

SENATE BILL NO. 2327

Introduced by

Senators Schobinger, Grindberg, Syverson, Tollefson

Representatives Iverson, Ruby

1 A BILL for an Act to create and enact section 57-01-19 and chapters 57-64, 57-65, 57-66,
2 57-67, and 57-68 of the North Dakota Century Code, relating to tax liens and imposition of sales
3 and use taxes and gross receipts taxes; to amend and reenact subsection 5 of section 5-01-16,
4 subsection 3 of section 5-01-17, subsection 1 of section 6-09.8-01, section 10-33-93,
5 subsection 2 of section 11-09.1-05, subsection 5 of section 11-37-08, subsection 1 of section
6 12.1-32-09, section 20.1-13-21, subsection 3 of section 25-04-16, sections 27-17-06 and
7 37-27-06, subsection 16 of section 40-05.1-06, sections 40-57.3-01 and 40-57.3-04,
8 subsection 8 of section 40-63-01, sections 40-63-04, 40-63-06, 40-63-07, and 47-21-08.1,
9 subsection 1 of section 50-06.3-06, section 51-04-08, subsection 2 of section 52-06-30,
10 sections 54-09-09, 54-17.2-23, and 57-01-13, subsections 15 and 27 of section 57-02-08,
11 sections 57-32-01.1 and 57-34-04.5, subsection 2 of section 57-35.3-01, sections 57-35.3-02,
12 57-35.3-06, 57-35.3-11, and 57-35.3-12, subsection 1 of section 57-35.3-13, subsection 14 of
13 section 57-35.3-15, subsection 5 of section 57-40.3-01, section 57-40.3-02, subsection 6 of
14 section 57-40.3-04, sections 57-40.3-11 and 57-40.5-03, subsection 3 of section 57-63-10, and
15 section 65-04-26 of the North Dakota Century Code, relating to revisions to references to state
16 sales and use taxes and state individual and corporate income taxes; to repeal chapter 10-30.1,
17 sections 10-33-124 and 40-63-09, chapters 52-02.1, 57-38, 57-38.1, 57-38.3, 57-38.4, 57-38.5,
18 57-38.6, 57-39.2, 57-39.3, 57-39.5, 57-39.6, and 57-40.2, and section 57-59-02 of the North
19 Dakota Century Code, relating to elimination of state individual and corporate income taxes and
20 replacement of statutory provisions relating to imposition of sales and use taxes; to provide
21 penalties; and to provide a contingent effective date.

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

23 **SECTION 1. AMENDMENT.** Subsection 5 of section 5-01-16 of the North Dakota
24 Century Code is amended and reenacted as follows:

1 5. This section does not apply to a transaction in which an individual twenty-one
2 years of age or older who imports or transports into this state 2.38 gallons [9 liters]
3 or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less
4 of beer per month for personal use and not for resale from a person holding a valid
5 manufacturer's or retailer's license issued by the state of its domicile. Every
6 package of alcoholic beverages shipped directly to an individual in this state must
7 be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR
8 OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an
9 individual twenty-one years of age or older before delivering any alcoholic
10 beverages shipped directly to an individual in this state. A manufacturer or retailer
11 selling or shipping alcoholic beverages under this subsection shall obtain a direct
12 shipping permit from the state tax commissioner and pay an annual fee of fifty
13 dollars within thirty days of making the first shipment. A direct shipper shall pay the
14 wholesaler and retailer taxes to the state tax commissioner on all alcoholic
15 beverages sold to residents in this state at the rates set forth in sections 5-03-07
16 and ~~57-39.2-03.2~~ 57-64-02. A direct shipper shall file reports with the state tax
17 commissioner showing for each shipment, the quantity sold, the date shipped, and
18 the amount of tax due the state. A direct shipper is subject to section 5-03-06.
19 The state tax commissioner may initiate and maintain an action in a court of
20 competent jurisdiction to enjoin a violation of this subsection and may request
21 award of all costs and attorney's fees incurred by the state incidental to that action.
22 Upon determination by the state tax commissioner that an illegal sale or shipment
23 of alcoholic beverages has been made to a consumer in this state by either a
24 manufacturer or retailer of alcoholic beverages, the state tax commissioner may
25 notify both the bureau of alcohol, tobacco, firearms and explosives of the United
26 States department of the treasury and the licensing authority for the state in which
27 the manufacturer or retailer is domiciled that a state law pertaining to the regulation
28 of alcoholic beverages has been violated and may request those agencies to take
29 appropriate action.

30 **SECTION 2. AMENDMENT.** Subsection 3 of section 5-01-17 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 3. A domestic winery shall pay to the state the wholesaler taxes and the sales taxes
2 on all wines sold at retail by the licensee as set forth in sections 5-03-07 and
3 ~~57-39.2-03.2~~ 57-64-02.

4 **SECTION 3. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 1. "Beginning farmer" means a person who ~~qualifies as a beginning farmer under~~
7 ~~subsection 2 of section 57-38-67.~~ is:
8 a. A resident of this state;
9 b. Receiving more than half of that person's gross annual income from farming,
10 except for the year the person initially commences farming;
11 c. Intending to use any farmland to be purchased or rented for agricultural
12 purposes;
13 d. Except for tax-exempt transactions entered into prior to July 1, 1985, having
14 adequate training by education in the type of farming operation which the
15 person wishes to begin on the purchased or rented land referred to in
16 subdivision c through satisfactory participation in the adult farm management
17 education program of the state board for career and technical education or an
18 equivalent program approved by the agriculture commissioner; and
19 e. Having, including the net worth of any dependents and spouse, a net worth of
20 less than one hundred thousand dollars, not including the value of their equity
21 in their principal residence, the value of one personal or family motor vehicle,
22 and the value of their household goods, including furniture, appliances,
23 musical instruments, clothing, and other personal belongings.

24 **SECTION 4. AMENDMENT.** Section 10-33-93 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **10-33-93. Merger of corporation conducting activities as a hospital with a**
27 **corporation organized for profit - Retention of property tax status.** Notwithstanding any
28 provision of chapter 10-19.1 and this chapter, a corporation conducting activities as a hospital
29 may merge with a corporation incorporated for profit and form a corporation incorporated under
30 this chapter.

- 1 1. Notwithstanding chapter 57-02 or any other provision of law, any interest in
2 property of corporations merging under this section retains the same property tax
3 status after the merger as it had in the taxable year before the merger.
- 4 2. Notwithstanding chapter ~~57-39.2~~ 57-64 or ~~57-40.2~~ 57-67 or any other provision of
5 law, the sale, purchase, or use of any property by a corporation merging under this
6 section retains the same status under the sales and use tax laws after the merger
7 as it would have had before the merger.

8 **SECTION 5. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota
9 Century Code as effective after December 31, 2005, is amended and reenacted as follows:

- 10 2. Control its finances and fiscal affairs; appropriate money for its purposes, and
11 make payments of its debts and expenses; subject to the limitations of this section
12 levy and collect property taxes, sales and use taxes, motor vehicle fuels and
13 special fuels taxes, motor vehicle registration fees, and special assessments for
14 benefits conferred, for its public and proprietary functions, activities, operations,
15 undertakings, and improvements; contract debts, borrow money, issue bonds,
16 warrants, and other evidences of indebtedness; establish charges for any county or
17 other services to the extent authorized by state law, and establish debt and mill
18 levy limitations; provided, that all property in order to be subject to the assessment
19 provisions of this subsection must be assessed in a uniform manner as prescribed
20 by the state board of equalization and the state supervisor of assessments. A
21 charter or ordinance or act of a governing body of a home rule county may not
22 supersede any state law that determines what property or acts are subject to, or
23 exempt from, ad valorem taxes. A charter or ordinance or act of the governing
24 body of a home rule county may not supersede section 11-11-55.1 relating to the
25 sixty percent petition requirement for improvements and of section 40-22-18
26 relating to the barring proceeding for improvement projects. After December 31,
27 2005, sales and use taxes levied under this chapter:
 - 28 a. Must conform in all respects with regard to the taxable or exempt status of
29 items under chapters ~~57-39.2~~ 57-64 and ~~57-40.2~~ 57-67 and may not be
30 imposed at multiple rates with the exception of sales of electricity, piped
31 natural or artificial gas, or other heating fuels delivered by the seller or the

- 1 retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes,
2 manufactured homes, or mobile homes.
- 3 b. May not be newly imposed or changed except to be effective on the first day
4 of a calendar quarterly period after a minimum of ninety days notice to the tax
5 commissioner or, for purchases from printed catalogs, on the first day of a
6 calendar quarter after a minimum of one hundred twenty days notice to the
7 seller.
- 8 c. May not be limited to apply to less than the full value of the transaction or item
9 as determined for state sales and use tax purposes.
- 10 d. Must be subject to collection by the tax commissioner under an agreement
11 under section 57-01-02.1.

