

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2155
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact sections 57-36-09.3, 57-36-09.4, 57-38-60.1, 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, 57-43.2-16.1, and 57-43.2-16.2 of the North Dakota Century Code, relating to an election to post a bond in lieu of corporate officer liability for the tobacco products tax, income tax, sales and use tax, motor vehicle fuel tax, and special fuel tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

57-36-09.3. Corporate officer liability.

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

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

57-36-09.4. Governor and manager liability.

1. If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, ~~the governor governors or manager managers,~~ jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, is are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the limited liability company.

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

57-38-60.1. Corporate officer liability.

1. If a corporation is an employer and fails for any reason to file the required returns or to pay the tax due, the ~~chairman, president, or chief operating officer~~ president, vice president, secretary, or treasurer, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments is personally liable for such failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual income tax withholding liability of the corporation.

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

57-38-60.2. Governor and manager liability.

1. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual income tax withholding liability of the limited liability company.

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

57-39.2-15.2. Governor and manager liability.

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

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

57-39.2-18.1. Corporate officer and limited liability company governor or manager liability.

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

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

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

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

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

57-43.1-17.2. Corporate officer liability.

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may

be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

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

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

57-43.1-17.3. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the limited liability company.

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

57-43.2-16.1. Corporate officer liability.

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

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

57-43.2-16.2. Governor and manager liability.

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

failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2155.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 96 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State