a receipt therefor. The board of county commissioners shall fix the compensation and limit the expenses which such of the agent may incur in managing, leasing, and collecting such rentals. Such, but the compensation and expenses shall may not exceed ten percent of the total revenue collected by such the agent and shall must be paid out of the revenue derived from the rentals of county lands. Any county commissioner doing any such work shall receive a per diem of not to exceed three dollars per day and mileage not to exceed five cents per mile {1.61 kilometers} for each mile {1.61 kilometers} necessarily traveled in performing such duties. No county commissioner shall receive such per diem and mileage as leasing agent during any day in which he makes a charge as county commissioner, and services rendered by a commissioner as such leasing agent shall be considered entirely separate and apart from his duties or services as county commissioner.

SECTION 33. AMENDMENT. Section 57-28-26 of the North Dakota Century Code is amended and reenacted as follows:

57-28-26. Disposition of rental revenue. All the net revenue derived from a lease of forfeited land, including leases of property under this chapter and all federal payments made to the county in connection therewith, in an amount not less than ninety percent of the total revenue collected, for property acquired by the county by tax deed shall be paid into the county treasury. On or before January tenth in each year the county treasurer shall apportion and distribute all net revenues so paid into the county treasury, these amounts received in the previous calendar year to the county, city, school district, township, or other taxing districts, in which the property is located in the proportions which current proportion that the previous year's general fund levies levy in the taxing districts wherein said lands are district bears to the total of general fund levies of all taxing districts in which the property is located bear to the total net revenue so collected.

SECTION 34. AMENDMENT. Section 57-28-27 of the North Dakota Century Code is amended and reenacted as follows:

57-28-27. Discretion of county commissioners in lease or sale of tax deed lands. In order to conserve and protect the interests of the state, the The board of county commissioners may refuse to sell or lease any agricultural lands held by the county under a tax deed when it is found that the sale or lease thereof if the board finds that any of the following would result:

1. Will The use would seriously impair the fertility of such tract the property or adjoining lands by use thereof which will result in property due to wind or water erosion.
2. Will The property will become a part of an agricultural unit which that will be too small or too large to be operated in conformance with the best interests of the community and taxing districts, and therefore the use may result in failure of the owner or lessee to pay taxes upon the said land, or property.

3. ~~Would~~ The use would result in lessening the value or marketability of adjacent tracts of such lands property held by the county at such time.

The board of county commissioners may classify agricultural lands held by the county so as to determine which tracts are properly usable according to suitability for tillage, and which tracts are usable only for haying, or grazing purposes. Applicants for deeds or leases may file with the county auditor, before the time set for sale or leasing of county agricultural tax lands, a statement in such form as may be prescribed by the board of county commissioners, giving information as to of the size of the farming unit for which such lands are the property is desired, the uses intended therefor for the property, and such any other information relative to the planned operation of such lands as the property which is required by the board of county commissioners may deem reasonably necessary for its information.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 660

SENATE BILL NO. 2127
(Committee on Appropriations)
(At the request of the Office of Management and Budget)

STATE REFUND ACCOUNT

AN ACT to create and enact a new section to chapter 57-27 of the North Dakota Century Code, relating to the creation of a state refund account; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-27 of the North Dakota Century Code is created and enacted as follows:

State refund account. The office of management and budget shall establish a state refund account. The account is to be used by each office, agency, or institution that must deposit funds collected, directly to the general fund.

The office of management and budget shall establish accounting requirements for the account in accordance with the central accounting system.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 661

SENATE BILL NO. 2345
(Senators Heinrich, Stenehjem)
(Representatives Nicholas, Ritter)

PUBLISHED NOTICE BY STREET ADDRESS

AN ACT to amend and reenact sections 32-19-30, 35-22-07, subsection 2 of section 57-27-02, sections 57-28-06, 57-28-07, and 57-28-14 of the North Dakota Century Code, relating to publication of street addresses as well as legal descriptions when published notice is required or allowed for real estate foreclosures, notices of tax sale, or notices of redemption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19-30. Service by publication - How made. Service of the summons may be made by publication if the plaintiff files a verified complaint in the office of the clerk of the district court of the county where the action is commenced, setting forth a claim for relief in favor of the plaintiff and against the defendants, for the foreclosure of a mortgage or other lien upon real estate, and when the plaintiff files in said office an affidavit signed by the plaintiff or his attorney substantially in the following form:

STATE OF NORTH DAKOTA)
County of -----) ss.
)

----- being first duly sworn upon oath deposes and
says that he is the (attorney for) ----- plaintiff in
the above entitled action:

Affiant further says that the defendants (naming them) ----- appear to have an interest in or lien or encumbrance upon the real estate described and listed by street address, if any, in the complaint in this action, that such interest or lien is subject and inferior to the lien of the plaintiff being foreclosed; that plaintiff seeks no personal judgment against the defendants, if any, (naming them) ----- and seeks only to bar and exclude said defendants from any interest in or lien or encumbrance upon the real estate described in the complaint, save and except the right of redemption as provided by law; that the residences of the defendants, if any, (naming them) ----- are not shown upon the records of the office of the register of deeds, county auditor, or clerk of the district court of ----- County, that being the county in which the real estate involved in this action is situated; that the residences of the defendants, if any, (naming them) ----- are as follows: -----; that affiant does not know the residences of the defendants, if any, (naming

them) -----; that the defendants, if any, (naming them) ----- are deceased, and it does not appear by the records in the office of the judge of the county court in and for ----- County, that being the county in which the real estate described in the complaint in the action is situated, that any administration upon the estate of said defendant is now pending; and that the defendants, if any, (naming them) ----- are deceased, and that ----- of ----- is the duly appointed, qualified, and acting administrator or executor, as the case may be, of the estate of said deceased.

The failure to include the street address in the affidavit does not affect the validity of the affidavit.

SECTION 2. AMENDMENT. Section 35-22-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-22-07. Notice of sale - Form. The notice of sale must be in substantially the following form:

Notice is hereby given that that certain mortgage, executed and delivered by -----, mortgagor, to -----, mortgagee, dated the ----- day of -----, 19---, and filed for record in the office of the register of deeds of the county of ----- and state of North Dakota on the ----- day of -----, 19---, and recorded in book ----- of ----- at page ----- (and assigned by said mortgagee to -----), will be foreclosed by a sale of the premises in such mortgage and hereinafter described at the front door of the courthouse in the county of ----- and state of North Dakota at the hour of ----- o'clock ---m., on the ----- day of -----, 19---, to satisfy the amount due upon such mortgage on the day of sale. The premises described in such mortgage and which will be sold to satisfy the same are described as follows: (here insert description and street address, if any).

There will be due on such mortgage at the date of sale the sum of ----- dollars.

The failure to include the street address in the notice does not affect the validity of the notice.

* SECTION 3. AMENDMENT. Subsection 2 of section 57-27-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A notice of expiration of the period of redemption shall be delivered to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state, but if the owner is a nonresident of this state, the notice shall be served by registered or certified mail addressed to the owner at his last known post-office address and by publication once in each week for three consecutive weeks in some newspaper printed and published in the county where the lands to which the notice relates are located, and if no newspaper is published therein, then in some newspaper printed and published at the capital of the state. If notice is published under this section, it must contain the description and any street address of the property. However,

* NOTE: Section 57-27-02 was also amended by section 2 of House Bill No. 1427, chapter 659.

the failure to include the street address in the notice does not affect the validity of the notice.

* SECTION 4. AMENDMENT. Section 57-28-06 of the North Dakota Century Code is amended and reenacted as follows:

57-28-06. Service of notice by publication. The county auditor, on or before August first of each year, shall serve notice of the expiration of the period of redemption by publication as to all tracts of real estate upon which such notice is served by registered or certified mail. Such notice may include any number of parcels of real estate, and only one heading shall be necessary for the entire list. The notice must contain the description and any street address of each parcel of property. However, the failure to include the street address in the notice does not affect the validity of the notice. The auditor shall include in the amounts stated in such notice the cost of publication of the notice. Such notice shall be published once before August first in the official newspaper of the county wherein such real estate is situated.

SECTION 5. AMENDMENT. Section 57-28-07 of the North Dakota Century Code is amended and reenacted as follows:

57-28-07. Form of notice for publication. The notice of the expiration of the period of redemption to be served by publication shall be substantially in the following form:

I, -----, county auditor, of ----- County, North Dakota, hereby do give notice that the real estate hereinafter described was sold to the county at the annual tax sale on December -----, 19--, for delinquent taxes, that subsequent tax sale certificates have been issued to the county, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, that the same still are the property of this county, and that unless redemption shall be made from such tax sale, on or before October first after the date of this notice, the same will become the absolute property in fee of this county, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and the former owner thereof, mortgagees, lienholders, and other persons interested therein will be forever foreclosed and barred from asserting any further rights to such real estate whatsoever. The following is a list of the real estate sold at such tax sale on which the period of redemption will expire on October first. Opposite each description of such real estate appears any street address of the property, the name of the owner of the record title thereof, and the amount which must be paid to redeem from such tax sale before the period of redemption expires. Said sum includes the amount for which said land was sold, together with subsequent delinquent taxes for ----- and prior years, and interest, penalties, and cost of service. (List descriptions, names of owners, and amount necessary to redeem.)

Given pursuant to authority of law this ----- day of -----, 19--.

The failure to include the street address in the notice does not affect the validity of the notice.

* NOTE: Section 57-28-06 was also amended by section 13 of House Bill No. 1427, chapter 659.

* SECTION 6. AMENDMENT. Section 57-28-14 of the North Dakota Century Code is amended and reenacted as follows:

57-28-14. Notice of annual sale - Contents. Notice of the annual sale shall include a description and any street address of all real estate to be sold, with the minimum sale price thereof, and shall be given:

1. By posting a notice at the front door of the courthouse at least fifteen days prior to the date of sale; and
2. By publishing a notice in the official newspaper of the county once, not less than ten days prior to the date of sale.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on January 1, 1992.

Approved March 25, 1991
Filed March 26, 1991

* NOTE: Section 57-28-14 was also amended by section 20 of House Bill No. 1427, chapter 659.

CHAPTER 662

SENATE BILL NO. 2185
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TELEPHONE COMPANY TAXATION

AN ACT to amend and reenact section 57-34-01 and subsection 1 of section 57-34-03 of the North Dakota Century Code, relating to the taxation of telephone companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Access revenues" means telephone company revenues resulting from charges to individuals, partnerships, and corporations for their use of telephone company services or facilities to provide a toll service that permits origination or termination of telecommunications between a point or points within one telephone exchange and a point or points within another telephone exchange.
2. "Adjusted telephone operating receipts" means telephone operating receipts less all amounts paid by the reporting telephone company to an individual, partnership, or corporation for connecting fees, switching charges, access charges, and directory assistance.
3. "Originating revenues factor" means a fraction the numerator of which is the revenues of the telephone company from toll business generated from customer premises equipment in this state, regardless of the location to which the billing notice is sent, and the denominator of which is the total revenues of the telephone company from toll business everywhere.
4. "Property factor" means a fraction the numerator of which is the undepreciated original cost as of December thirty-first of the property located in this state owned or rented by the telephone company and used in operating its telecommunications business and the denominator of which is the undepreciated original cost as of December thirty-first of the property located everywhere owned or rented by the telephone company and used in operating its telecommunications business.
- 3- 5. "Station" shall mean means a telephone station subscriber line located in this state with a distinct call number designation or distinct extension number designation.