12 **SECTION 6. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 5. Bonds issued by a commerce authority under this section are declared to be
15 issued for an essential public government purpose, and together with interest and
16 income on the bonds, are exempt from ~~all individual and corporate~~ taxes imposed
17 under ~~sections section 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3.~~

18 **SECTION 7. AMENDMENT.** Subsection 1 of section 12.1-32-09 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 1. A court may sentence a convicted offender to an extended sentence as a
21 dangerous special offender or a habitual offender in accordance with this section
22 upon a finding of any one or more of the following:
- 23 a. The convicted offender is a dangerous, mentally abnormal person whose
24 conduct has been characterized by persistent aggressive behavior and the
25 behavior makes the offender a serious danger to other persons.
- 26 b. The convicted offender is a professional criminal who has substantial income
27 or resources derived from criminal activity.
- 28 c. The convicted offender is a habitual offender. The court may not make such a
29 finding unless the offender is an adult and has previously been convicted in
30 any state or states or by the United States of two felonies of class C or above
31 committed at different times when the offender was an adult. For the

1 purposes of this subdivision, a felony conviction in another state or under the
2 laws of the United States is considered a felony of class C or above if it is
3 punishable by a maximum term of imprisonment of five years or more.

4 d. The offender was convicted of an offense that seriously endangered the life of
5 another person and the offender had previously been convicted of a similar
6 offense.

7 e. The offender is especially dangerous because the offender used a firearm,
8 dangerous weapon, or destructive device in the commission of the offense or
9 during the flight therefrom.

10 A conviction shown on direct or collateral review or at the hearing to be invalid or
11 for which the offender has been pardoned on the ground of innocence must be
12 disregarded for purposes of subdivision c. In support of findings under
13 subdivision b, it may be shown that the offender has had control of income or
14 property not explained as derived from a source other than criminal activity. For
15 purposes of subdivision b, a substantial source of income means a source of
16 income which for any period of one year or more exceeds the minimum wage,
17 determined on the basis of a forty-hour week and a fifty-week year, without
18 reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of
19 1938, as amended, for an employee engaged in commerce or in the production of
20 goods for commerce, and which for the same period exceeds fifty percent of the
21 offender's declared federal adjusted gross income ~~under chapter 57-38~~.

22 **SECTION 8. AMENDMENT.** Section 20.1-13-21 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **20.1-13-21. Evidence of tax payment or exemption.** With an application for a
25 motorboat number and license under section 20.1-13-03 by an applicant in whose name the
26 motorboat has not previously been licensed, the applicant shall present proof of payment of
27 sales or use tax that was due upon acquisition or bringing the motorboat into this state for
28 storage or use in this state or shall present proof of exemption from sales or use taxes. Credit
29 for taxes paid by the applicant upon acquisition of the motorboat in another state must be
30 allowed as provided in section ~~57-40.2-14~~ 57-67-18 if proof of that payment is presented. To
31 establish that the motorboat was acquired through a casual sale and qualifies for exempt

1 status, the applicant shall present a receipt for the sale signed by the seller and showing the
2 seller's name and address. The department may waive the furnishing of a signed receipt for a
3 casual sale if the applicant shows good cause why a receipt is unavailable and signs a
4 statement showing the name and address of the seller and stating that to the best of the
5 applicant's knowledge the seller is not in the business of selling boats.

6 **SECTION 9. AMENDMENT.** Subsection 3 of section 25-04-16 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 3. Any patient, former patient, parent of a patient or former patient, guardian, or
9 personal representative who seeks relief from the payment of the cost of care and
10 treatment by filing an application for relief of payment shall do so with the
11 understanding that the supervising department may, in its discretion, and to its
12 satisfaction, verify any statement made in such application for relief of payment by
13 a request for information from financial institutions, including commercial banks,
14 and from other sources likely to possess verifying information. ~~Notwithstanding the~~
15 ~~provisions of section 57-38-57, this verification~~ Verification may include a review of
16 any of such applicant's state income tax return or any other document or report
17 documents or reports submitted to or held by any office or department of the state
18 of North Dakota or any of its political subdivisions.

19 **SECTION 10. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **27-17-06. Immediate withdrawal of present active judges from judges retirement**
22 **fund.** From and after July 1, 1973, each judge of the supreme or district court serving on that
23 date and each former judge of the supreme or district court, not receiving judicial retirement
24 salary, may elect to withdraw ~~his~~ that individual's previous contributions made pursuant to this
25 chapter, and thereafter not participate in a judicial retirement program provided for by law. This
26 option ceases to be available and may not be exercised after June 30, 1975. If a judge selects
27 this option, ~~he~~ that individual is entitled to receive the combined total of the following sums:

- 28 1. The entire amount of ~~his~~ that individual's previous contributions made pursuant to
29 this chapter, to be calculated to the date of election under this section; plus
- 30 2. An amount calculated by applying the vesting schedule set forth in section
31 54-52-11 to an amount equal to sixty percent of the judge's individual contributions

1 as calculated in subsection 1, plus earnings thereon as calculated in subsection 3;
2 plus
3 3. An amount calculated by applying the figure .05625 to the periodic annual or partial
4 annual balances in the individual judge's account during ~~his~~ that individual's years
5 of service prior to selecting the option provided by this section. The figure applied
6 pursuant to this subsection must be compounded annually.

7 ~~The total amounts received pursuant to this section may not be considered taxable income for~~
8 ~~the purposes of chapter 57-38, and may be treated as an additional adjustment reducing the~~
9 ~~amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the
10 option provided by this section must be made in writing to the director of the office of
11 management and budget.

12 **SECTION 11. AMENDMENT.** Section 37-27-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **37-27-06. Payments exempt from taxation and from execution - Assignments void**
15 **- Debts to state and political subdivisions not deducted.** Payments under this chapter are
16 exempt from all state and local taxes, ~~including an income tax liability determined under section~~
17 ~~57-38-30.3,~~ and from levy, garnishment, attachment, and sale on execution. Any pledge,
18 mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment
19 under this chapter is void and payment to the veteran may not be denied because of any sums
20 owed to the state or any political subdivisions, except as provided in section 37-27-05.

21 **SECTION 12. AMENDMENT.** Subsection 16 of section 40-05.1-06 of the North Dakota
22 Century Code as effective after December 31, 2005, is amended and reenacted as follows:

23 16. To impose registration fees on motor vehicles, or sales and use taxes in addition to
24 any other taxes imposed by law. After December 31, 2005, sales and use taxes
25 levied under this chapter:
26 a. Must conform in all respects with regard to the taxable or exempt status of
27 items under chapters ~~57-39.2~~ 57-64 and ~~57-40.2~~ 57-67 and may not be
28 imposed at multiple rates with the exception of sales of electricity, piped
29 natural or artificial gas, or other heating fuels delivered by the seller or the
30 retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes,
31 manufactured homes, or mobile homes.

