

SENATE BILL NO. 2155

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 57-36-09.3, 57-36-09.4, 57-38-60.1,
2 57-38-60.2, 57-39.2-15.2, 57-39.2-18.1, 57-40.2-15.1, 57-43.1-17.2, 57-43.1-17.3,
3 57-43.2-16.1, and 57-43.2-16.2 of the North Dakota Century Code, relating to an election to
4 post a bond in lieu of corporate officer liability for the tobacco products tax, income tax, sales
5 and use tax, motor vehicle fuel tax, and special fuel tax.

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

7 **SECTION 1. AMENDMENT.** Section 57-36-09.3 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-36-09.3. Corporate officer liability.**

- 10 1. If a corporation holding a license issued under this chapter fails for any reason to
11 file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice
12 president, secretary, or treasurer, jointly or severally, having control or supervision
13 of, or charged with the responsibility for making; such returns and payments is
14 personally liable for the failure. The dissolution of a corporation does not discharge
15 an officer's liability for a prior failure of the corporation to make a return or remit the
16 tax due. The sum due for such a liability may be assessed and collected under the
17 provisions of this chapter for the assessment and collection of other liabilities.
- 18 2. If the corporate officers elect not to be personally liable for the failure to file the
19 required returns or to pay the tax due, the corporation must be required to make a
20 cash deposit or post with the tax commissioner a bond or undertaking executed by
21 a surety company authorized to do business in this state. The cash deposit, bond,
22 or undertaking provided for in this section must be in an amount equal to the
23 estimated annual tobacco products tax liability of the corporation.

1 **SECTION 2. AMENDMENT.** Section 57-36-09.4 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-36-09.4. Governor and manager liability.**

4 1. If a limited liability company ~~is an employer and~~ holding a license issued under this
5 chapter fails for any reason to file the required returns or to pay the taxes due
6 under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or
7 severally, charged with the responsibility of supervising the preparation of such
8 returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a
9 limited liability company does not discharge a governor's or manager's liability for a
10 prior failure of the limited liability company to file a return or remit the tax due. The
11 taxes, penalty, and interest may be assessed and collected under the provisions of
12 this chapter.

13 2. If the governors or managers elect not to be personally liable for the failure to file
14 the required returns or to pay the tax due, the limited liability company must be
15 required to make a cash deposit or post with the tax commissioner a bond or
16 undertaking executed by a surety company authorized to do business in this state.
17 The cash deposit, bond, or undertaking provided for in this section must be in an
18 amount equal to the estimated annual tobacco products tax liability of the limited
19 liability company.

20 **SECTION 3. AMENDMENT.** Section 57-38-60.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-38-60.1. Corporate officer liability.**

23 1. If a corporation is an employer and fails for any reason to file the required returns
24 or to pay the tax due, the ~~chairman, president, or chief operating officer~~ president,
25 vice president, secretary, or treasurer, jointly or severally, charged with the
26 responsibility of supervising the preparation of such returns and payments is
27 personally liable for such failure. The dissolution of a corporation does not
28 discharge an officer's liability for a prior failure of the corporation to file a return or
29 remit the tax due. The taxes, penalty, and interest may be assessed and collected
30 pursuant to the provisions of this chapter.

1 2. If the corporate officers elect not to be personally liable for the failure to file the
2 required returns or to pay the tax due, the corporation must be required to make a
3 cash deposit or post with the tax commissioner a bond or undertaking executed by
4 a surety company authorized to do business in this state. The cash deposit, bond,
5 or undertaking provided for in this section must be in an amount equal to the
6 estimated annual income tax withholding liability of the corporation.

7 **SECTION 4. AMENDMENT.** Section 57-38-60.2 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **57-38-60.2. Governor and manager liability.**

10 1. If a limited liability company is an employer and fails for any reason to file the
11 required returns or to pay the tax due, the ~~governor~~ governors or ~~manager~~
12 managers, jointly or severally, charged with the responsibility of the preparation of
13 such returns and payments, ~~is~~ are personally liable for such failure. The
14 dissolution of a limited liability company does not discharge a governor's or
15 manager's liability for a prior failure of the limited liability company to file a return or
16 remit the tax due. The taxes, penalty, and interest may be assessed and collected
17 pursuant to the provisions of this chapter.