6. "Telephone company" means all mutual associations and cooperative organizations or cooperative corporations engaged in the business of furnishing communication by telephone, and shall further mean all other persons, firms, corporations, or other organizations which are engaged in the business of furnishing means of communication by telephone within this state exclusively to rural areas or to rural areas and cities provided that each city served has a population of two thousand five hundred persons or less.
2. 7. "Telephone operating receipts" shall consist of all revenue received, including but not limited to assessments collected from members of mutual associations, or organizations, in place of rentals less switching charges and tolls paid to other companies includes all revenue derived from local and rural exchange service, revenues from wide area telephone service, access revenues, billing and collection revenues, revenues from coin-operated telephones, revenues from directory advertising, revenues from directory assistance, recoveries within the year of all telecommunications revenues written off in prior years as uncollectible, all other operating revenues from telecommunications service as defined in subsection 11 of section 49-21-01 attributable to this state, and toll business gross revenues as defined in this section. For a telephone company operating on any form of mutual basis, "telephone operating receipts" includes all amounts assessed against the members for the operation and maintenance of the business. "Telephone operating receipts" does not include income from merchandising, jobbing and contract work, charges for the maintenance or repair of customer premises equipment, including equipment leased or rented by the customer from any source, revenue from commercial and cable television, unless it is used for two-way communication, radio, one-way radio paging, the transmission of messages incidental to transient occupancy in hotels, income from nonutility operations, or revenues from the transfer, sale, or lease of property not devoted to telecommunications operation. "Telephone operating receipts" does not include excise taxes on telephone service or facilities or uncollectible telephone operating revenues actually written off during the year.
8. "Toll business gross revenues" means gross revenues from toll business originating and terminating in this state and toll business gross revenues attributable to this state.
9. "Toll business gross revenues attributable to this state" means the telephone company's total gross revenues from interstate toll services everywhere multiplied by the amount obtained by dividing the sum of the property factor and the originating revenues factor by two.

SECTION 2. AMENDMENT. Subsection 1 of section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

1. 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:
 - a. Telephone companies maintaining an average of one and twenty-five hundredths telephone stations or less per mile [1.61

kilometers] of telephone line operated in this state shall be taxed at the rate of one-half of one percent of their adjusted telephone operating receipts.

- b. 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 [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of one percent of their adjusted telephone operating receipts.
- c. 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 [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of one and one-half of one percent of their adjusted telephone operating receipts.
- d. Telephone companies maintaining an average of more than two and twenty-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of two percent of their adjusted telephone operating receipts.

Approved March 11, 1991

Filed March 11, 1991

CHAPTER 663

HOUSE BILL NO. 1613
(Representatives Dorso, Mahoney)
(Senators Tomac, Dotzenrod)
(Approved by the Committee on Delayed Bills)

BRANCH BANK TAXATION

AN ACT to create and enact a new section to chapter 57-35 and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to the taxation of the branch offices of a banking subsidiary of any out-of-state bank holding company; to amend and reenact subsection 1 of section 57-35-01 and subsection 1 of section 57-35.2-01 of the North Dakota Century Code, relating to definitions for purposes of bank taxation; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-35-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Bank" shall include any banking association organized under the laws of the United States or of the state of North Dakota, located in and having its principal place of business in this state. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of any out-of-state bank holding company to establish a branch office in this state, the definition of "bank" also includes the branch office of the bank or the banking subsidiary of the out-of-state bank holding company.

SECTION 2. A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Payment of tax if branch banking is authorized. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of an out-of-state bank holding company to establish a branch office in this state, the tax commissioner may require the branch office to pay tax under this chapter based on any method of allocation and apportionment which would fairly represent the extent of the branch's business activity in this state.

SECTION 3. AMENDMENT. Subsection 1 of section 57-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Bank" means any banking association organized under the laws of the United States or of the state of North Dakota located in or having a place of business in this state. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of any out-of-state bank holding company to establish a branch office in this state, the definition of "bank"

also includes the branch office of the bank or the banking subsidiary of the out-of-state bank holding company.

SECTION 4. A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Payment of tax if branch banking is authorized. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of an out-of-state bank holding company to establish a branch office in this state, the tax commissioner may require the branch office to pay tax under this chapter based on any method of allocation and apportionment which would fairly represent the extent of the branch's business activity in this state.

SECTION 5. APPLICATION. This Act must not be construed as committing this state in any manner to a policy of permitting interstate branch banking.

Approved April 10, 1991
Filed April 10, 1991

CHAPTER 664

HOUSE BILL NO. 1484
(Gorman)

FINANCIAL INSTITUTION LOSS CARRY FORWARD

AN ACT to create and enact a new section to chapter 57-35, a new section to chapter 57-35.1, and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to taxation of banks, trust companies, and building and loan associations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Net operating loss - Carry forward. If the net operating loss of a bank or trust company for any taxable period beginning on or after January 1, 1991, exceeds its net income, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward.

SECTION 2. A new section to chapter 57-35.1 of the North Dakota Century Code is created and enacted as follows:

Net operating loss - Carry forward. If the net operating loss of a building and loan association for any taxable period beginning on or after January 1, 1991, exceeds its net income, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward.

SECTION 3. A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Net operating loss - Carry forward. If the net operating loss of a bank, trust company, or building and loan association for any taxable period beginning on or after January 1, 1991, exceeds its net income, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 1990.

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 665

HOUSE BILL NO. 1208
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TOBACCO TAX STAMPS ELIMINATED

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to allowing cigarette distributors to retain a portion of tax collections for administrative expenses; to amend and reenact sections 57-36-01, 57-36-02, 57-36-07, 57-36-09, 57-36-14, 57-36-18, 57-36-26, and 57-36-33 of the North Dakota Century Code, relating to removing the requirement that cigarettes contain tax stamps and to the filing of monthly tax returns for tobacco products; to repeal sections 57-36-08, 57-36-10, 57-36-11, 57-36-12, and 57-36-13 of the North Dakota Century Code, relating to removing the requirement that cigarettes contain tax stamps; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

57-36-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Cigar" means any roll of tobacco wrapped in tobacco.
2. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.
3. "Consumer" means any person who has title to or possession of cigarettes, snuff, cigars, or other tobacco products in storage, for use or other consumption in this state.
4. "Dealer" shall include any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, snuff, or other tobacco products.
5. "Distributor" shall include any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
6. "Insignia" shall include or mean the impression or mark made on the cigarettes, or the package containing the same, approved by the tax commissioner, as provided in section 57-36-11.

- 7- "Licensed dealer" shall mean a dealer licensed under the provisions of this chapter.
- 8- 7. "Licensed distributor" shall mean a distributor licensed under the provisions of this chapter.
- 9- 8. "Other tobacco products" means any product except cigarettes, cigarette papers, cigars, or snuff which is made up or composed of tobacco, in whole or in part.
- 10- 9. "Person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, or association however formed.
- 11- 10. "Sale" or "sell" shall apply to gifts, exchanges, and barter.
- 12- ~~"Stamp" shall mean the stamps prepared by the tax commissioner as provided in section 57-36-08.~~
- 13- 11. "Storage" means any keeping or retention of cigarettes, snuff, cigars, or other tobacco products for use or consumption in this state.
- 14- 12. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, snuff, cigars, or other tobacco products.

* SECTION 2. AMENDMENT. Section 57-36-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general ~~in the sum of not less than one thousand dollars or more than five thousand dollars.~~ Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. ~~Stamps or insignia provided for in this chapter may be sold to and affixed only in North Dakota by licensed distributors. Licensed dealers may sell, buy, or have in their possession only cigarettes upon which stamps or insignia were previously affixed.~~ A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 3. AMENDMENT. Section 57-36-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- * NOTE: Section 57-36-02 was also amended by section 4 of Senate Bill No. 2174, chapter 78.

57-36-07. Packaging - Presumption from possession —~~Stamps to be affixed.~~ Cigarettes must be packaged ~~and stamped~~ as follows:

1. All cigarettes sold in this state must be in packages containing five or more cigarettes each.
2. ~~Within seventy-two hours of receipt by the licensee, each package of cigarettes, except as otherwise provided in this chapter, must have a securely affixed stamp denoting the tax, and each stamp must be properly canceled prior to sale or removal for consumption, under regulations prescribed by the tax commissioner.~~
- 3- If the cigarettes are to be sold to an enrolled tribal member pursuant to section 57-36-11.1, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.
- 4- 3. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers. ~~Each package of cigarettes, except as otherwise provided, must have a securely affixed stamp denoting the tax. Stamps must be canceled as provided in this chapter, and possession of any unstamped package of cigarettes is prima facie evidence of a violation of this chapter.~~

SECTION 4. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty. Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, snuff, cigars, or other tobacco products made by them, and shall be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, snuff, cigars, or other tobacco products, shall keep and preserve for one year all invoices of cigarettes, cigarette papers, snuff, cigars, or other tobacco products purchased by him, together with all receipts issued by the state for stamps purchased by him the distributor, and shall permit the state tax commissioner, his and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, his and assistants, authorized agents, or and representatives, in ascertaining whether the stamps required by this chapter have been purchased and used, or of the state tax commissioner in determining the amount of such the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, snuff, cigars, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale.
2. On or before the tenth fifteenth day of January, April, July, and October of each year each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to

such officer the tax commissioner all purchases and sales of cigarettes, cigarette papers, snuff, cigars, or other tobacco products made from or to any persons either within or without this state during the preceding three months; provided, however, that the tax commissioner shall have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with any remittance which might be due shall be filed before the tenth day of the month following the month for which the returns are filed, showing the names and addresses of the seller and of the buyer, the date of such sale or purchase, and the quantity and make of all cigarettes, cigarette papers, snuff, cigars, or other tobacco products month. The tax levied by this chapter shall be payable monthly and shall be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

- 3- Any person violating any provision of this section shall be guilty of a class B misdemeanor.

SECTION 5. AMENDMENT. Section 57-36-14 of the North Dakota Century Code is amended and reenacted as follows:

57-36-14. Procedure in case of seizure - Determination - Judgment. The procedure in case of seizure of cigarettes or, equipment as provided in section 57-36-13, or any other product taxed pursuant to this chapter, shall be as follows:

1. Upon the seizure of any cigarettes and within two days thereafter, the officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and shall file a copy thereof with the tax commissioner.
2. Within ten days after the date of the service of such inventory, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may file a demand for a judicial determination of the question as to whether such property was, or lawfully is, subject to seizure and forfeiture. Thereupon the tax commissioner, within thirty days, shall institute an action in the district court of the county where such seizure was made to determine the issue of forfeiture. Such action shall be brought in the name of the state of North Dakota, and shall be prosecuted by the state's attorney, the tax commissioner, or by the attorney general. The district court shall hear such action as a court case, and shall try and determine the issues of law and fact involved.
3. In case a judgment of forfeiture is entered, the tax commissioner, unless such judgment is stayed pending an appeal to the supreme court, as soon as convenient, shall sell such forfeited property and cover the proceeds, less court costs, into the common school fund of the state.
4. In case a demand for a judicial determination is made and no action is commenced as provided in this section, such property shall be released by the tax commissioner and redelivered to the person entitled thereto.

5. In the event that no demand for judicial determination is made, such seized property shall be deemed forfeited to the state by operation of law, and the tax commissioner thereupon may sell the same.
6. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation pursuant to the provisions of this chapter, the officer making the seizure shall file an inventory, and upon a demand for a judicial determination as provided in this section, the tax commissioner, within thirty days thereafter, shall commence an action in the district court of the county where such seizure was made to declare a forfeiture of such vehicle or other means of transportation, and such action shall be heard and determined as other forfeiture actions instituted under this chapter.
7. Whenever the tax commissioner is satisfied that any person from whom property is seized was acting in good faith and without intent to evade the revenue provisions of this chapter, he shall release the property seized without further legal proceedings.

SECTION 6. AMENDMENT. Section 57-36-18 of the North Dakota Century Code is amended and reenacted as follows:

57-36-18. Tax commissioner to administer chapter. In administering this chapter the tax commissioner and ~~his~~ agents of the tax commissioner shall exercise the following powers:

1. The tax commissioner and ~~his~~ authorized agents of the tax commissioner shall enforce the provisions of this chapter and shall have the powers of peace officers. They may arrest violators of the provisions of this chapter and enter complaint before any court of competent jurisdiction, and may seize without formal warrant, and use as evidence, any forged, counterfeit, spurious, or altered license ~~or stamp~~ found in the possession of any person in violation of this chapter.
2. The tax commissioner may prescribe rules and regulations not inconsistent with the provisions of the chapter for its detailed and efficient administration.