- 1 b. May not be newly imposed or changed except to be effective on the first day
2 of a calendar quarterly period after a minimum of ninety days notice to the tax
3 commissioner or, for purchases from printed catalogs, on the first day of a
4 calendar quarter after a minimum of one hundred twenty days notice to the
5 seller.
- 6 c. May not be limited to apply to less than the full value of the transaction or item
7 as determined for state sales and use tax purposes.
- 8 d. Must be subject to collection by the tax commissioner under an agreement
9 under section 57-01-02.1.

10 **SECTION 13. AMENDMENT.** Section 40-57.3-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **40-57.3-01. City lodging tax - Imposition - Amount - Disposition.** The governing
13 body of any city may, by ordinance, impose a city tax, not to exceed two percent, upon the
14 gross receipts of retailers on the leasing or renting of hotel, motel, or tourist court
15 accommodations within the city for periods of less than thirty consecutive calendar days or one
16 month. The tax imposed by this section shall be in addition to the state sales tax on rental
17 accommodations provided in chapter ~~57-39.2~~ 57-64 and any city which imposes the tax upon
18 gross receipts described in this section shall deposit all proceeds in the city visitors' promotion
19 fund. Moneys deposited in the city visitors' promotion fund shall be spent only as provided in
20 this chapter. This chapter applies to all cities and does not limit the authority of a home rule city
21 to levy any taxes authorized by other provisions of law.

22 **SECTION 14. AMENDMENT.** Section 40-57.3-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative**
25 **expenses allowed - Rules.** The taxes imposed under this chapter are due and payable at the
26 same time the taxpayer is required to file a return under chapter ~~57-39.2~~ 57-64 and must be
27 collected and administered by the state tax commissioner in accordance with the relevant
28 provisions of chapter ~~57-39.2~~ 57-64. The amount the tax commissioner remits monthly to each
29 city as taxes collected for that city's visitors' promotion fund and visitors' promotion capital
30 construction fund must be reduced by three percent as an administrative fee necessary to
31 defray the cost of collecting the taxes and the expenses incident to collection. The

1 administrative fee must be deposited in the general fund in the state treasury. The tax
2 commissioner shall adopt rules necessary for the administration of this chapter. The penalties
3 and liabilities provided in ~~sections 57-39.2-18 and 57-39.2-18.1~~ chapter 57-64 specifically apply
4 to the filing of returns and administration of the taxes imposed under this chapter.

5 **SECTION 15. AMENDMENT.** Subsection 8 of section 40-63-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 8. "Taxpayer" means an individual, corporation, financial institution, or trust, including
8 those subject to the taxes imposed by chapter 57-35.3 ~~or 57-38~~ and includes a
9 partnership, subchapter S corporation, limited partnership, limited liability company,
10 or any other passthrough entity.

11 **SECTION 16. AMENDMENT.** Section 40-63-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **40-63-04. Income Financial institution tax exemptions.**

14 1. ~~An individual taxpayer who purchases or rehabilitates single family residential~~
15 ~~property for the individual's primary place of residence as a zone project is exempt~~
16 ~~from up to ten thousand dollars of personal income tax liability as determined~~
17 ~~under section 57-38-29 or 57-38-30.3 for five taxable years beginning with the date~~
18 ~~of occupancy or completion of rehabilitation.~~

19 2. Any taxpayer that purchases, leases, or rehabilitates residential or commercial
20 property for any business or investment purpose as a zone project is exempt from
21 any tax on income derived from the business or investment locations within the
22 zone for five taxable years, beginning with the date of purchase, lease, or
23 completion of rehabilitation.

24 3. ~~If the cost of a new business purchase or expansion of an existing business,~~
25 ~~approved as a zone project, exceeds seventy five thousand dollars, and the~~
26 ~~business is located in a city with a population of not more than two thousand five~~
27 ~~hundred, an individual taxpayer may, in lieu of the exemption provided in~~
28 ~~subsection 2, elect to take an income tax exemption of up to two thousand dollars~~
29 ~~of personal income tax liability as determined under section 57-38-29 or~~
30 ~~57-38-30.3. The election must be made on the taxpayer's zone project application.~~
31 The election is irrevocable and binding for the duration of the exemptions provided

1 in subsection 2 or 3. ~~If no election is made on the zone project application, the~~
2 taxpayer is only eligible for the exemption provided in subsection 2.

3 4. 2. The exemptions provided by this section do not eliminate any duty to file a return or
4 to report income as required under chapter 57-35.3 ~~or 57-38.~~

5 **SECTION 17. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **40-63-06. Historic preservation and renovation tax credit.** A credit against state tax
8 liability as determined under ~~sections~~ section 57-35.3-03, ~~57-38-29, 57-38-30, and 57-38-30.3~~
9 is allowed for investments in the historic preservation or renovation of property within the
10 renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to
11 a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in
12 which the preservation or renovation is completed. Any excess credit may be carried forward
13 for a period of up to five taxable years.

14 **SECTION 18. AMENDMENT.** Section 40-63-07 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **40-63-07. Renaissance fund organization - Exemption from taxation.**

- 17 1. Each city with a designated renaissance zone may establish a renaissance fund
18 organization, if the detailed plan for such an organization is clearly established in
19 the development plan and approved with the plan, or is submitted at a later date to
20 the department of commerce division of community services for approval after the
21 designation of a renaissance zone.
- 22 2. The purpose of a renaissance fund organization is solely to raise funds to be used
23 to make investments in zone projects and to make investments in designated
24 renaissance zone cities. A renaissance fund organization may provide financing to
25 projects undertaken by individuals, partnerships, limited partnerships, limited
26 liability companies, trusts, corporations, nonprofit organizations, and public entities.
27 The financing may include any combination of equity investments, loans,
28 guarantees, and commitments for financing. The amount of financing is not limited
29 by this chapter.
- 30 3. A renaissance fund organization is exempt from any tax imposed by chapter
31 57-35.3 ~~or 57-38.~~ An exemption under this section may be passed through to any

1 shareholder, partner, and owner if the renaissance fund organization is a
2 passthrough entity for tax purposes. A corporation or financial institution entitled to
3 the exemption provided by this subsection shall file required returns and report
4 income to the tax commissioner as ~~required by the provisions of those chapters as~~
5 ~~if the exemption did not exist. If an employer, this subsection does not exempt a~~
6 ~~renaissance fund organization from complying with the income tax withholding~~
7 ~~laws.~~

8 4. A credit against state tax liability as determined under section 57-35.3-03,
9 ~~57-38-29, 57-38-30, or 57-38-30.3~~ is allowed for investments in a renaissance fund
10 organization. The amount of the credit is fifty percent of the amount invested in the
11 renaissance fund organization during the taxable year. Any amount of credit which
12 exceeds a taxpayer's tax liability for the taxable year may be carried forward for up
13 to five taxable years after the taxable year in which the investment was made.

14 5. The total amount of credits allowed under this section may not exceed, in the
15 aggregate, an initial limit of two million five hundred thousand dollars. Upon
16 exhaustion of this initial limit, an additional two million five hundred thousand
17 dollars in credits is available for investments in renaissance fund organizations. A
18 renaissance fund organization that has received investments that qualify for these
19 additional credits under this subsection may not use more than fifty percent of such
20 investments for organization investments outside of a renaissance zone.

21 6. Income to a renaissance fund organization derived from the sale or refinancing of
22 zone properties financed wholly or in part by the organization may be disbursed as
23 annual dividends equal to the income, minus ten percent, derived from all sources
24 and proportional to the investment. In the event of a loss to the fund resulting in a
25 temporary diminishment of the fund below the original principal amount, no annual
26 dividend may be paid until the fund is restored.

27 7. Income to a renaissance fund organization derived from interest or the temporary
28 investment of its funds in certificates of deposit, bonds, treasury bills, or securities
29 may be used for administration.