18 2. If the governors or managers elect not to be personally liable for the failure to file
19 the required returns or to pay the tax due, the limited liability company must be
20 required to make a cash deposit or post with the tax commissioner a bond or
21 undertaking executed by a surety company authorized to do business in this state.
22 The cash deposit, bond, or undertaking provided for in this section must be in an
23 amount equal to the estimated annual income tax withholding liability of the limited
24 liability company.

25 **SECTION 5. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code
26 is amended and reenacted as follows:

27 **57-39.2-15.2. Governor and manager liability.**

28 1. If a limited liability company ~~is an employer and~~ holding a license issued under this
29 chapter fails for any reason to file the required returns or to pay the taxes due
30 under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or
31 severally, charged with the responsibility of supervising the preparation of such

1 returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a
2 limited liability company does not discharge a manager's liability for a prior failure
3 of the limited liability company to file a return or remit the tax due. The taxes,
4 penalty, and interest may be assessed and collected under the provisions of this
5 chapter.

6 2. If the governors or managers elect not to be personally liable for the failure to file
7 the required returns or to pay the tax due, the limited liability company must be
8 required to make a cash deposit or post with the tax commissioner a bond or
9 undertaking executed by a surety company authorized to do business in this state.
10 The cash deposit, bond, or undertaking provided for in this section must be in an
11 amount equal to the estimated annual sales tax liability of the limited liability
12 company.

13 **SECTION 6. AMENDMENT.** Section 57-39.2-18.1 of the 1997 Supplement to the
14 North Dakota Century Code is amended and reenacted as follows:

15 **57-39.2-18.1. Corporate officer ~~and limited liability company~~ ~~governor or manager~~**
16 **liability.**

17 1. If a corporation ~~or limited liability company~~ holding a permit issued pursuant to the
18 provisions of this chapter fails for any reason to file the required returns or to pay
19 the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer
20 of the corporation, ~~governors, or managers~~ jointly or severally, having control, or
21 supervision of, or charged with the responsibility for making such returns and
22 payments ~~shall be~~ are personally liable for such failure. The dissolution of a
23 corporation ~~or limited liability company~~ shall not discharge an officer's, ~~governor's,~~
24 ~~or manager's~~ liability for a prior failure of the corporation ~~or limited liability company~~
25 to make a return or remit the tax due. The sum due for such a liability may be
26 assessed and collected pursuant to the provisions of this chapter for the
27 assessment and collection of other liabilities.

28 2. If the corporate officers elect not to be personally liable for the failure to file the
29 required returns or to pay the tax due, the corporation must be required to make a
30 cash deposit or post with the tax commissioner a bond or undertaking executed by
31 a surety company authorized to do business in this state. The cash deposit, bond,

1 or undertaking provided in this section must be in an amount equal to the
2 estimated annual sales tax liability of the corporation.

3 **SECTION 7. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **57-40.2-15.1. Corporate officer and limited liability company manager liability.**

- 6 1. If a corporation or limited liability company holding a permit issued pursuant to the
7 provisions of this chapter fails for any reason to file the required returns or to pay
8 the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer
9 of the corporation, or governors or managers of a limited liability company, jointly
10 or severally, having control, or supervision of, or charged with the responsibility for
11 making such returns and payments ~~shall be~~ are personally liable for such failure.
12 The dissolution of a corporation or limited liability company must not discharge an
13 officer's, governor's, or manager's liability for a prior failure of the corporation or
14 limited liability company to make a return or remit the tax due. The sum due for
15 such a liability may be assessed and collected pursuant to the provisions of this
16 chapter for the assessment and collection of other liabilities.
- 17 2. If the corporate officers, governors, or managers elect not to be personally liable
18 for the failure to file the required returns or to pay the tax due, the corporation or
19 limited liability company must be required to make a cash deposit or post with the
20 tax commissioner a bond or undertaking executed by a surety company authorized
21 to do business in this state. The cash deposit, bond, or undertaking provided for in
22 this section must be in an amount equal to the estimated annual use tax liability of
23 the corporation or limited liability company.