* SECTION 7. AMENDMENT. Section 57-36-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, snuff, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty percent of the wholesale purchase price at the time ~~such~~ the products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction; provided, that the dealer may

* NOTE: Section 57-36-26 was also amended by section 2 of House Bill No. 1509, chapter 666.

elect to report and remit the tax on ~~his~~ the cost price of ~~such~~ the products to the dealer rather than on the wholesale purchase price. The proceeds of ~~such~~ the tax, together with ~~such~~ the forms of return and in accordance with ~~such~~ any rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a ~~calendar quarterly~~ monthly basis on or before the ~~tenth~~ ~~fifteenth~~ day of the month following the ~~quarterly~~ monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit ~~such a~~ ~~that~~ remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

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~~ the other state is twenty percent of the wholesale purchase price or more, then no tax shall be due on ~~such~~ the article. The provisions of this subsection shall apply only if ~~such~~ the 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.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section shall be subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of ~~such~~ the tax for each month of delay or fraction thereof excepting the month within which ~~such~~ the return was required to be filed or ~~such~~ the tax became due. The tax commissioner, if satisfied that the delay was excusable, may ~~remit~~ waive all or any part of ~~such~~ the penalty. ~~Such~~ The penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.
5. Repealed by S.L. 1975, ch. 106, § 673.

SECTION 8. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Deduction to reimburse licensed distributor for administrative expenses.

1. A licensed distributor who pays the tax due under this chapter within the time limitations prescribed may deduct and retain one and one-half percent of the tax due to reimburse the distributor

for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information requested by the commissioner.

2. The total deduction allowed by this section may not exceed one hundred dollars per month for each licensed distributor.

SECTION 9. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter-

- 1- ~~Any~~ any person who violates any provision of this chapter shall be guilty of a class A misdemeanor. All cigarettes, cigarette papers, snuff, cigars, or other tobacco products in ~~his~~ the possession of the person or in his the place of business of the person shall be confiscated and forfeited to the state.
- 2- Any consumer who purchases any package of cigarettes which does not bear the stamp or insignia placed thereon pursuant to the provisions of this chapter, and any person who shall use or consume within this state any cigarette, unless the same shall be taken from a package or container having attached thereto the stamp or insignia required by this chapter, shall be guilty of a class B misdemeanor.

SECTION 10. REPEAL. Section 57-36-13 of the North Dakota Century Code, and sections 57-36-08, 57-36-10, 57-36-11, and 57-36-12 of the 1989 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 11. EFFECTIVE DATE. This Act becomes effective on September 1, 1991.

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 666

HOUSE BILL NO. 1509
(Ritter, Pyle)

TOBACCO TAXES

AN ACT to amend and reenact section 57-36-25, subsection 1 of section 57-36-26, subsection 1 of section 57-36-28, and section 57-36-32 of the North Dakota Century Code, relating to taxation of tobacco products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-25. Cigars, snuff, and other tobacco products - Excise tax on wholesale purchase price - Penalty - Reports - Collection - Allocation of revenue.

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, sold in this state an excise tax at the rate of ~~twenty~~ twenty-two percent of the wholesale purchase price at which such cigars, snuff, and other tobacco products are purchased by distributors. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.
2. Any person failing to file any prescribed forms of return or to pay any tax within the time required or permitted by this section shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof excepting the portion of the month within which such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
3. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasurer at the end

of each month and deposited in the state treasury to the credit of the general fund.

4. Repealed by S.L. 1975, ch. 106, § 673.

* SECTION 2. AMENDMENT. Subsection 1 of section 57-36-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of ~~twenty~~ twenty-two percent of the wholesale purchase price at the time ~~such~~ the products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction+ ~~provided, that.~~ However, the dealer may elect to report and remit the tax on ~~his~~ the dealer's cost price of ~~such~~ the products rather than on the wholesale purchase price. The proceeds of ~~such~~ the tax, together with ~~such~~ the forms of return and in accordance with ~~such~~ the rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit such a remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

SECTION 3. AMENDMENT. Subsection 1 of section 57-36-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed upon the use or storage by consumers of cigars, snuff, and other tobacco products in this state, and upon ~~such those~~ those consumers, at the rate of ~~twenty~~ twenty-two percent of the cost to the consumer of ~~such~~ those products.

SECTION 4. AMENDMENT. Section 57-36-32 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited. There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of ~~eight~~ nine and one-half mills on each ~~such~~ each cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying ~~such~~ the tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

Approved April 16, 1991

Filed April 18, 1991

* NOTE: Section 57-36-26 was also amended by section 7 of House Bill No. 1208, chapter 665.

CHAPTER 667

SENATE BILL NO. 2124
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

ESTATE TAX FEDERALIZATION DATE AND SALES TAX INTEREST RATE

AN ACT to amend and reenact sections 57-37.1-01 and 57-39.2-11 of the North Dakota Century Code, relating to the definition of "federal gross estate" and "federal taxable estate" for estate tax purposes and interest to be paid on sales tax extensions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-37.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-37.1-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning:

1. "Federal gross estate" means the gross estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of 1986, as amended through December 31, ~~1988~~ 1990.
2. "Federal taxable estate" means the taxable estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of 1986, as amended through December 31, ~~1988~~ 1990.
3. "Nonresident decedent" means an individual who at the time of his or her death was not a resident decedent.
4. "Personal representative" or "personal representative of an estate" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within this state, then any person in actual or constructive possession of any property having a situs in this state which is included in the federal gross estate of the decedent.
5. "Resident decedent" means an individual whose residence at the time of his or her death was in North Dakota according to the rules for determining residence as provided in section 54-01-26.
6. "Situs of property" means, as to real property, the state or country in which it was situated at the time of the decedent's death; as to tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death; as to intangible personal property, the state or country in

which the decedent was a resident at death; and when used in reference to property having a situs in North Dakota it also means the county in which the property has its situs as determined in accordance with this subsection. Provided, however, that as to intangible personal property a resident may specify in his or her will that the situs of all, or of particular items of, intangible personal property shall be at any location within a county or counties in this state at which he or she had resided for at least fifteen years after attaining eighteen years of age.

7. "Tax commissioner" means the tax commissioner of the state of North Dakota.

SECTION 2. AMENDMENT. Section 57-39.2-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-11. Return of gross receipts.

1. Except as provided in section 57-39.2-12 for monthly reports and payments, on or before the last day of the month following the close of the first quarterly period, and on or before the last day of the month following each subsequent quarterly period of three months, the retailer shall make out a return for the preceding quarterly period in such the form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by such the return, and such any further information as the commissioner may require to enable him the retailer correctly to compute and collect the tax herein levied. The commissioner, upon request by any retailer and a proper showing of the necessity therefor, may grant unto such the retailer an extension of time not to exceed thirty days for making such a return. If such the extension is granted to any such retailer, the time in which he the retailer is required to make payment as provided for in section 57-39.2-12 shall be extended for the same period but interest shall be charged upon the amount of the deferred payment at the rate of eight twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
2. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is not allowed under this section unless the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07.
3. Returns shall be signed by the retailer or his a duly authorized agent of the retailer and shall contain a written declaration that they are made and subscribed under the penalties of this chapter.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for all deaths occurring after December 31, 1990.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 668

SENATE BILL NO. 2128
(Committee on Finance and Taxation)
(At the request of the State Treasurer)

ESTATE TAX REFUND INTEREST

AN ACT to amend and reenact subsection 3 of section 57-37.1-08 of the North Dakota Century Code, relating to estate tax refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-37.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In case an overpayment of such tax has been made for the estate of a decedent, such overpayment must be repaid out of any undistributed estate taxes in the hands of the state treasurer upon an order of the tax commissioner. Any overpayment to be repaid shall bear interest at the rate of two-thirds of one percent per month or fraction thereof Bank of North Dakota's money market demand account rate on the date of the tax commissioner's order to the state treasurer. Interest is to be computed from the time the tax was paid until the overpayment is repaid. Any interest owed by the state must be paid by the state treasurer from the appropriation for miscellaneous refunds approved by the legislative assembly. The state treasurer shall thereupon present and file with the appropriate county treasurers and city auditors a verified claim of such overpayment accompanied by a copy of the order of the tax commissioner for such refund and the county treasurers and city auditors shall pay such claim to the state treasurer.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 669

HOUSE BILL NO. 1195
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

ESTATE TAX LIENS

AN ACT to create and enact section 57-37.1-09.1 of the North Dakota Century Code, relating to liens for estate taxes; to amend and reenact sections 47-19-06 and 57-37.1-09 of the North Dakota Century Code, relating to liens for estate taxes and the termination of interests in joint tenancy and life estates; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-19-06 of the North Dakota Century Code is amended and reenacted as follows:

47-19-06. Death certificates - Joint tenant —~~Estate tax determination~~ - Prima facie evidence of termination of estate held. In all cases of joint tenancy in lands, and in all cases where an estate, title, or interest in, or lien upon, lands has been or may be created, which estate, title, interest, or lien was or is to continue only during the life of any person named or described in the instrument by which such the estate, title, interest, or lien was created, a copy of the record of the death certificate of any such the joint tenant or of the person upon whose life such the estate, title, interest, or lien was or is limited, duly certified by any officer who is required by the laws of the state or country in which such the record is made, to keep a record of the death of persons occurring within the jurisdiction of such the officer, may be recorded in the office of the register of deeds of the county in which such the lands are situated if, in cases where said decedent had an estate, title, or interest in, or lien upon, said lands, there has been recorded a certified copy of an order of a county court or a statement of the state tax commissioner relating to estate tax determination of said decedent's estate. The legal description of any property to which the recording of the death certificate relates must be attached to the death certificate. Such The certified copy of death certificate, or such the record thereof in said office, or a duly certified copy of such the last mentioned record, shall be prima facie evidence of the death of such the person and the termination of such the joint tenancy and of all such the estate, title, interest, and lien as was or is limited upon the life of such that person. The register of deeds shall forward a copy of the recorded death certificate to the tax commissioner.

SECTION 2. AMENDMENT. Section 57-37.1-09 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-09. ~~Lien for taxes~~— Beneficiaries to share burden of tax.

~~Any tax imposed by this chapter shall be and shall remain a lien upon the property transferred, and upon all property acquired by~~

the personal representative for a period of ten years from the date of death of the decedent or until the tax is paid or a bond is given for its payment, whichever comes first, but such lien shall not affect any tangible or intangible personal property after it has passed to a bona fide purchaser for value.

- 2- The lien charged upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due on said real estate or separate parcel, or by the filing and acceptance of a bond for their payment, or by an order of the tax commissioner transferring such lien to other real estate owned by the person to whom said real estate or any separate parcel thereof passes.
- 3- The beneficiaries ~~shall be~~ are personally liable for their respective share of the tax imposed by this chapter, as well as the personal representative, and if the personal representative pays such the tax, he shall have the right to the personal representative may recover the tax from the beneficiaries in accordance with the provisions of section 30.1-20-16. No general statute of limitation ~~shall may~~ be considered as a bar to the collection of the respective share of the estate tax from each beneficiary. For the purposes of this chapter, the term "beneficiary" ~~shall mean~~ means any person receiving an interest in property of a decedent which is subject to inclusion in the decedent's federal gross estate and which had a situs in North Dakota at the time of decedent's death.
- 4- Any unpaid taxes imposed by this chapter shall be and remain a lien upon the property transferred, and upon all property acquired by the personal representative, for a period of ten years from the date of death of the decedent.
- 5- Any lien which may have attached to real property pursuant to the provisions of the various inheritance tax laws or estate tax laws that were in effect prior to the enactment of the provisions of this chapter shall terminate in accordance with the provisions of law that were in effect at the time the lien attached.