30 8. If an investment in a renaissance fund organization which is the basis for a credit
31 under this section is redeemed by the investor within ten years of the date it is

1 purchased, the credit provided by this section for the investment must be
2 disallowed, and any credit previously claimed and allowed with respect to the
3 investment must be paid to the tax commissioner with the appropriate return of the
4 taxpayer covering the period in which the redemption occurred. When payments
5 are made to the tax commissioner under this section, the amount collected must be
6 handled in the same manner as if no credit had been allowed.

7 9. A renaissance fund organization shall secure an annual audit of its financial
8 records, prepared by an independent certified public accounting firm in accordance
9 with generally accepted auditing standards. The audit report must include a
10 statement of the percentage of annual investments received by the organization
11 which have been invested by the organization in investments permitted under this
12 chapter, including the use of investments, distinguishing between organization
13 investments made in renaissance zones and outside renaissance zones. A
14 renaissance fund organization shall file a copy of each audit of its financial records
15 under this subsection with the governing body of the city in which it was
16 established, the department of commerce division of community services, and the
17 tax commissioner. The department of commerce division of community services
18 shall provide an annual report to the budget section of the legislative council
19 showing the conclusions of audit reports filed under this subsection.

20 **SECTION 19. AMENDMENT.** Section 47-21-08.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **47-21-08.1. Administration.** The provisions of chapter ~~57-39.2~~ 57-64, pertaining to
23 the administration of the retail sales tax, including provisions for penalty and interest, not in
24 conflict with the provisions of this chapter, shall govern the administration of the tax levied by
25 this chapter.

26 **SECTION 20. AMENDMENT.** Subsection 1 of section 50-06.3-06 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 1. Any person liable for the expenses of care and treatment at the state hospital may
29 make application to the department to pay less than the expenses charged. The
30 application must be accompanied by proof of the applicant's inability to pay. Any
31 person who seeks relief from the payment of expenses for services provided by the

1 state hospital shall do so with the understanding that the department may verify
2 any statement made in such application by a request for information from financial
3 institutions, including commercial banks. ~~Notwithstanding the provisions of section~~
4 ~~57-38-57, this verification~~ Verification may include a review of any of the
5 applicant's ~~state income tax return or any other document or report~~ documents or
6 reports submitted to or held by any office or department of the state of North
7 Dakota, or any of its political subdivisions.

8 **SECTION 21. AMENDMENT.** Section 51-04-08 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **51-04-08. Certain excepted sales.** The provisions of this chapter do not apply to the
11 following:

- 12 1. Sales made to dealers by commercial travelers or selling agents in the usual
13 course of business.
- 14 2. Sales made by persons soliciting orders of goods, wares, merchandise, or
15 personal property for future delivery, and not from a stock or supply carried by the
16 solicitor or otherwise available for immediate delivery to the purchaser, in which the
17 solicitor does not demand or accept payment of any money or deposit in advance
18 or on delivery without first providing the purchaser with the privilege of examination
19 of the goods, wares, merchandise, or personal property.
- 20 3. Sales made by a person who has a sales or use tax permit in accordance with
21 chapter ~~57-39-2~~ 57-64 or ~~57-40-2~~ 57-67, pays contributions to job service North
22 Dakota for unemployment compensation in accordance with chapter 52-04, and
23 who has reported to workforce safety and insurance in accordance with chapter
24 65-04.
- 25 4. Sales made by a seller at residential premises pursuant to an invitation issued by
26 the owner or legal occupant of such premises.

27 **SECTION 22. AMENDMENT.** Subsection 2 of section 52-06-30 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 2. An individual filing a new claim for unemployment compensation benefits, at the
30 time of filing the claim, must be advised that:

- 1 a. Unemployment compensation is subject to federal income tax ~~and state~~
2 ~~income tax~~;
- 3 b. Requirements exist pertaining to estimated federal ~~and state~~ tax payments;
- 4 c. The individual may elect to have federal income tax deducted and withheld
5 from the individual's payment of unemployment compensation benefits at the
6 amount specified in the federal Internal Revenue Code; and
- 7 d. ~~The individual, having elected to have federal income tax withheld, may also~~
8 ~~elect to have state income tax deducted and withheld from the individual's~~
9 ~~payment of unemployment compensation at a rate determined by the tax~~
10 ~~commissioner pursuant to section 57-38-59; and~~
- 11 e. The individual is permitted to change a previously elected withholding status.
12 Amounts deducted and withheld from unemployment compensation must
13 remain in the unemployment fund until transferred to the federal ~~and state~~
14 taxing authority as payment of income tax. The bureau shall follow all
15 procedures specified by the United States department of labor; and the
16 federal internal revenue service; ~~and the tax commissioner~~ pertaining to the
17 deducting and withholding of income tax. Amounts must be deducted and
18 withheld under this section only after amounts are deducted and withheld for
19 any overpayments of unemployment compensation, child support obligations,
20 or any other amounts required to be deducted and withheld under this
21 chapter.

22 **SECTION 23. AMENDMENT.** Section 54-09-09 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-09-09. Computerized central indexing system - Rules.**

- 25 1. The secretary of state shall maintain a computerized central indexing system that
26 contains the information filed with the office of the secretary of state or with any of
27 the offices of the recorder in this state pursuant to sections 35-13-02, 35-17-04,
28 35-20-16, 35-30-02, 35-31-02, 35-34-04, 35-34-06, 41-09-72, 57-01-19, 57-28-29,
29 ~~57-38-49~~, 57-39.2-13, 57-40.2-16, 57-40.3-07.1, 57-43.1-17.4, 57-43.2-16.3, and
30 57-51-11. The system must connect each recorder's office to the secretary of
31 state's office through the information technology department. The system must

1 allow access to financing statement information by equipment that conforms to
2 requirements determined by the information technology department. The system
3 must have safeguards to allow access to information that is in the system relating
4 to security interests or liens and to prevent unauthorized alteration or deletion of
5 that information and to allow access to other information in the system as
6 prescribed by the secretary of state.

7 2. Within two working days of receipt of a financing statement, continuation
8 statement, amendment, or termination statement filed pursuant to chapter 41-09 or
9 a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or
10 35-31-02, the recorder or secretary of state shall file the information contained in
11 the statement in the computerized central indexing system. A computer printout of
12 information from the system is prima facie evidence of the existence or
13 nonexistence of the filing of a financing statement or lien. The secretary of state
14 shall prescribe one form that can be used to perfect a security interest in farm
15 products or gain protection under the central notice system, or both.

16 3. The secretary of state may adopt rules necessary to implement this section and
17 sections 54-09-10 and 54-09-11.

18 **SECTION 24. AMENDMENT.** Section 54-17.2-23 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-17.2-23. State building authority lease payments - Limitation.** The general fund
21 amount of lease payments for a biennium associated with capital construction projects financed
22 by the industrial commission acting as the state building authority may not exceed the amount
23 equal to a portion of sales, use, and motor vehicle excise tax collections equal to ten percent of
24 an amount, determined by multiplying the quotient of one percent divided by the general sales
25 tax rate that was in effect when the taxes were collected, times the net sales, use, and motor
26 vehicle excise tax collections under chapters ~~57-39.2, 57-40.2, and 57-40.3, 57-64, 57-65,~~
27 57-66, and 57-67. The computation for the authorized general fund lease payments for a
28 biennium must be based on the projected sales, use, and motor vehicle excise tax collections
29 presented to the legislative assembly at the close of the most recently adjourned regular
30 legislative session. Lease payment amounts for any particular project must be calculated as of
31 the date the related bonds are issued.