24 **SECTION 8. AMENDMENT.** Section 57-43.1-17.2 of the North Dakota Century Code
25 is amended and reenacted as follows:

26 **57-43.1-17.2. Corporate officer liability.**

- 27 1. If a corporation holding a license issued under this chapter fails for any reason to
28 file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice
29 president, secretary, or treasurer, jointly or severally, having control or supervision
30 of, or charged with the responsibility for making, such returns and payments is
31 personally liable for the failure. The dissolution of a corporation does not discharge

1 an officer's liability for a prior failure of the corporation to make a return or remit the
2 tax due. The sum due for such a liability may be assessed and collected under the
3 provisions of this chapter for the assessment and collection of other liabilities.

4 2. If the corporate officers elect not to be personally liable for the failure to file the
5 required returns or to pay the tax due, the corporation must be required to make a
6 cash deposit or post with the tax commissioner a bond or undertaking executed by
7 a surety company authorized to do business in this state. The cash deposit, bond,
8 or undertaking provided for in this section must be in an amount equal to the
9 estimated annual motor vehicle fuel tax liability of the corporation.

10 **SECTION 9. AMENDMENT.** Section 57-43.1-17.3 of the 1997 Supplement to the
11 North Dakota Century Code is amended and reenacted as follows:

12 **57-43.1-17.3. Governor and manager liability.**

13 1. If a limited liability company holding a license issued under this chapter fails for any
14 reason to file the required returns or to pay the taxes due under this chapter, the
15 ~~governor~~ ~~governors~~ or ~~manager~~ ~~managers~~, jointly or severally, charged with the
16 responsibility of supervising the preparation of such returns and payments, ~~is~~ are
17 personally liable for such failure. The dissolution of a limited liability company does
18 not discharge a governor's or manager's liability for a prior failure of the limited
19 liability company to file a return or remit the tax due. The taxes, penalty, and
20 interest may be assessed and collected under the provisions of this chapter.

21 2. If the governors or managers elect not to be personally liable for the failure to file
22 the required returns or to pay the tax due, the limited liability company must be
23 required to make a cash deposit or post with the tax commissioner a bond or
24 undertaking executed by a surety company authorized to do business in this state.
25 The cash deposit, bond, or undertaking provided for in this section must be in an
26 amount equal to the estimated annual motor vehicle fuel tax liability of the limited
27 liability company.

28 **SECTION 10. AMENDMENT.** Section 57-43.2-16.1 of the North Dakota Century Code
29 is amended and reenacted as follows:

30 **57-43.2-16.1. Corporate officer liability.**

- 1 1. If a corporation holding a license issued under this chapter fails for any reason to
2 file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice
3 president, secretary, or treasurer, jointly or severally, having control or supervision
4 of, or charged with the responsibility for making; such returns and payments is
5 personally liable for the failure. The dissolution of a corporation does not discharge
6 an officer's liability for a prior failure of the corporation to make a return or remit the
7 tax due. The sum due for such a liability may be assessed and collected under the
8 provisions of this chapter for the assessment and collection of other liabilities.
- 9 2. If the corporate officers elect not to be personally liable for the failure to file the
10 required returns or to pay the tax due, the corporation must be required to make a
11 cash deposit or post with the tax commissioner a bond or undertaking executed by
12 a surety company authorized to do business in this state. The cash deposit, bond,
13 or undertaking provided for in this section must be in an amount equal to the
14 estimated annual special fuel tax liability of the corporation.

15 **SECTION 11. AMENDMENT.** Section 57-43.2-16.2 of the 1997 Supplement to the
16 North Dakota Century Code is amended and reenacted as follows:

17 **57-43.2-16.2. Governor and manager liability.**

- 18 1. If a limited liability company holding a license issued under this chapter fails for any
19 reason to file the required returns or to pay the taxes due under this chapter, the
20 ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the
21 responsibility of supervising the preparation of such returns and payments, ~~is~~ are
22 personally liable for such failure. The dissolution of a limited liability company does
23 not discharge a governor's or manager's liability for a prior failure of the limited
24 liability company to file a return or remit the tax due. The taxes, penalty, and
25 interest may be assessed and collected pursuant to the provisions of this chapter.
- 26 2. If the governors or managers elect not to be personally liable for the failure to file
27 the required returns or to pay the tax due, the limited liability company must be
28 required to make a cash deposit or post with the tax commissioner a bond or
29 undertaking executed by a surety company authorized to do business in this state.
30 The cash deposit, bond, or undertaking provided for in this section must be in an

- 1 amount equal to the estimated annual special fuel tax liability of the limited liability
- 2 company.