SECTION 3. Section 57-37.1-09.1 of the North Dakota Century Code is created and enacted as follows:

57-37.1-09.1. Lien for tax. Whenever any estate is liable to pay a tax, the amount of the tax, including any interest or addition to the tax, is a lien in favor of the state of North Dakota on the real and personal property of the estate from the time the tax commissioner files a notice of estate tax lien with the register of deeds of a county in which the real or personal property is situated. If the real or personal property is conveyed or transferred by the estate before the tax commissioner files a notice of estate tax lien, the tax, and any interest or addition to the tax, is a liability of the beneficiaries of the estate under the provisions of section 57-37.1-09 and the liability becomes a lien upon the property of the beneficiaries named in the notice of estate tax lien.

SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for all deaths occurring after December 31, 1990, section 3 of this Act becomes effective on January 1, 1991, and this Act is retroactive to the dates contained in this section.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 670

SENATE BILL NO. 2554
(Mathern)

CORPORATE ALTERNATIVE MINIMUM INCOME TAX

AN ACT to amend and reenact section 57-38-01, subdivision c of subsection 1 of section 57-38-01.3, and section 57-38-30 of the North Dakota Century Code, relating to the elimination of the alternative minimum income tax for corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

- 0.1. "Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.
1. "Corporation" includes associations, business trusts, joint stock companies, and insurance companies.
- 1.1. "Developmental disability" has the same meaning as defined in section 25-01.2-01.
2. "Domestic" when applied to a corporation means created or organized under the laws of North Dakota.
3. "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 1986, as amended. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
- a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances where the minimum investment by the lessor is less

than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.

- b. Provided, that one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.
 - c. Provided, that the depreciation adjustments allowed in subdivision b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.
 - d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.
4. "Foreign" when applied to a corporation means created or organized outside of North Dakota.
- 4.1. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
- a. Conditions which are primarily those of drug abuse, alcoholism, or mental retardation, unless in addition to one or more of these conditions, the person has a mental disorder.
 - b. The declining mental abilities that accompany impending death.

- c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

4.2. "North Dakota alternative minimum taxable income" in the case of corporations means alternative minimum taxable income as computed under the Internal Revenue Code provisions in effect at the close of the corporation's taxable year; reduced by any interest received from obligations of the United States included in alternative minimum taxable income or in the computation of alternative minimum taxable income on the federal return; reduced by the federal income tax deduction computed under subdivision c of subsection 4 of section 57-38-01.3; increased by the amount of any net operating loss deductions to the extent that those items were deducted in determining federal alternative minimum taxable income; increased by the amount of any special deductions to the extent that those items were deducted in determining federal alternative minimum taxable income; and either increased or decreased by the adjustments provided in subdivisions a and b of subsection 3 of section 57-38-01 and subdivision g of subsection 4 of section 57-38-01.3; with the remaining amount apportioned to North Dakota by the same fraction computed under the provisions of chapter 57-38, 57-38-1, or 57-59. The sum calculated pursuant to this subsection must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to this subsection, the excess may be carried back or carried forward for the same time period that an identical federal net operating loss may be carried back or carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryback or carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

- 5. "Person" includes individuals, fiduciaries, partnerships, and corporations.
- 6. "Resident" applies only to natural persons and includes, for the purpose of determining liability for the tax imposed by this chapter upon or with reference to the income of any income year, any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state.
- 7. "Tax commissioner" means the state tax commissioner.
- 8. "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 act and chapter or other provisions of law. Except as otherwise

expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.

9. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax imposed by this chapter.
10. Any term, as used in this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

* SECTION 2. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. Reduced by the amount of federal income taxes, paid or accrued as the case may be during the applicable tax year to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required by only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted. Income shall be further reduced by federal alternative minimum tax when a federal credit for prior year minimum tax is taken. This reduction is limited to federal alternative minimum tax previously disallowed in computing North Dakota taxable income and may not exceed North Dakota taxable income computed before the North Dakota net operating loss deduction. Any excess may be carried forward to the next taxable year a federal credit for prior year minimum tax is taken.

SECTION 3. AMENDMENT. Section 57-38-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income ~~or the North Dakota alternative minimum 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 must be levied, collected, and paid annually as in this chapter provided; ~~and which must be computed at the greater of the two calculations under subsections 1 and 2:~~

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.

* NOTE: Subdivision c of subsection 1 of section 57-38-01.3 was also amended by section 1 of Senate Bill No. 2223, chapter 672.

- b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.
 - c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
 - d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.
 - e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
 - f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. Six percent of the North Dakota alternative minimum taxable income. The calculation for North Dakota alternative minimum taxable income applies only if the corporation's federal alternative minimum tax liability exceeds the corporation's regular federal tax liability.
3. To the extent the tax calculation under subsection 2 exceeds the tax calculation under subsection 1, a credit for the excess amount must be allowed against the tax liability for any future years calculated under subsection 1. This credit carryover is not allowed to the extent that the liability computed under subsection 2 would result if the only adjustments and items of tax preference taken into account to arrive at federal alternative minimum taxable income were exclusion preferences as defined in section 53(d)(1)(B) of the Internal Revenue Code.
4. The credit allowed under subsection 3 for any taxable year may not exceed the excess, if any, of tax liability of the corporation for the taxable year as calculated under subsection 1 over the tax liability of the corporation for the taxable year as calculated under subsection 2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 671

HOUSE BILL NO. 1300
(Kretschmar)

QUALIFIED INVESTMENT FUND

AN ACT to create and enact a new subsection to section 57-38-01 and a new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to definition of qualified investment fund and exemption from income tax liability for distributions of a qualified investment fund; to amend and reenact subsections 3 and 4 of section 57-38-30.3 of the North Dakota Century Code, relating to exclusion from computation of income tax liability of distributions from a qualified investment fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

"Qualified investment fund" means any investment company or trust registered with the securities and exchange commission, or any segregated portfolio of assets of such a company or trust, which for the calendar year in which the distribution is paid:

- a. Has investments limited to interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or any instrumentality of the United States government;
- b. Has, within thirty days after the close of the calendar year, provided to shareholders and the commissioner a detailed schedule of allocation of its assets and its sources of income showing that it is a qualified investment fund; and
- c. Has, within thirty days after the close of the calendar year, provided to each shareholder a statement of the amount of distributions earned by the shareholder in the calendar year which are attributable to income from obligations issued by or on behalf of this state, any political subdivision of this state, or any instrumentality of the United States government.

SECTION 2. A new subdivision to subsection 1 of section 57-38-01.2 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of any distribution described in subdivision c of section 1 of this Act received from a qualified investment fund.

SECTION 3. AMENDMENT. Subsections 3 and 4 of section 57-38-30.3 of the 1990 Special Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision c of section 1 of this Act from a qualified investment fund must be excluded from the numerator.
4. The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision c of section 1 of this Act from a qualified investment fund must be excluded from the numerator.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 672

SENATE BILL NO. 2223
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

INCOME TAX REVISIONS

AN ACT to amend and reenact subdivision c of subsection 1 of section 57-38-01.3, sections 57-38-05, 57-38-34.3, subsection 6 of section 57-38-42, subsection 6 of section 57-38-60, and section 57-38.1-04 of the North Dakota Century Code, and section 2 of chapter 27 of the 1989 Session Laws of North Dakota, relating to the elimination of cash basis federal income tax deductions for corporations, the exemption of certain income of nonresidents, limiting to individuals the optional contributions to the centennial tree program trust fund and wildlife fund, providing a penalty for failure to file a partnership return, removing the maximum bond limit to ensure the payment of income taxes withheld from wages, and the allocation of nonbusiness income; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- C. ~~Reduced by the amount of federal income taxes, paid or accrued as the case may be during the applicable tax year to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income.~~ Reduced by the amount of federal income tax liability, as computed under chapter 1 of the Internal Revenue Code of 1986, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that the taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.

SECTION 2. AMENDMENT. Section 57-38-05 of the North Dakota Century Code is amended and reenacted as follows:

- * NOTE: Subdivision c of subsection 1 of section 57-38-01.3 was also amended by section 2 of Senate Bill No. 2554, chapter 670.

57-38-05. Certain income of nonresidents not taxed. ~~Income~~ Unless the income, gains, or both, arise from transactions in the regular course of the taxpayer's trade or business carried on in this state, or unless the acquisition, management, and disposition of intangible personal property constitutes a trade or business carried on in this state, income of nonresidents derived from ~~interest from land contracts and income of nonresidents derived from~~, mortgages, stocks, bonds, and securities or other intangible personal property, or from the sale of ~~similar~~ intangible personal property, shall not be taxed.

SECTION 3. AMENDMENT. Section 57-38-34.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-34.3. Optional contributions to nongame wildlife fund. ~~On all tax returns under this chapter, a~~ An individual taxpayer may designate on the tax return of that individual a contribution to the nongame wildlife fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the taxpayer individual. ~~On all the individual state income tax returns return the tax commissioner shall notify taxpayers the individual of this optional contribution.~~ The amount of these optional contributions must be transferred by the tax commissioner to the state treasurer for deposit in the nongame wildlife fund for use as provided in section 20.1-02-16.2.

SECTION 4. AMENDMENT. Section 2 of chapter 27 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

Optional contributions to centennial tree program trust fund. ~~On all tax returns under this chapter, a taxpayer~~ An individual may designate on the tax return of that individual a contribution to the centennial tree program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the taxpayer individual. The tax commissioner shall notify taxpayers of this optional contribution on ~~all the individual state income tax returns.~~ The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the centennial tree program trust fund for use as provided in section 1 of this Act.

SECTION 5. AMENDMENT. Subsection 6 of section 57-38-42 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. In case of failure to file ~~on an information at the source return as required by subsection 1 by the date prescribed by this chapter in subsection 3, and after thirty days' notice to file is given by the tax commissioner, information at the source returns as required by subsection 1,~~ the tax commissioner may assess a penalty of ten dollars for each failure to file, not to exceed two thousand dollars. ~~In case of failure to file a partnership return as required by subsection 2 on the date prescribed in subsection 3, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of five hundred dollars for each failure to file.~~

SECTION 6. AMENDMENT. Subsection 6 of section 57-38-60 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 the tax commissioner 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 ensure the payment to the state of taxes deducted and withheld from wages, ~~but not to exceed five thousand dollars.~~

SECTION 7. AMENDMENT. Section 57-38.1-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-04. Certain items - Allocation. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated, net of related expenses, as provided in sections 57-38.1-05 through 57-38.1-08.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 3, 1991
Filed April 4, 1991

CHAPTER 673

HOUSE BILL NO. 1150
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

PARTNERSHIP SALE GAIN ALLOCATION

AN ACT to create and enact a new subsection to section 57-38-12 and a new section to chapter 57-38.1 of the North Dakota Century Code, relating to the gain or loss on the sale of partnership interest when the partnership income or loss was previously determined to be nonbusiness income when taxing the income of a corporation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-12 of the North Dakota Century Code is created and enacted as follows:

Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

SECTION 2. A new section to chapter 57-38.1 of the North Dakota Century Code is created and enacted as follows:

Gain or loss on the sale of a partnership. Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

SECTION 3. EFFECTIVE DATE. This Act is effective for all taxable years beginning after December 31, 1990.

Approved March 19, 1991
Filed March 19, 1991

CHAPTER 674

SENATE BILL NO. 2212
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

INCOME TAX ESTIMATES, RETURNS, AND REFUNDS

AN ACT to amend and reenact subsection 5 of section 57-38-34, subsections 1, 2, and 4 of section 57-38-42, sections 57-38-62, 57-38-63, and 57-38-64 of the North Dakota Century Code, relating to the requirements for information at the source tax returns, clarification of the requirements for the payment of estimated income tax, clarification of the requirements for the application for a quick refund of overpaid estimated tax by a corporation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-38-34 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The tax commissioner may grant a reasonable extension of time for filing a return when, in ~~his~~ the judgment of the tax commissioner, good cause exists.