1 **SECTION 25. AMENDMENT.** Section 57-01-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-01-13. (Contingent expiration date - See note) Collection of delinquent sales,**
4 **use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle**
5 **excise, telecommunications carriers, ~~income,~~ and business and corporation privilege**
6 **and other taxes.**

- 7 1. ~~Notwithstanding the secrecy and confidential information provisions in~~
8 ~~chapters 57-38, 57-39.2, and 57-40.2, the~~ The tax commissioner may, for the
9 purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels,
10 special fuels, importer for use, aviation fuel, motor vehicle excise,
11 telecommunications carriers, ~~income,~~ or business and corporation privilege taxes
12 or any other taxes collected by the tax commissioner due from a taxpayer not
13 residing or domiciled in this state, contract with any collection or credit agency,
14 within or without the state, for the collection of the delinquent ~~sales, use, motor~~
15 ~~vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,~~
16 ~~telecommunications carriers, income, or business and corporation privilege~~ taxes,
17 including penalties and interest thereon. For purposes of this section, a delinquent
18 tax is defined as a tax liability that is due and owing for a period longer than six
19 months and for which the taxpayer has been given at least three notices in writing
20 requesting payment. The notices must be sent by first-class mail to the taxpayer at
21 the taxpayer's last-known mailing address. The third notice must be sent with a
22 copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent
23 tax liability pursuant to this section, subsequent ~~sales, use, motor vehicle fuels,~~
24 ~~special fuels, importer for use, aviation fuel, motor vehicle excise,~~
25 ~~telecommunications carriers, income, or business and corporation privilege~~ taxes
26 that become due from the same taxpayer may be assigned immediately and
27 without further notice to the taxpayer, so long as the originally assigned liability has
28 not been fully collected.
- 29 2. a. Fees for services, reimbursement, or any other remuneration to a collection or
30 credit agency must be based on the amount of tax, penalty, and interest
31 actually collected. Each contract entered into between the tax commissioner

- 1 and the collection or credit agency must provide for the payment of fees for
2 the services, reimbursements, or other remuneration not in excess of fifty
3 percent of the amount of delinquent ~~sales, use, motor vehicle fuels, special~~
4 ~~fuels, importer for use, aviation fuel, motor vehicle excise, income, or~~
5 ~~business and corporation privilege~~ tax, including penalties and interest
6 actually collected.
- 7 b. All funds collected by the collection or credit agency must be remitted to the
8 tax commissioner monthly from the date of collection from a taxpayer. Forms
9 to be used for the remittances must be prescribed by the tax commissioner.
10 The tax commissioner shall transfer the funds to the state treasurer for
11 deposit in the state general fund. An amount equal to the amount of fees for
12 services, reimbursement, or any other remuneration to the collection or credit
13 agency as set forth in the contract authorized by this section is appropriated
14 as a standing and continuing appropriation to the tax commissioner for
15 payment of fees due under the contract.
- 16 c. Before entering into a contract, the tax commissioner shall require a bond
17 from the collection or credit agency not in excess of ten thousand dollars,
18 guaranteeing compliance with the terms of the contract.
- 19 3. A collection or credit agency entering into a contract with the tax commissioner for
20 the collection of delinquent taxes pursuant to this section thereby agrees that it is
21 doing business in this state for the purposes of the North Dakota ~~income tax and~~
22 ~~business and corporation privilege~~ tax laws.

23 **(Contingent effective date - See note) Collection of delinquent sales, use, motor**
24 **vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,**
25 **telecommunications carriers, ~~income~~, and business and corporation privilege and other**
26 **taxes.**

- 27 1. ~~Notwithstanding the secrecy and confidential information provisions in~~
28 ~~chapters 57-38 and 57-39.2, the~~ The tax commissioner may, for the purpose of
29 collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels,
30 importer for use, aviation fuel, motor vehicle excise, telecommunications carriers,
31 ~~income~~, or business and corporation privilege taxes or any other taxes collected by

1 the tax commissioner due from a taxpayer not residing or domiciled in this state,
2 contract with any collection or credit agency, within or without the state, for the
3 collection of the delinquent ~~sales, use, motor vehicle fuels, special fuels, importer~~
4 ~~for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or~~
5 ~~business and corporation privilege~~ taxes, including penalties and interest thereon.
6 For purposes of this section, a delinquent tax is defined as a tax liability that is due
7 and owing for a period longer than six months and for which the taxpayer has been
8 given at least three notices in writing requesting payment. The notices must be
9 sent by regular mail to the taxpayer at the taxpayer's last-known mailing address.
10 The third notice must be sent with a copy of an affidavit of mailing. If the tax
11 commissioner has assigned a delinquent tax liability pursuant to this section,
12 subsequent ~~sales, use, motor vehicle fuels, special fuels, importer for use, aviation~~
13 ~~fuel, motor vehicle excise, income, or business and corporation privilege~~ taxes that
14 become due from the same taxpayer may be assigned immediately and without
15 further notice to the taxpayer, so long as the originally assigned liability has not
16 been fully collected.

- 17 2. a. Fees for services, reimbursement, or any other remuneration to a collection or
18 credit agency must be based on the amount of tax, penalty, and interest
19 actually collected. Each contract entered into between the tax commissioner
20 and the collection or credit agency must provide for the payment of fees for
21 the services, reimbursements, or other remuneration not in excess of fifty
22 percent of the amount of delinquent ~~sales, use, motor vehicle fuels, special~~
23 ~~fuels, importer for use, aviation fuel, motor vehicle excise, income, or~~
24 ~~business and corporation privilege~~ tax, including penalties and interest
25 actually collected.
- 26 b. All funds collected, less the fees for collection services, as provided in the
27 contract, must be remitted to the tax commissioner monthly from the date of
28 collection from a taxpayer. Forms to be used for the remittances must be
29 prescribed by the tax commissioner.

1 c. Before entering into a contract, the tax commissioner shall require a bond
2 from the collection or credit agency not in excess of ten thousand dollars,
3 guaranteeing compliance with the terms of the contract.

4 3. A collection or credit agency entering into a contract with the tax commissioner for
5 the collection of delinquent taxes pursuant to this section thereby agrees that it is
6 doing business in this state for the purposes of the North Dakota ~~income tax and~~
7 ~~business and corporation privilege~~ tax laws.

8 **SECTION 26.** Section 57-01-19 of the North Dakota Century Code is created and
9 enacted as follows:

10 **57-01-19. Lien of tax - Presentation of lien - Satisfaction of lien.** Whenever any
11 taxpayer liable to pay a tax or penalty imposed under chapter 57-64, 57-65, 57-66, or 57-67
12 refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to
13 such tax, together with the costs that may accrue in addition thereto, is a lien in favor of the
14 state of North Dakota upon all property and rights to property, whether real or personal,
15 belonging to said taxpayer. Such lien attaches at the time the tax becomes due and payable
16 and continues until the liability for such amount is satisfied.

17 Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in,
18 or lien on, any property situated in the state, prior to the commissioner filing in the central
19 indexing system maintained by the secretary of state a notice of the lien under this section,
20 takes free of, or has priority over, the lien. The commissioner shall index in the central indexing
21 system the following data:

- 22 1. The name of the taxpayer.
23 2. The tax identification number or social security number of the taxpayer.
24 3. The name "State of North Dakota" as claimant.
25 4. The date and time the notice of lien was indexed.
26 5. The amount of the lien.

27 The notice of lien is effective as of eight a.m. next following the indexing of the notice.
28 Any notice of lien filed by the commissioner with a recorder may be indexed in the central
29 indexing system without changing its original priority as to property in the county where the lien
30 was filed. The commissioner shall index any notice of lien with no payment of fees or costs to
31 the secretary of state.

1 Upon payment of the tax, together with any accrued penalties and interest, as to which
2 the commissioner has filed a notice of lien, the commissioner shall index a satisfaction of the
3 lien in the central indexing system without fees or costs.