SECTION 2. AMENDMENT. Subsections 1, 2, and 4 of section 57-38-42 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. ~~Every individual, partnership, corporation, joint stock company, or association, or insurance company Except for employers subject to sections 57-38-59 through 57-38-61, every person, a resident of, or having a place of business ownership of property with a situs in, or carrying on a trade or 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 this state or of any state institution, or of any political subdivision within the this state, having control, receipt, custody, disposal, or making payment of interest, other than interest coupons payable to bearer, rent rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, for personal or professional services performed in this state, 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, paid during any the calendar year to any taxpayer, shall make a complete return thereof to the tax commissioner, under such regulations and in such the form and manner and to such extent as may be prescribed by the tax~~

commissioner. This subsection applies only if an information return for the same item is also required to be filed for federal income tax purposes. Except for those payments from which state income tax was withheld, interest, dividend, pension, and annuity payments are excluded from the reporting requirements of this subsection; provided, where any person has withheld state income tax from an interest, dividend, pension, or annuity payment, that person shall be deemed to be an employer for purposes of sections 57-38-59 through 57-38-61 and shall comply with the requirements of those sections. For purposes of this subsection, the tax commissioner is authorized to prescribe rules to specifically exclude items that are otherwise required to be reported under this subsection from the reporting requirements of this subsection if, in the tax commissioner's judgment, the reporting of the items does not contribute to the effective administration of the state's income tax laws.

2. Every partnership, having a place of carrying on a trade or 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, name, address, social security number or federal identification number, whichever applies, and the amount of the distributive share of each individual partner.
4. Each information return required under subsection 1 and each must be deemed to be filed with the tax commissioner if the person required to make the return files with the tax commissioner a copy of the information return along with a copy of the transmittal form required to be filed with the internal revenue service. Each partnership return required under subsection 2 shall be signed and shall contain or be verified by a written declaration that it is made under the penalties of perjury.

SECTION 3. AMENDMENT. Section 57-38-62 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-62. Declaration Payment of estimated income tax.

1. All individuals, estates, and trusts An individual, estate, or trust that are is subject to section 6654 of the Internal Revenue Code relating to a taxpayer's failure to pay federal estimated income tax shall, at the time prescribed in this chapter, make a declaration of their pay estimated tax for the current taxable year. Married taxpayers individuals who file a joint federal estimate income tax return and are subject to section 6654 of the Internal Revenue Code shall each be deemed to be subject to the federal provision. If a declaration payment of estimated tax is required, the taxpayer individual, estate, or trust shall make, at the times time prescribed in this chapter, total estimated payments in an amount which is pay the lesser of the following:
 - a. An amount which, when added to the taxpayer's withholding, equals or exceeds ninety percent of the taxpayer's total current year taxable year's net tax liability. No interest or penalty provisions of this chapter shall apply if the total

amount of estimated tax due pursuant to this subdivision is less than two hundred dollars. The two hundred dollar floor shall apply per return.

- b. An amount which, when added to the taxpayer's withholding, equals or exceeds one hundred percent of the taxpayer's total net tax liability for the immediately preceding taxable year.
- (1) This provision is subdivision does not available for apply to any taxpayer who was a nonfiler or a part-year resident for not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a of this subsection if this part applies.
- (2) In order to satisfy the requirements of this subdivision, taxpayers married individuals who are required to file separate state returns for the current taxable year but filed who were required to file a North Dakota joint state return for the prior immediately preceding taxable year, shall each be required to pay estimated tax in an amount which, when added to the taxpayer's individual's withholding, is equal to equals the net tax liability which would have been incurred in computed for the immediately preceding taxable year if separate state returns had been required to be filed.
- (3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year shall be required to pay estimated tax in an amount which, when added to their withholding, equals the sum of their separate net tax liabilities for the immediately preceding taxable year.
2. All corporate taxpayers A corporation shall, at the time prescribed in this chapter, make a declaration of their pay estimated tax for the current taxable year containing such information as the tax commissioner may prescribe by rules and regulations, if the taxpayer's corporation's estimated tax due the state from sources or business done in this state can reasonably be expected to exceed five thousand dollars and if their previous year's state income the corporation's net tax liability for the immediately preceding taxable year exceeded five thousand dollars. If payment of estimated tax is required, the corporation shall, at the time prescribed in this chapter, pay the lesser of the following:
- a. Ninety percent of the corporation's current taxable year's net tax liability.
- b. One hundred percent of the corporation's net tax liability for the immediately preceding taxable year.

3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration nonpayment, late payment, or underpayment of estimated tax as required by this chapter; or if a declaration of estimated tax for any quarter is understated or underpaid by more than ten percent. No penalty is due if the total amount of all payments for estimated tax made on or before the due date for that installment equals or exceeds the total amount that would have been required to be paid on or before that date if the estimated tax equaled the tax shown on the taxpayer's return for the preceding taxable year. For purposes of applying the penalty provisions of section 57-38-45, each of the due dates under section 57-38-63 are deemed to be a payment or return due date. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions of this section, no penalty or interest is due if the underpayment of any installment comes within the exception provided in estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code of 1954 for recurring seasonal income. Notwithstanding the other provisions of this section, no penalty or interest is due if the estimated tax of an individual, estate, or trust is less than two hundred dollars per income tax return filed.
4. For purposes of this section, "estimated tax" means the amount that a person taxpayer estimates to be income tax under this chapter for the current taxable year less the amount of any credits allowable, including tax withheld.
5. For purposes of this section, "net tax liability" means the amount of income tax computed under this chapter for the current taxable year less the amount of any credits allowable except tax withheld and estimated tax paid.

SECTION 4. AMENDMENT. Section 57-38-63 of the North Dakota Century Code is amended and reenacted as follows:

57-38-63. Payment Due date for payment of estimated income tax. No later than April fifteenth of the taxable year the taxpayer shall file the declaration of estimated tax and make payment of A taxpayer shall pay no less than one-quarter of the amount of estimated tax due thereon with to 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 on April fifteenth, June fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following taxable year. Provided; provided, that a taxpayer having a taxable year other than a calendar year shall file a declaration of pay the estimated tax and remit payment of tax due on the fifteenth day of the fourth, sixth, and ninth month months of its the taxable year, and the fifteenth day of the first month of the following taxable year.

SECTION 5. AMENDMENT. Section 57-38-64 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-64. Amendment of declaration Application for quick refund of overpaid estimated tax by a corporation. Any person may amend a declaration of estimated income tax and make the adjusted payments of tax due thereon under the regulations of the tax commissioner. A corporation may, after the close of the taxable year and before the fifteenth day of the fourth month thereafter, file an application for an adjustment of an overpayment by it of estimated income tax for such the taxable year. Such a A claim for credit or refund must be verified and paid as are other claims against the state. No application under this section may be allowed unless the amount of the adjustment exceeds five hundred dollars and no. No interest may accrue or be paid thereon. Refunds will be payable for taxable years beginning after July 1, 1987 on any credit or refund allowed under this section as otherwise provided for under section 57-38-35.2.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 675

HOUSE BILL NO. 1461
(Representatives Belter, Linderman)
(Senators Moore, Dotzenrod)

INCOMING TAX WITHHOLDING FOR AGRICULTURE

AN ACT to create and enact a new subsection to section 57-38-60 of the North Dakota Century Code, relating to an exemption from filing of agricultural employers' returns and remittances under income tax withholding laws; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-60 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

An employer is not subject to this section or section 57-38-59 for wages paid to any employee solely for agricultural labor, as defined in section 3121(g) of the Internal Revenue Code [26 U.S.C. 3121(g)].

SECTION 2. EFFECTIVE DATE. This Act is effective for employers' returns and remittances due after June 30, 1991.

Approved April 10, 1991
Filed April 12, 1991

CHAPTER 676

HOUSE BILL NO. 1325
(Representatives Kloubec, DeMers, Timm)
(Senators Goetz, Nething, Satrom)

NATURAL GAS SALES TAX RATE

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the rate of sales taxes on sales of natural gas; to amend and reenact subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to imposition of sales taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-02.1 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes and for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the state of North Dakota of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of ~~gas~~, communication services, or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
 - d. Magazines and other periodicals.

- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax rate on natural gas sales. Notwithstanding any other provisions of this chapter, the rate of the tax imposed under this chapter upon the gross receipts of retailers from all sales at retail of natural gas to retail consumers or users is four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after December 31, 1992.

Filed April 12, 1991

NOTE: The Governor's veto of House Bill No. 1325 was not sustained.
For the text of the Governor's veto message see chapter 734.

CHAPTER 677

SENATE BILL NO. 2393
(Heigaard)

LODGING SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 22 of section 57-39.2-04 of the North Dakota Century Code, relating to the sales tax exemption for hotel and motel rooms leased or rented for thirty or more consecutive days.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 22 of section 57-39.2-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 678

HOUSE BILL NO. 1308
(Gorman)

MEDICAL RESEARCH INSTITUTE EXEMPTION

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for purchases by a nonprofit medical research institute; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-39.2-04 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Gross receipts from all sales made to a nonprofit medical research institute. For purposes of this subsection, "nonprofit medical research institute" means an institute that is a member of the association of independent research institutes, which is not a private foundation, and which is recognized by the internal revenue service as having exempt status under 26 U.S.C. 501(c)(3).

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1991.

Approved March 18, 1991
Filed March 19, 1991

CHAPTER 679

HOUSE BILL NO. 1606
(Representatives Timm, Williams)
(Senators Dotzenrod, Goetz)
(Approved by the Committee on Delayed Bills)

COAL FACILITY TAX EXEMPTIONS

AN ACT to create and enact a new section to chapter 57-39.2 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to sales tax exemptions and use tax rates; to amend and reenact subsections 2 and 3 of section 57-60-02 of the North Dakota Century Code, relating to exemption from the privilege tax on coal facilities during the first five years of production from a new electrical generating plant; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Reduced rate and exemption for power plant construction and production equipment.

1. As used in this section, unless the context otherwise requires:

- a. "Operator" means any person owning, holding, or leasing a power plant.
- b. "Power plant" means an electrical generating plant, together with all additions thereto, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
- c. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

- 2. Sales of production equipment used exclusively in power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
- 3. Sales of tangible personal property, other than production equipment, which is used in the construction of new power plants are exempt from the tax imposed by this chapter.
- 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator

intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the five percent sales tax rate and apply to the commissioner for a refund.

5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 2. A new section to chapter 57-40.2 of the North Dakota Century Code is created and enacted as follows:

Reduced rate and exemption for power plant construction and production equipment.

1. As used in this section, unless the context otherwise requires:

- a. "Operator" means any person owning, holding, or leasing a power plant.
- b. "Power plant" means an electrical generating plant, together with all additions thereto, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
- c. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

2. Sales of production equipment used exclusively in power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production equipment, which is used in the construction of new power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the five percent sales tax rate and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 57-60-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction after June 30, 1991, are exempt from sixty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 1991, partial or complete exemption from the remaining thirty-five percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production from the plant. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there shall be a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction after June 30, 1991, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production from the plant.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1991.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 680

HOUSE BILL NO. 1048
(Legislative Council)
(Interim Jobs Development Commission)

MANUFACTURING MACHINERY SALES TAX EXEMPTION

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales and use tax exemption for new manufacturing machinery and equipment purchases; and to repeal sections 57-39.2-03.5 and 57-40.2-03.4 of the North Dakota Century Code, relating to reduced sales and use tax rates for purchases of new manufacturing machinery and equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for manufacturing machinery and equipment.

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in physical or economic expansion of an existing manufacturing plant. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.
2. To qualify for exemption at the time of purchase, the manufacturer must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer must pay the tax and apply to the commissioner for a refund.
3. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer must apply for a refund of the amount remitted by the contractor.
4. For purposes of this section, the following definitions apply:
 - a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured.
 - b. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.
 - c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in the manufacturing process. The term includes electrical,

mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result.