4 **SECTION 27. AMENDMENT.** Subsections 15 and 27 of section 57-02-08 of the North
5 Dakota Century Code are amended and reenacted as follows:

- 6 15. a. All farm structures and improvements located on agricultural lands.
- 7 (1) This subsection must be construed to exempt farm buildings and
8 improvements only, and may not be construed to exempt from taxation
9 industrial plants, or structures of any kind not used or intended for use
10 as a part of a farm plant, or as a farm residence.
- 11 (2) Any structure or improvement used primarily in connection with a retail
12 or wholesale business other than farming, any structure or improvement
13 located on platted land within the corporate limits of a city, or any
14 structure or improvement located on railroad operating property subject
15 to assessment under chapter 57-05 is not exempt under this
16 subsection. For purposes of this paragraph, "business other than
17 farming" includes processing to produce a value-added physical or
18 chemical change in an agricultural commodity beyond the ordinary
19 handling of that commodity by a farmer prior to sale.
- 20 (3) The following factors may not be considered in application of the
21 exemption under this subsection:
- 22 (a) Whether the farmer grows or purchases feed for animals raised
23 on the farm.
- 24 (b) Whether animals being raised on the farm are owned by the
25 farmer.
- 26 (c) Whether the farm's replacement animals are produced on the
27 farm.
- 28 (d) Whether the farmer is engaged in contract feeding of animals on
29 the farm.
- 30 b. It is the intent of the legislative assembly that this exemption as applied to a
31 residence must be strictly construed and interpreted to exempt only a

1 residence that is situated on a farm and which is occupied or used by a
2 person who is a farmer and that the exemption may not be applied to property
3 which is occupied or used by a person who is not a farmer. For purposes of
4 this subdivision:

5 (1) "Farm" means a single tract or contiguous tracts of agricultural land
6 containing a minimum of ten acres [4.05 hectares] and for which the
7 farmer, actually farming the land or engaged in the raising of livestock
8 or other similar operations normally associated with farming and
9 ranching, has received annual net income from farming activities which
10 is fifty percent or more of annual net income, including net income of a
11 spouse if married, during any of the three preceding calendar years.

12 (2) "Farmer" means an individual who normally devotes the major portion
13 of time to the activities of producing products of the soil, poultry,
14 livestock, or dairy farming in such products' unmanufactured state and
15 has received annual net income from farming activities which is fifty
16 percent or more of annual net income, including net income of a spouse
17 if married, during any of the three preceding calendar years. "Farmer"
18 includes a "retired farmer" who is retired because of illness or age and
19 who at the time of retirement owned and occupied as a farmer the
20 residence in which the person lives and for which the exemption is
21 claimed. "Farmer" includes a "beginning farmer" who has begun
22 occupancy and operation of a farm within the three preceding calendar
23 years; who normally devotes the major portion of time to the activities of
24 producing products of the soil, poultry, livestock, or dairy farming in
25 such products' unmanufactured state; and who does not have a history
26 of farm income from farm operation for each of the three preceding
27 calendar years.

28 (3) "Net income from farming activities" means taxable income from those
29 activities as computed for federal income tax purposes ~~pursuant to~~
30 ~~chapter 57-38~~ adjusted to include the following:

- 1 (a) The difference between gross sales price less expenses of sale
2 and the amount reported for sales of agricultural products for
3 which the farmer reported a capital gain.
- 4 (b) Interest expenses from farming activities which have been
5 deducted in computing taxable income.
- 6 (c) Depreciation expenses from farming activities which have been
7 deducted in computing taxable income.
- 8 (4) When exemption is claimed under this subdivision for a residence, the
9 assessor may require that the occupant of the residence who it is
10 claimed is a farmer provide to the assessor for the year or years
11 specified by the assessor a written statement in which it is stated that
12 fifty percent or more of the net income of that occupant, and spouse if
13 married and both spouses occupy the residence, was, or was not, net
14 income from farming activities.
- 15 (5) In addition to any of the provisions of this subsection or any other
16 provision of law, a residence situated on agricultural land is not exempt
17 for the year if it is occupied by an individual engaged in farming who
18 had nonfarm income, including that of a spouse if married, of more than
19 forty thousand dollars during each of the three preceding calendar
20 years. This paragraph does not apply to a retired farmer or a beginning
21 farmer as defined in paragraph 2.
- 22 (6) For purposes of this section, "livestock" includes "nontraditional
23 livestock" as defined in section 36-01-00.1.
- 24 (7) A farmer operating a bed and breakfast facility in the farm residence
25 occupied by that farmer is entitled to the exemption under this section
26 for that residence if the farmer and the residence would qualify for
27 exemption under this section except for the use of the residence as a
28 bed and breakfast facility.
- 29 27. Installations, machinery, and equipment of systems in new or existing buildings or
30 structures, designed to provide heating or cooling or to produce electrical or
31 mechanical power, or any combination of these, or to store any of these, by

1 utilization of solar, wind, or geothermal energy; provided, that if the solar, wind, or
2 geothermal energy device is part of a system which uses other means of energy,
3 only that portion of the total system directly attributable to solar, wind, or
4 geothermal energy shall be exempt. Provided, however, that any exemptions
5 granted by this subsection shall be valid for a five-year period following installation
6 of any such system. For the purposes of this subsection, ~~solar or wind energy~~
7 ~~devices shall have the meaning provided in section 57-38-01.8; geothermal energy~~
8 ~~device means a system or mechanism or series of mechanisms designed to~~
9 ~~provide heating or cooling or to produce electrical or mechanical power, or any~~
10 ~~combination of these, by a method which extracts or converts the energy naturally~~
11 ~~occurring beneath the earth's surface in rock structures, water, or steam.:~~

12 a. "Geothermal energy device" means a system or mechanism or series of
13 mechanisms designed to provide heating or cooling or to produce electrical or
14 mechanical power, or any combination of these, by a method which extracts
15 or converts the energy naturally occurring beneath the earth's surface in rock
16 structures, water, or steam.

17 b. "Solar or wind energy device" means a system or mechanism or series of
18 mechanisms designed to provide heating or cooling or to produce electrical or
19 mechanical power, or any combination of these, or to store any of these, by a
20 method which converts the natural energy of the sun or wind.

21 **SECTION 28. AMENDMENT.** Section 57-32-01.1 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **57-32-01.1. Property assessed in lieu of registration fees and sales and use taxes.**

24 The taxes imposed by chapters 57-06, 57-07, 57-08, 57-13, and this chapter on air carrier
25 transportation property are in lieu of the registration fees imposed by section 2-05-11 and are in
26 lieu of sales and use taxes which would otherwise be imposed on the sale, storage, use, or
27 consumption of air carrier transportation property ~~except for the provisions of sections~~
28 ~~57-39.2-04 and 57-40.2-04.~~

29 **SECTION 29. AMENDMENT.** Section 57-34-04.5 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **57-34-04.5. Resale certificates.** A telecommunications carrier who receives a resale
2 certificate certifying that another telecommunications carrier holds a North Dakota sales and
3 use tax permit for sales or use tax purposes ~~under section 57-39.2-14~~ is relieved from
4 submitting the telecommunications gross receipts tax upon the sale of telecommunications
5 services to be resold by the telecommunications carrier submitting the certificate. When a
6 telecommunications carrier submits a false resale certificate to another telecommunications
7 carrier, the telecommunications carrier that submitted the certificate is liable for the
8 telecommunications gross receipts tax on the sale. A hospital, hotel, motel, or similar place of
9 temporary accommodation selling telecommunications service to its patients or guests is not a
10 telecommunications carrier under this section.

11 **SECTION 30. AMENDMENT.** Subsection 2 of section 57-35.3-01 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. "Financial institution" means:

- 14 a. A corporation or other business entity registered under state law as a bank
15 holding company, registered under the Bank Holding Company Act of 1956,
16 as amended [Pub. L. 84-240; 70 Stat. 133; 12 U.S.C. 1841 et seq.], or
17 registered as a savings and loan holding company under the National
18 Housing Act, as amended [Pub. L. 73-847; 48 Stat. 1246; 12 U.S.C. 1701
19 et seq.];
- 20 b. A national bank organized and existing as a national bank association
21 pursuant to the provisions of the National Bank Act [1864 ch. 106, § 5;
22 13 Stat. 100; 12 U.S.C. 21 et seq.];
- 23 c. A savings association or federal savings bank as defined in the Federal
24 Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 873; 12 U.S.C. 1813(b)(1)];
- 25 d. A bank or thrift institution incorporated or organized under the laws of any
26 state;
- 27 e. A trust company organized under the laws of any state, the United States, a
28 dependency or insular possession of the United States, or a foreign country;
- 29 f. A corporation organized under the provisions of Public Law No. 63-6, § 25A
30 [38 Stat. 273; 12 U.S.C. 611 to 631];

- 1 g. An agency or branch of a foreign depository as defined in Public Law
2 No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
- 3 h. A production credit association organized under the Farm Credit Act of 1933
4 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which
5 held by the federal production credit corporation has been retired;
- 6 i. A corporation the voting stock of which is more than fifty percent owned,
7 directly or indirectly, by any person or business entity described in
8 subdivisions a through h other than an insurance company taxable under
9 section 26.1-03-17 ~~or a corporation taxable under chapter 57-38~~;
- 10 j. A corporation or other business entity that derives more than fifty percent of
11 its total gross income for financial accounting purposes from finance leases.
12 For purposes of this subdivision, a "finance lease" means any lease
13 transaction that is the functional equivalent of an extension of credit and which
14 transfers substantially all of the benefits and risks incident to the ownership of
15 property. The phrase includes any "direct financing lease" or "leverage lease"
16 that meets the criteria of financial accounting standards board statement
17 no. 13, "accounting for leases", or any other lease that is accounted for as a
18 financing by a lessor under generally accepted accounting principles. For the
19 classification under this subdivision to apply:
- 20 (1) The average of the gross income in the current tax year and
21 immediately preceding two tax years must satisfy the more than fifty
22 percent requirement; and
- 23 (2) Gross income from incidental or occasional transactions must be
24 disregarded; or
- 25 k. Any other person or business entity, other than an insurance company taxable
26 under section 26.1-03-17, a real estate broker, or a securities dealer, ~~or a~~
27 ~~person or entity taxable under chapter 57-38~~, which derives more than fifty
28 percent of its gross income from activities that a person described in
29 subdivisions b through h and j is authorized to transact. For the purpose of
30 this subsection, the computation of gross income does not include income
31 from nonrecurring, extraordinary items.

1 The commissioner may exclude any person from the application of subdivision k
2 upon that person proving, by clear and convincing evidence, that the
3 income-producing activity of that person is not in substantial competition with those
4 persons described in subdivisions b through h and j.

5 **SECTION 31. AMENDMENT.** Section 57-35.3-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-35.3-02. Taxable income.**

- 8 1. In determining "taxable income" there must be added to federal taxable income:
- 9 a. The adjustments provided by subdivisions c, d, and g of subsection 1 of
10 section 57-38-01.3 as they existed before January 1, 2007;
- 11 b. Interest not subject to federal tax upon obligations of the state of North Dakota
12 and its political subdivisions;
- 13 c. The amount of any charitable contribution deduction taken for federal income
14 tax purposes under section 170 of the Internal Revenue Code;
- 15 d. In the case of a building and loan association or savings and loan association,
16 the amount of any bad debt reserve deduction taken for federal income tax
17 purposes under section 585 of the Internal Revenue Code; and
- 18 e. Dividends paid by a federal reserve bank to the extent not subject to federal
19 tax.
- 20 2. In determining "taxable income" there must be subtracted from federal taxable
21 income:
- 22 a. The adjustments provided by subdivision b of subsection 1 of section
23 57-38-01.3 as it existed before January 1, 2007;
- 24 b. Repealed by S.L. 2003, ch. 529, § 3;
- 25 c. In the case of a building and loan association or savings and loan association
26 that uses the bad debt reserve method under section 585 of the Internal
27 Revenue Code to account for bad debts for federal income tax purposes, an
28 amount equal to the deduction for bad debts that would have been allowed
29 under section 166(a) of the Internal Revenue Code if a deduction had not
30 been claimed under section 585 or 593;

- 1 d. The amount of any adjustments taken into account for federal income tax
2 purposes under section 593(g) of the Internal Revenue Code;
- 3 e. The amount of any interest and expenses relating to income not taxable for
4 federal income tax purposes if the income is taxable under sections
5 57-35.3-01 through 57-35.3-12 and the interest and expenses were
6 disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal
7 Revenue Code in computing federal taxable income;
- 8 f. The amount of any wage and salary expenses disallowed as deductions
9 under section 280C(a) of the Internal Revenue Code in computing federal
10 taxable income;
- 11 g. An amount equal to the deduction for charitable contributions that would be
12 allowed for federal income tax purposes under section 170 of the Internal
13 Revenue Code if the percentage limitation of section 170(b)(2) of the Internal
14 Revenue Code was applied in all relevant taxable periods to taxable income,
15 rather than federal taxable income, but computed without regard to this
16 subdivision and that portion of subdivision a that refers to subdivision g of
17 subsection 1 of section 57-38-01.3 as it existed before January 1, 2007.
18 However, no deduction is allowable for a contribution if and to the extent that
19 a credit is allowed for the contribution under section 57-35.3-05;
- 20 h. The amount of net income not allocated and apportioned to this state under
21 sections 57-35.3-13 through 57-35.3-17, but only to the extent that the
22 amount of net income not allocated and apportioned to this state under those
23 sections is not included in any adjustment made pursuant to the preceding
24 subdivisions; and
- 25 i. The amount of federal income tax liability for the same taxable year for which
26 North Dakota taxable income is being determined, to the extent that the
27 federal taxes are computed upon income that becomes part of North Dakota
28 taxable income. Provided, that no adjustment to federal income taxes, paid or
29 accrued, is required because of allowable deductions to federal taxable
30 income made under the cost recovery provisions of subdivision b of
31 subsection 5 of section 57-38-01 as it existed before January 1, 2007.

1 Federal income taxes for prior periods assessed against the taxpayer by
2 reason of audit or other adjustment by the internal revenue service, or
3 voluntary disclosure by the taxpayer, are not deductible except in the period in
4 which income so taxed was reported or reportable or in which an adjustment
5 was required but only after an adjustment is made by or with the office of the
6 state tax commissioner. A refund of federal income tax must be reported and
7 included in North Dakota taxable income in the year in which the tax was
8 originally deducted. Income must be further reduced by any federal
9 alternative minimum tax when a federal credit for a prior year minimum tax is
10 taken. This reduction is limited to any federal alternative minimum tax
11 previously disallowed in computing North Dakota taxable income and may not
12 exceed North Dakota taxable income computed before the North Dakota net
13 operating loss deduction. Any excess may be carried forward to the next
14 taxable year a federal credit for a prior year minimum tax is taken.

15 3. A net operating loss for any prior taxable period, attributable to North Dakota
16 sources, must be allowed as a deduction from the sum otherwise calculated under
17 this section to the extent that it exceeds the taxable income for each of the prior
18 taxable years to which the loss may be carried under sections 57-35.3-01 through
19 57-35.3-12 or under prior chapters 57-35, 57-35.1, ~~or 57-35.2, or corporations~~
20 ~~under chapter 57-38~~, governing the taxation of the taxpayer. Net operating losses
21 may be carried forward for the same time period as federal net operating losses
22 may be carried forward. If a financial institution uses an apportionment formula in
23 the loss year to determine the amount of income or loss that is attributable to North
24 Dakota sources, the amount of the North Dakota loss so determined is the net
25 operating loss attributable to North Dakota sources for purposes of this subsection.
26 No deduction may be taken for a carryforward when determining the amount of net
27 operating loss that is attributable to North Dakota sources. No net operating loss
28 carryback deduction is allowed.

29 4. The commissioner may adopt rules to prevent requiring income that had been
30 previously taxed under sections 57-35.3-01 through 57-35.3-12, or prior law
31 governing the taxation of financial institutions, from being taxed again because of

1 the provisions of sections 57-35.3-01 through 57-35.3-12 and to adopt rules to
2 prevent any income from becoming exempt from taxation because of sections
3 57-35.3-01 through 57-35.3-12 if it would otherwise have been subject to taxation
4 under sections 57-35.3-01 through 57-35.3-12.