- d. "Machinery" and "equipment" do not include handtools, buildings, or transportation equipment not directly used in manufacturing; office machines and equipment; machines and equipment used in administrative, accounting, sales, or other segments of the business; any property that becomes a part of the manufactured product; or any other equipment or machinery not used directly and solely in manufacturing.
- e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.
- f. "Used directly" means used solely in the actual production during processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:
 - (1) To effect a direct and immediate physical change upon the tangible personal property.
 - (2) To guide or measure a direct and immediate physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
 - (3) To test or measure the property on the production line or at a site in the immediate location of production.
 - (4) To transport, convey, or handle the tangible personal property during the manufacturing.
 - (5) To package the product for sale and shipment.

SECTION 2. REPEAL. Sections 57-39.2-03.5 and 57-40.2-03.4 of the 1989 Supplement to the North Dakota Century Code are repealed.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 681

SENATE BILL NO. 2098
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

SALES TAX RETURNS FOR MAY

AN ACT to amend and reenact subsection 1 of section 57-39.2-12 and subsection 7 of section 57-40.2-07 of the North Dakota Century Code, relating to making the references to due dates for May monthly sales and use tax returns permanent in each odd-numbered year; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month, except tax collected during May ~~1989~~ in each odd-numbered year is payable on or before the twenty-second day of June ~~1989~~ of that year. The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to ~~such taxes~~ the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer shall return to quarterly filing and payments. 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~~ the business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided in section 57-39.2-18.

SECTION 2. AMENDMENT. Subsection 7 of section 57-40.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter shall be payable monthly on or before the last day of the next succeeding month, except for taxes collected during May ~~1987~~ of each odd-numbered

year, which are payable on or before the twenty-second day of June ~~1987~~ of that year. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty shall be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed shall be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement shall apply separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, ~~such~~ a person may return to quarterly installments.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 682

SENATE BILL NO. 2330
(Senator Marks)
(Representatives Kroeber, Trautman)

CAPITAL CONSTRUCTION FUND ALLOCATION DATE

AN ACT to amend and reenact section 7 of chapter 644 of the 1989 Session Laws of North Dakota, relating to the effective date for the allocation of sales, use, and motor vehicle excise tax revenues to the capital construction fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 7 of chapter 644 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 7. EFFECTIVE DATE. Section 1 of this Act is effective for sales, use, and motor vehicle excise tax collections ~~from taxable events occurring~~ received by the state tax commissioner after June 30, 1991.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 683

HOUSE BILL NO. 1116
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

MOTOR CARRIER EXCISE TAX EXEMPTION

AN ACT to amend and reenact subsection 3 of section 57-40.3-04 of the North Dakota Century Code, relating to exemption of motor carrier vehicles from motor vehicle excise tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-40.3-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Motor carrier vehicles in excess of twenty thousand pounds [9071.85 kilograms] gross weight, whether owned or leased, engaged in interstate commerce but only to the extent their ~~revenue from interstate hauling bears to their total revenue for the preceding operating year~~ fleet miles outside North Dakota bear to their total fleet miles. For the purposes of this subsection, "fleet miles" means those miles reported in accordance with the international registration plan and must coincide with the mileage reporting period required by the plan. For the purposes of this subsection, "motor carrier vehicles" means any vehicles used upon public streets or highways for the purpose of transporting persons or property for commercial purposes.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 684

HOUSE BILL NO. 1238
(Wald)

TRANSFER OF MOTOR VEHICLE TO TRUST

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to an exemption from the motor vehicle excise tax for certain transfers of motor vehicles into trust; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-40.3-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Motor vehicles acquired by inheritance from, ~~or~~ by bequest of, or operation of a trust created by a decedent who owned it; the transfer of a motor ~~vehicles which were~~ vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more ~~of the~~ joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee; the transfer of motor vehicles by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships; the transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed; and the transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization but the ownership of which business organization remains in the same person or persons as prior to the reorganization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1991.

Approved March 8, 1991
Filed March 8, 1991

CHAPTER 685

HOUSE BILL NO. 1395
(Representatives D. Olsen, A. Olson, Shide)
(Senators Mutch, David)

NONPROFIT CORPORATION MOTOR VEHICLE EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for motor vehicles acquired by nonprofit corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-40.3-04 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Motor vehicles acquired through purchase or gift by any nonprofit county and local historical societies that are exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 686

SENATE BILL NO. 2238
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

EMERGENCY SERVICE COMMUNICATIONS

AN ACT to create and enact a new section to chapter 57-40.6 and a new subsection to section 57-40.6-02 of the North Dakota Century Code, relating to enhanced 911 data base management charges and authority of counties or cities to impose excise taxes on telephone access lines; to amend and reenact section 57-40.6-01 and subsection 1 of section 57-40.6-02 of the North Dakota Century Code, relating to the definitions of the emergency service communications systems and the authority of counties or cities to impose excise tax on telephone access lines, and to amend and reenact subsection 1 of section 1 and section 3 of chapter 720 of the 1987 Session Laws of North Dakota, relating to the appointment of an emergency services communication system advisory committee and the expiration date of the Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, or emergency 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
2. "Telephone access line" means the telephone service line that connects a subscriber's main telephone or equivalent main telephone to the telephone company's switching office principal access to the telephone company's switched network including an outward dialed trunk or access register.

* SECTION 2. AMENDMENT. Subsection 1 of section 57-40.6-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than one year two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for

* NOTE: Subsection 1 of section 57-40.6-02 was also amended by section 1 of Senate Bill No. 2422, chapter 687.

submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed fifty cents per month per telephone access line.

SECTION 3. A new subsection to section 57-40.6-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

In the interest of public safety, where the customers exchange boundary and the boundary of the political subdivision imposing the tax do not coincide, and where all of the political subdivisions within the exchange boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the exchange boundary have voted for the tax, an exchange customer residing outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system. The telephone company may collect an additional tax, equal in amount to the basic tax on those subscribers within the exchange boundary. The additional tax amounts collected must be remitted as provided in this chapter.

SECTION 4. AMENDMENT. Subsection 1 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota is amended and reenacted as follows:

1. The governor shall appoint a nine member an eleven-member emergency services communication system advisory committee for 911 telephone systems. For purposes of this section, "emergency services communications system" has the same meaning as that term is defined in section 57-40.6-01. The governor shall include, on the advisory committee, one representative from the rural telephone companies, one representative from the commercial telephone companies, one representative from the North Dakota league of cities, one representative from the association of counties, one representative from the office of management and budget, one representative from the North Dakota peace officers association, one representative from the fire chiefs association, one representative from the department of human services, and one representative from the state radio communications' office, one representative from the health department, one county 911 coordinator, and one emergency medical technician. Members' terms shall be for three years and subject to reappointment. The committee shall name a chairman and a vice chairman from its membership, and the state radio communications' office shall provide staff services to the advisory committee. Advisory committee members are entitled to travel expense reimbursement from the state radio communications office. Reimbursement shall be at the same rates and in the same manner as provided for state employees.

SECTION 5. A new section to chapter 57-40.6 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Enhanced 911 data base management charges. Any telephone company charges for enhanced 911 data base management must be on a per telephone access line basis.

SECTION 6. AMENDMENT. Section 3 of chapter 720 of the 1987 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, ~~1991~~ 1994, and after that date is ineffective.

Approved April 3, 1991
Filed April 4, 1991

CHAPTER 687

SENATE BILL NO. 2422
(Senators Kelly, Lindgren)
(Representatives Flaagan, Larson)

TELEPHONE ACCESS LINE TAX

AN ACT to amend and reenact subsection 1 of section 57-40.6-02 of the North Dakota Century Code, relating to the excise tax that counties or cities may impose on telephone access lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 57-40.6-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than one year two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed ~~fifty cents~~ one dollar per month per telephone access line.

Approved April 11, 1991
Filed April 12, 1991

- * NOTE: Subsection 1 of section 57-40.6-02 was also amended by section 2 of Senate Bill No. 2238, chapter 686.

CHAPTER 688

HOUSE BILL NO. 1117
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

FUELS TAX ADMINISTRATION

AN ACT to amend and reenact subsection 4 of section 57-43.1-01, sections 57-43.1-03 and 57-43.1-06, subsection 3 of section 57-43.1-14, subsection 2 of section 57-43.1-17, section 57-43.1-27, subsection 6 of section 57-43.2-01, sections 57-43.2-03, 57-43.2-05, and 57-43.2-07, subsection 2 of section 57-43.2-14, and section 57-43.2-25 of the North Dakota Century Code, relating to the definition of importer for use, the refund of special fuel or motor fuel tax, motor fuel dealer's bond, the collection of motor fuel tax, the sale of motor vehicle fuel to retail outlets, and the special fuel wholesaler's or dealer's license and bond; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-43.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms]. gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. **Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.**

SECTION 2. AMENDMENT. Section 57-43.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03. Refund of tax for fuel used for industrial purposes - Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel as defined in ~~subsection 4~~ of section 57-43.1-01 for industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the

commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by one-half cent per gallon [3.79 liters], except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged one-half cent per gallon [3.79 liters] by the dealer and the one-half cent charge must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 3. AMENDMENT. Section 57-43.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-06. Refund to prevent double taxation - Reduction for agricultural fuel tax fund. Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state to a state which requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. ~~The refund of tax paid pursuant to this chapter must be reduced by the amounts provided in sections 57-43.1-03 and 57-43.1-03.1, and the reduction shall be deposited in the agricultural fuel tax fund.~~ The refund may be granted only upon application to the commissioner on forms prescribed by the commissioner, including proof of payment of the tax imposed by the other state, and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 may not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section.

SECTION 4. AMENDMENT. Subsection 3 of section 57-43.1-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. ~~The commissioner may require a dealer, as~~ As a condition precedent to the issuance of a license, to a dealer shall furnish a bond in an amount set by the commissioner, but not less than one thousand dollars, guaranteeing the payment of the motor vehicle fuel tax collected by the dealer of not less than one thousand dollars. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a dealer has had a valid license for three or more years, the commissioner may review the records of the dealer and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner.

SECTION 5. AMENDMENT. Subsection 2 of section 57-43.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. If a dealer omits from a statement a properly includable gallonage amount which is in excess of it is determined upon audit that the tax due was twenty-five percent of the amount of gallonage stated in the or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the statement, or six years after the statement was filed, whichever period expires later.

SECTION 6. AMENDMENT. Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail ~~dealers in motor vehicle fuels~~ outlets - Tax imposed - Credit for losses. When a wholesale dealer in motor vehicle fuels makes a sale to a retail ~~dealer outlet~~ the wholesale dealer shall credit the retail ~~dealer outlet~~ with one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the ~~retailer's retail outlet's~~ cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the dealer shall deduct the total credit allowance granted on sales to retail ~~dealers outlets~~ in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

SECTION 7. AMENDMENT. Subsection 6 of section 57-43.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. ~~Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.~~

SECTION 8. AMENDMENT. Section 57-43.2-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Tax levied. A special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02, if the special fuels are sold to a special fuels user in this state, and the same rate of tax is imposed if the special fuel is imported for use in this state by a special fuels user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section 57-43.1-08. The special excise tax applies to all sales of special fuels taxed under section 57-43.2-02 for which taxes are later refunded to a special fuels user. For purposes of this section, "use" means the consumption of fuel for heating, agricultural, or railroad purposes, or for industrial purposes other than in the performance of a contract with any unit of government. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state

or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due. The provisions for credit in this section apply only if the other state or its political subdivisions allow a credit with respect to the tax imposed by this section which is substantially similar in effect to the credit provided in this section.

SECTION 9. AMENDMENT. Section 57-43.2-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-05. Special fuel wholesaler's or dealer's license required. No person may act as a special fuel wholesaler or dealer in this state unless that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by the commissioner. Application for a special fuel wholesaler's or dealer's license must be made to the commissioner and a separate license is required for each separate place of business or location where special fuels are regularly sold, delivered, or placed into the tanks of bulk supply vehicles for delivery into supply tanks of special fuel users. The application must be filed upon a form prepared and furnished by the commissioner and must contain such information as the commissioner requires.

SECTION 10. AMENDMENT. Section 57-43.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-07. Special fuel wholesaler's or dealer's bond.

1. Except as provided in this section, no special fuel wholesaler's or dealer's license may be issued to any person or continued in force unless the person has furnished a surety bond in the form and amount as the commissioner requires, but not less than five hundred dollars, to secure his compliance with this chapter and the payment of all taxes, interest, and penalties due or to become due. As a condition precedent to the issuance of a license, a wholesaler or dealer shall furnish a bond in an amount set by the commissioner, but not less than five hundred dollars, guaranteeing the payment of the special fuels tax collected by the wholesaler or dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a wholesaler or dealer has had a valid license for three or more years, the commissioner may review the wholesaler's or dealer's records and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner.
2. The commissioner may waive the filing of a bond if, upon investigation, it is found that the bond may be waived without impairing or jeopardizing the revenue collections of this state, or in lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold at public or private sale, without notice to the depositor, if it becomes necessary in order to recover any tax, penalties, or interest due. The commissioner shall pay all moneys deposited as security with the commissioner under the provisions of this subsection to the state treasurer who shall credit them into a special fund to be known as the "special fuels tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, by the person depositing moneys with the tax

commissioner as security for the payment of tax, penalty, or interest imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the tax, penalty, and interest due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the person.

SECTION 11. AMENDMENT. Subsection 2 of section 57-43.2-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If a special fuel dealer omits from a return a properly includable gallage amount which is in excess of it is determined upon audit that the tax due was twenty-five percent of the amount of gallage stated in the or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the 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.

SECTION 12. AMENDMENT. Section 57-43.2-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-25. Liquefied petroleum gas dealers - License - Fee - Permits - Bond. It is unlawful for any person to act as a wholesale dealer in special fuel known as liquefied petroleum gas in this state unless the person is a holder of an uncanceled special liquefied petroleum gas dealer's license issued to that person by the commissioner, in addition to complying with all other provisions of this chapter. Application for the license must be made to the commissioner and a separate license is required for each separate place of business or location where liquefied petroleum gas is regularly sold, delivered, or placed into tanks of bulk supply vehicles for delivery into supply tanks of retail liquefied petroleum gas dealers or users. The cost of this license is twenty dollars, which amount must accompany each application, upon a form prepared and furnished by the commissioner. The application must contain the information the commissioner deems necessary, together with a surety bond in the form and amount as the commissioner requires, but not less than five hundred dollars, except that the commissioner may waive the filing of a bond if the commissioner finds such bond may be waived without impairing or jeopardizing the revenue collections of this state or other security as provided under section 57-43.2-07.

If any person deals only in the retail selling of liquefied petroleum gas, the provisions of sections 57-43.2-06 and 57-43.2-11 do apply, but in lieu of those provisions each liquefied petroleum gas retail dealer is required to apply to the commissioner for a liquefied petroleum gas retail dealer's permit. The cost of a permit issued by the commissioner is twenty dollars. Each liquefied petroleum gas retail dealer shall collect the special fuels excise tax levied under section 57-43.2-03, and shall transmit quarterly all taxes collected to the commissioner. The commissioner shall furnish report forms requiring the information the commissioner deems necessary for the efficient administration of this section. The report must

accompany the transmittal of all taxes collected by liquefied petroleum gas retail dealers.

SECTION 13. EFFECTIVE DATE. Section 8 of this Act is effective for taxable events occurring after December 31, 1990.

Approved April 10, 1991
Filed April 10, 1991

CHAPTER 689

HOUSE BILL NO. 1098
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

OIL AND GAS VALUATION FOR TAXATION

AN ACT to create and enact sections 57-51-02.2 and 57-51-02.3 of the North Dakota Century Code, relating to gross production tax on gas and oil; to amend and reenact sections 57-51-01, 57-51-02, 57-51-05, and subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code and to amend and reenact section 1 of chapter 733 of the 1989 Session Laws of North Dakota, relating to imposition of gross production tax and the apportionment and use of the gross production tax; to repeal section 57-51-18 of the North Dakota Century Code, relating to payment where ownership is in dispute; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51-01. Definitions. As used in this chapter:

1. "Barrel of oil" ~~shall mean~~ means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.99 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" ~~shall mean~~ means the state tax commissioner.
3. "Field" ~~means~~ the geographic area underlaid by one or more pools, as defined by the industrial commission.
4. "Gas" ~~shall mean~~ means natural gas and casinghead gas.
- 4- 5. "Oil" ~~shall mean~~ means petroleum, crude oil, mineral oil, and casinghead gasoline.
- 5- 6. "Person" ~~shall include~~ includes partnership, corporation, association, fiduciary, trustee, and any combination of individuals.
7. "Posted price" ~~means~~ the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.
8. "Transportation costs" ~~means~~ the costs incurred for transporting oil established in accordance with the first applicable of the following methods:

- a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
- b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
- c. Where no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system, as determined by the commissioner.

SECTION 2. AMENDMENT. Section 57-51-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02. Gross production tax - Oil. A tax of five per centum of the gross value at the well is ~~hereby~~ levied upon all oil ~~and gas~~ produced within ~~the state of~~ North Dakota, less the value of any part thereof, the ownership or right to which is exempt from taxation. The tax ~~hereby~~ levied shall attach to ~~and is hereby levied upon~~ the whole production, including ~~what is~~ commonly known as the royalty interest.

SECTION 3. Section 57-51-02.2 of the North Dakota Century Code is created and enacted as follows:

57-51-02.2. Gross production tax - Gas. A gross production tax is levied upon all gas produced within North Dakota less any part thereof, the ownership or right to which is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. For fiscal year beginning July 1, 1991, the gas tax rate is four cents; for fiscal years beginning July 1, 1992, and subsequent years, the gas tax rate is four cents times the gas base rate adjustment for the fiscal year as calculated pursuant to subsection 2.
2.
 - a. On or before May 15, 1992, and annually thereafter, the tax department shall determine the gas base rate adjustment and the resulting gas tax rate for the fiscal year beginning on the following July first.
 - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths
 - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed

on or before June first. In addition, the tax department shall publish the adjustment as a rule in the North Dakota Administrative Code.

- d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
- e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 4. Section 57-51-02.3 of the North Dakota Century Code is created and enacted as follows:

57-51-02.3. Valuation of oil - Alternatives - Exceptions. The gross value at the well for oil is the price paid for the oil under an arm's-length contract between the producer and the purchaser less, where applicable, transportation costs associated with moving the oil from the point of production to the point of sale under the contract. In the absence of an arm's-length contract, the gross value at the well for oil is established by the first applicable of the following methods:

1. The price paid under an arm's-length contract, to which the person paying the tax is a party, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, where applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
2. The price paid under an arm's-length contract, between parties other than the person paying the tax, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, where applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
3. The value determined by consideration of the posted price relevant in valuing oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, where applicable, adjustments for transportation costs to reflect the differential between the value at the point of production and the value at the location reflected in the posted price.

SECTION 5. AMENDMENT. Section 57-51-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51-05. Payment of tax on quarterly basis - When tax due - When delinquent - Payment by purchaser - By producer - How casinghead gas taxed.

1. The gross production tax on oil or gas, as herein provided, must be paid on a monthly basis. The tax on oil is due and payable on the twenty-fifth day of the month succeeding the month of production.

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

2. On oil or gas sold at the time of production, the gross production tax thereon shall be paid by the purchaser, and such purchaser shall and is hereby authorized to deduct in making settlement with the producer or royalty owner, the amount of tax so paid; provided, that in the event oil on which such gross production tax becomes due is not sold at the time of production but is retained by the producer, the tax on such oil not so sold shall be paid by the producer for himself including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner such producer shall have the right to deduct the amount of such tax so paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time such tax becomes due with the amount of the tax paid.
3. Gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, shall be considered for the purpose of this chapter, as to the amount utilized, as gas actually produced and saved.
- 4- In case oil or gas is sold under circumstances where the sale price does not represent the cash price thereof prevailing for oil or gas of like kind, character or quality in the field from which such product is produced, the commissioner may require the said tax to be paid upon the basis of the prevailing price then being paid at the time of production thereof in said field for oil, or gas of like kind, quality, and character.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 57-51-06 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The tax herein provided for ~~shall~~ must be paid to the commissioner and the person paying the tax shall file with ~~said~~ the commissioner at the time the tax is required to be paid, a statement, under oath, on forms prescribed by ~~said~~ the commissioner, giving with other information required, the following:

- a. Full description of the property by lease name, subdivision of quarter section, section, township and range, from which said oil or gas was produced.
 - b. The name of the producer.
 - c. The gross amount of said oil or gas purchased.
 - d. The total value of such oil or gas at the price paid therefor, if purchased at time of production.
 - e. The prevailing market price of oil or gas sold at time of production, provided, that in lieu of such statement, a purchaser, at time of production, may furnish a true verified copy of the regular settlement sheet in use by such purchaser, if such sheet contains all the information required.
2. Any person engaged in the production within this state of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement under oath upon forms prescribed by said the commissioner, giving, along with other information required, the following:
- a. Name of the property, description by subdivision of quarter section, section, township, and range.
 - b. The gross amount of oil or gas produced and saved.
 - c. The name of the purchaser and the price received therefor.
 - d. Each report required hereunder shall be filed on separate forms as to product and county.

SECTION 7. AMENDMENT. Section 1 of chapter 733 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. First ~~an amount~~ the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and gas upon which a tax is collected under this chapter one-fifth of the tax on gas must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding five million dollars per biennium including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.

SECTION 8. REPEAL. Section 57-51-18 of the North Dakota Century Code is repealed.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1991.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 690

SENATE BILL NO. 2279
(Senators Streibel, Ingstad, Naaden)
(Representatives Byerly, Wardner)

OIL EXTRACTION TAX TRIGGER

AN ACT to amend and reenact subsections 4 and 5 of section 38-08-04, sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to definitions for purposes of the oil extraction tax, conditions affecting the rate of the oil extraction tax, and conditions affecting exemptions to the oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 38-08-04 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in subsection 8 of section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations under section 57-51.1-01, and the date of qualification for the reduced rate of oil extraction tax for secondary and tertiary recovery operations.
5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and of subsections 1, 4, 5, 6, and 8 of section 57-51.1-01.

* SECTION 2. AMENDMENT. Section 57-51.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax. For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period; and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

* NOTE: Section 57-51.1-01 was also amended by section 1 of House Bill No. 1414, chapter 691.

2. "Average price" of a barrel of crude oil means the average daily price for a barrel of west Texas intermediate cushioning crude oil, as those prices appear in the Wall Street Journal, midwest edition, **for the period June first through October thirty first of any year.**
3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.
5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission, the project must have been unitized after April 27, 1987, and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations.
6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
 - a. Miscible fluid displacement.
 - b. Steam drive injection.
 - c. Microemulsion.
 - d. In situ combustion.
 - e. Polymer augmented water flooding.
 - f. Cyclic steam injection.
 - g. Alkaline flooding.
 - h. Carbonated water flooding.
 - i. Immiscible carbon dioxide displacement.
 - j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under

section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations.

7. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.
8. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet or less, fifteen barrels per day for wells of a depth of more than six thousand feet but not more than ten thousand feet, and twenty barrels per day for wells of a depth of more than ten thousand feet during any preceding consecutive twelve-month period beginning after December 31, 1972. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

*** SECTION 3. AMENDMENT.** Section 57-51.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted shall be deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax shall be six and one-half percent of the gross value at the well of the oil extracted, except that for wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project, the rate of tax shall be four percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more then the rate of tax for the following calendar year on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted: for any consecutive five-month period in any year is thirty-three dollars or more, then the rate of tax for the following months on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted. However, if after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year, the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project.

**** SECTION 4. AMENDMENT.** Section 57-51.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

* NOTE: Section 57-51.1-02 was also amended by section 2 of House Bill No. 1414, chapter 691.

** NOTE: Section 57-51.1-03 was also amended by section 3 of House Bill No. 1414, chapter 691.

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed after April 27, 1987, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil ~~between June first and October thirty first of any year is thirty-three dollars or more~~ for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded either a minimum of sixty-five thousand dollars or a minimum of thirty thousand dollars if production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil ~~between June first and October thirty first of any year is thirty-three dollars or more~~ for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 691

HOUSE BILL NO. 1414
(Representatives Timm, R. Anderson, Hokana)
(Senators Kinnoin, Vosper, O'Connell)

TAXATION OF ENHANCED OIL RECOVERY

AN ACT to amend and reenact subsections 5 and 6 of section 57-51.1-01 and sections 57-51.1-02 and 57-51.1-03 of the North Dakota Century Code, relating to an exemption from the oil extraction tax for production from secondary or tertiary recovery projects; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 5 and 6 of section 57-51.1-01 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission; ~~the project must have been unitized after April 27, 1987,~~ and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.
6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
 - a. Miscible fluid displacement.
 - b. Steam drive injection.
 - c. Microemulsion.
 - d. In situ combustion.
 - e. Polymer augmented water flooding.
 - f. Cyclic steam injection.

* NOTE: Section 57-51.1-01 was also amended by section 2 of Senate Bill No. 2279, chapter 690.

- g. Alkaline flooding.
- h. Carbonated water flooding.
- i. Immiscible carbon dioxide displacement.
- j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.

* SECTION 2. AMENDMENT. Section 57-51.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted shall be deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax shall be six and one-half percent of the gross value at the well of the oil extracted, except that for oil produced from wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991, for oil that does not qualify as incremental oil but is produced from a ~~qualifying~~ secondary or tertiary recovery project or for a that is certified as qualifying by the industrial commission after June 30, 1991, and for incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03, the rate of tax shall be four percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more then the rate of tax for the following calendar year on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted.

** SECTION 3. AMENDMENT. Section 57-51.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

* NOTE: Section 57-51.1-02 was also amended by section 3 of Senate Bill No. 2279, chapter 690.

** NOTE: Section 57-51.1-03 was also amended by section 4 of Senate Bill No. 2279, chapter 690.

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed after April 27, 1987, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded either a minimum of sixty-five thousand dollars or a minimum of thirty thousand dollars if production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more.
5.
 - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission during the period beginning July 1, 1991, and ending June 30, 1995, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
 - b. The incremental production from a tertiary recovery project which has been certified as a qualified project by the industrial commission subsequent to June 30, 1991, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins.
 - c. For purposes of this subsection, incremental production is defined in the following manner:

- (1) For purposes of determining the exemption provided for in subdivision a of this subsection and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (2) For purposes of determining the exemption provided for in subdivision a of this subsection and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (3) For purposes of determining the exemption provided for in subdivision a of this subsection and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms

to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

- (4) For purposes of determining the exemption provided for in subdivision b of this subsection and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (5) For purposes of determining the exemption provided for in subdivision b of this subsection and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (6) For purposes of determining the exemption provided for in subdivision b of this subsection and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used

by the commission at the time the tertiary recovery project is certified.

- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c of this subsection.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1991.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 692

HOUSE BILL NO. 1200

(Committee on Finance and Taxation)

(At the request of the State Board of Equalization)

FOREST STEWARDSHIP TAX

AN ACT to create and enact a new section to chapter 57-57 of the North Dakota Century Code, relating to forest stewardship recognition; to amend and reenact sections 57-57-01, 57-57-02, 57-57-03, 57-57-04, 57-57-05, 57-57-06, 57-57-07, 57-57-08, 57-57-09, and 57-57-10 of the North Dakota Century Code, relating to changing the name of the native woodland tax to the forest stewardship tax, describing property that may qualify for the forest stewardship tax, setting the rate and manner of collection of the tax, describing the duties of the state forester and board of county commissioners, and providing for hearings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-57-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "County designee" means a person or agent under the control of local or state governmental entities who is willing and able to cooperate with the state forester as provided in this chapter.
2. "Forest" means an area of land normally supporting a growth of planted tree cover, woodlands, or windbreaks.
3. "Forest stewardship" means the application of environmental and economic resource management principles to benefit current and future landowners, the public, and the forest resource.
4. "State forester" means the state forester appointed under section 4-19-01 and, where reasonable, the agents and personnel under the state forester's control.
2. "Woodland" means an area of land normally supporting a growth of natural or planted forest cover.

SECTION 2. AMENDMENT. Section 57-57-02 of the North Dakota Century Code is amended and reenacted as follows:

57-57-02. Eligibility to be taxed for forest stewardship tax - Application. Beginning January 1, 1974, the This chapter applies in any county in which the county commission has approved by resolution the application of this chapter to all qualifying property within the county.

The owner or ~~his~~ agent of the owner, having any tract of contiguous ~~woodland forest~~ which consists of:

1. Natural forest cover ten acres [4.05 hectares] or larger in size;
2. Planted forest cover five acres [2.02 hectares] or larger in size and not less than sixty feet [18.29 meters] in width; or
3. Any combination of natural and planted forest cover ten acres [4.05 hectares] or larger in size,

may file an application with the ~~state forester~~ county commission of the county in which the property is located setting forth a description of property ~~which he~~ that the owner desires to place under the ~~woodland forest~~ stewardship tax and on which land ~~he~~ the owner will practice forestry. ~~If the county commission has approved application of this chapter within the county, the county commission shall forward each application received to the state forester for a determination of whether the property qualifies under this chapter.~~ The state forester shall prescribe the form of ~~such~~ for application blanks and make them available to all ~~interested persons desiring to subject woodlands owned by them to the provisions of this chapter.~~

SECTION 3. AMENDMENT. Section 57-57-03 of the North Dakota Century Code is amended and reenacted as follows:

57-57-03. Duties of the state forester. Upon the ~~filing receipt~~ of the application provided for in section 57-57-02, the state forester shall examine the land and ~~if he finds that the woodland will produce a forest cover, the state forester shall enter an order approving the application report to the county commission whether the property qualifies for taxation under this chapter.~~ A copy of ~~such order shall the state forester's report must be forwarded to the owner or his~~ the agent of the owner, to the local assessor of any township or district ~~wherein~~ in which the land is located, to the clerk of the township if the township is organized, and to the county auditor. The state forester may appoint a local county designee to assist in the performance of the duties of the state forester under this chapter.

SECTION 4. AMENDMENT. Section 57-57-04 of the North Dakota Century Code is amended and reenacted as follows:

57-57-04. Application and ~~order acceptance~~ to constitute a contract. The application of the owner or ~~his~~ agent of the owner and the ~~filing acceptance of the order application by the state forester shall constitute board of county commissioners constitutes~~ a contract, running with the land, for a period of five years, unless terminated as provided in this chapter. Any order issued on or before ~~March~~ February first of any year ~~shall take effect in such that year, but all orders issued after March February 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 of the owner or agent of the owner and the board of county commissioners, the land ~~shall be is declassified and shall be removed from the provisions of this chapter.~~

SECTION 5. AMENDMENT. Section 57-57-05 of the North Dakota Century Code is amended and reenacted as follows:

57-57-05. Duty of local assessor. The local assessor in preparing the tax roll shall show the acreage [hectarage] for each owner covered by the

provisions of this chapter in a column designated by the words "Woodland Forest Tax Law" or the initials "W-F-L, F.T.L.".

SECTION 6. AMENDMENT. Section 57-57-06 of the North Dakota Century Code is amended and reenacted as follows:

57-57-06. 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 forest stewardship 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 chapter of fifty cents per acre.~~ Such The tax shall be is 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 taxes under this chapter~~ is 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 woodlands~~ the forest. It is expressly provided that the woodland forest stewardship tax shall not be is not in lieu of income taxes nor excise taxes upon the sale of forest products or services that may be derived from ~~such woodlands~~ the forest. ~~It is expressly provided that the 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 woodland tax rate at any time deemed suitable or necessary by both parties.~~

SECTION 7. AMENDMENT. Section 57-57-07 of the North Dakota Century Code is amended and reenacted as follows:

57-57-07. Destructive practices prohibited - Declassification - Management and assistance of the state forester. If ~~woodlands are a forest~~ is cleared, grazed, burned, cut, or otherwise dealt with in a destructive manner as determined by the state forester, ~~they~~ it may be subject to declassification and return to the regular tax rolls. At the request of the owner or ~~his~~ the agent of the owner, the state forester or the county designee of the state forester may assist in preparing and carrying out a forest management plan for the orderly development of ~~these woodlands~~ each forest. The plan must cover a five-year period and must recognize the individual management objectives of the landowner. The plan must contain written recommendations for managing timber and other associated forest resources. Approval and implementation of the forest management plan must be by mutual consent of the landowner and the state forester.

SECTION 8. AMENDMENT. Section 57-57-08 of the North Dakota Century Code is amended and reenacted as follows:

57-57-08. Report of the state forester - Declassification orders. The state forester shall make an annual written report as to the forest practices of each woodland forest owner or ~~his~~ the agent of the owner covering lands enrolled under this chapter. The report may be based on spot field inspections, landowner questionnaires, or documented observations from local assessors. The report must list the landowners, legal descriptions, and acreages which are eligible to receive continued tax benefits. A copy of the report must be forwarded to the county auditor by March first of each year. If the state forester finds that the owner or ~~his~~ the agent of the owner has not complied with the law, or if the land is no longer used for forestry purposes, ~~he~~ the state forester shall issue an order removing the land from the woodland forest stewardship tax law classification. Any declassification

order issued on or before March February first of any year ~~shall take~~ takes effect in ~~such~~ that year. A copy of the declassification order ~~shall must~~ be sent to the owner or ~~his~~ the agent of the owner, to the local assessor of the township or district ~~wherein~~ in which 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~~ is final unless set aside pursuant to the provisions of section 57-57-09.

SECTION 9. AMENDMENT. Section 57-57-09 of the North Dakota Century Code is amended and reenacted as follows:

57-57-09. Public hearing by petition - Hearing board - Presiding officer. The owner or ~~his~~ agent of the owner, 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 chapter. Upon filing of ~~such the~~ petition, the state forester shall set ~~such the~~ matter for public hearing at ~~such a~~ time as ~~he~~ the state forester sees fit in the county ~~wherein~~ in which 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 in which~~ the lands are located ~~shall~~ constitute the hearing board. The state forester ~~shall be~~ is the presiding officer of the hearing and shall give thirty days' written notice of the hearing to the owner or ~~his~~ agent of the owner, board of township supervisors, and the board of county commissioners. ~~Such~~ The hearing may be deferred not more than sixty days after notice to the parties involved.

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

57-57-10. Procedural rules for hearing - Decision - Appeal. A written record ~~shall~~ must 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~~ must be furnished to any party upon written request ~~therefor~~. After hearing all the testimony and after making ~~such any~~ independent investigations ~~as they deem it deems~~ necessary, the hearing board shall make ~~their~~ its findings of fact and the decision of the majority will rule. The state forester as the presiding officer of the hearing board ~~will~~ shall 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 in which~~ 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~~ are appealable. A procedural order made by the state forester or the hearing board during the hearing ~~shall is~~ not be deemed a final order nor an order affecting a substantial right. ~~Such~~ An appeal ~~shall may~~ be taken pursuant to the provisions of section 28-32-15. An appeal from a determination or decision of the hearing board ~~shall does~~ not stay the enforcement of ~~such the~~ determination or decision unless the court to which the appeal is taken, upon application and after a hearing, ~~shall order~~ orders 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~~ deems proper.

SECTION 11. A new section to chapter 57-57 of the North Dakota Century Code is created and enacted as follows:

Forest stewardship recognition. Recognition is appropriate for landowners and organizations demonstrating special forest stewardship efforts. The state forester may establish stewardship requirements, standards, and awards for such a recognition program.

SECTION 12. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 16, 1991

Filed April 18, 1991