5 5. If it appears to the commissioner that the segregation of assets shown by any
6 return made under sections 57-35.3-01 through 57-35.3-12 does not properly
7 reflect the taxpayer's activity or business done, or the income earned from the
8 taxpayer's activity or from business done in this state, because of the character of
9 the taxpayer's business and the character and location of its assets, the
10 commissioner may equitably adjust the tax.

11 **SECTION 32. AMENDMENT.** Section 57-35.3-06 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-35.3-06. Tax return.** On or before April fifteenth of each year, the taxpayer shall file
14 with the commissioner, on forms or in a manner prescribed by the commissioner, a report in
15 writing under oath showing the amount of taxable income of the financial institution for the
16 preceding calendar year. If required by the commissioner, the return must be accompanied by
17 a true copy of the federal income tax return of the taxpayer or by equivalent information in the
18 form and manner prescribed by the commissioner. A true copy of the federal income tax return
19 must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed
20 the return required by this section if required by the commissioner before the expiration of the
21 applicable period for assessment of additional tax liability ~~under section 57-38-38~~. The
22 commissioner may prescribe alternative methods for signing, subscribing, or verifying a return
23 filed by electronic means, including telecommunications, that has the same validity and
24 consequence as the actual signature and written declaration for a paper return. The
25 commissioner may grant a reasonable extension of time for filing a return ~~under the standards~~
26 ~~and terms applicable to other corporations under section 57-38-34~~.

27 **SECTION 33. AMENDMENT.** Section 57-35.3-11 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **57-35.3-11. Refunds.** Refunds of the tax imposed by sections 57-35.3-01 through
30 57-35.3-12, including related interest, must be paid from the state general fund. An amount
31 equal to the portion of any such refund attributable to tax collections deposited in the financial

1 institution tax distribution fund must be reimbursed to the state general fund from the first
2 available assets of the financial institution tax distribution fund, with interest thereon at the rate
3 prescribed by section 57-38-35.2 as it existed before January 1, 2007, from the date of
4 payment of the refund from the state general fund. The amounts necessary to pay these
5 refunds are hereby appropriated to the state treasurer as a standing and continuing
6 appropriation for payment under this section.

7 **SECTION 34. AMENDMENT.** Section 57-35.3-12 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-35.3-12. Applicable provisions of chapter 57-38 relating to administration,**
10 **interest, and penalties.** The provisions of section 57-38-33, subsection 1 of section 57-38-34,
11 sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37, 57-38-38, 57-38-39, 57-38-40,
12 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49, 57-38-50, 57-38-51, 57-38-53,
13 57-38-54, 57-38-56, and 57-38-57 as they existed before January 1, 2007, insofar as consistent
14 therewith, govern the administration of sections 57-35.3-01 through 57-35.3-12. For this
15 purpose, the term "corporation", as used in the sections listed in this section, includes a
16 financial institution.

17 **SECTION 35. AMENDMENT.** Subsection 1 of section 57-35.3-13 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 1. Except as otherwise specifically provided, a financial institution whose business
20 activity is taxable both within and without this state shall allocate and apportion its
21 net income as provided in sections 57-35.3-13 through 57-35.3-17. All items of
22 nonbusiness income, meaning income that is not includable in the apportionable
23 income tax base, must be allocated under chapter 57-38.1 as it existed before
24 January 1, 2007. A financial institution organized under the laws of a foreign
25 country, the Commonwealth of Puerto Rico, or a territory or possession of the
26 United States the effectively connected income of which, as defined under the
27 Internal Revenue Code, is taxable both within this state and within another state,
28 other than the state in which it is organized, shall allocate and apportion its net
29 income as provided in sections 57-35.3-13 through 57-35.3-17.

30 **SECTION 36. AMENDMENT.** Subsection 14 of section 57-35.3-15 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 14. All other receipts. The numerator of the receipts factor includes all other receipts
2 under the rules set forth in chapter 57-38.1 as it existed before January 1, 2005, to
3 the extent not inconsistent with this section.

4 **SECTION 37. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 5. "Purchase price" means the total amount paid for the motor vehicle whether
7 received in money or otherwise; provided, however, that when a motor vehicle or
8 other tangible personal property that will be subject to a sales or use tax imposed
9 by chapter ~~57-39.2~~ 57-64 or ~~57-40.2~~ 57-67 when sold or used is taken in trade as
10 a credit or as part payment on a motor vehicle taxable under this chapter, the credit
11 or trade-in value allowed by the person selling the motor vehicle shall be deducted
12 from the total selling price to establish the purchase price of the vehicle being sold
13 and the trade-in allowance allowed by the seller on a motor vehicle accepted as a
14 trade-in shall constitute the purchase price of a motor vehicle accepted as a
15 trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle
16 stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount
17 not to exceed the total amount the purchaser has been compensated by an
18 insurance company for the loss but not to exceed the total amount of motor vehicle
19 excise tax paid. The purchaser must provide the director of the department of
20 transportation with a notarized statement from the insurance company verifying the
21 fact that the original vehicle was a total loss and stating the amount compensated
22 by the insurance company for the loss. The statement from the insurance
23 company must accompany the purchaser's application for a certificate of title for
24 the replacement vehicle. In instances in which a licensed motor vehicle dealer
25 places into the dealer's service a new vehicle for the purpose of renting, leasing, or
26 dealership utility service, the reasonable value of the vehicle replaced shall be
27 included as trade-in value provided the vehicle replaced has been subject to motor
28 vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly
29 registered and licensed. "Purchase price" when the motor vehicle is acquired by
30 gift or by any other transfer for a nominal or no monetary consideration also
31 includes the average value of similar motor vehicles, established by standards and

1 guides as determined by the director of the department of transportation.
2 "Purchase price" when a motor vehicle is manufactured by a person who registers
3 it under the laws of this state means the manufactured cost of such motor vehicle
4 and manufactured cost means the amount expended for materials, labor, and other
5 properly allocable costs of manufacture except that, in the absence of actual
6 expenditures for the manufacture of a part or all of the motor vehicle, manufactured
7 cost means the reasonable value of the completed motor vehicle.

8 **SECTION 38. AMENDMENT.** Section 57-40.3-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-40.3-02. Tax imposed.** There is hereby imposed an excise tax at the rate of five
11 and seven-tenths percent on the purchase price of any motor vehicle purchased or acquired
12 either in or outside of the state of North Dakota for use on the streets and highways of this state
13 and required to be registered under the laws of this state.

14 **SECTION 39. AMENDMENT.** Subsection 6 of section 57-40.3-04 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 6. Motor vehicles transferred between a lessee and lessor; provided, that the lessee
17 has been in continuous possession of such vehicle for a period of one year or
18 longer, and further provided that the lessor has paid either the tax imposed under
19 section 57-40.3-02 at the time of titling or licensing the vehicle in this state or the
20 use tax imposed by chapter ~~57-40.2~~ 57-67.

21 **SECTION 40. AMENDMENT.** Section 57-40.3-11 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **57-40.3-11. Penalties.**

24 1. Any person who violates any of the provisions of this chapter is guilty of a class B
25 misdemeanor.
26 2. Any person who submits a false or fraudulent motor vehicle purchaser's certificate,
27 or who fails to submit the certificate, is subject to a penalty of five percent of the
28 true amount of the tax which was due or five dollars, whichever is greater, plus one
29 percent of such tax for each month or fraction thereof subsequent to the month in
30 which the motor vehicle purchaser's certificate was due or the false or fraudulent
31 motor vehicle purchaser's certificate was furnished to the director of the

1 department of transportation. Such penalty must be paid to either the tax
2 commissioner or the director of the department of transportation and disposed of
3 pursuant to the provisions of section 57-40.3-10. The tax commissioner, if satisfied
4 that the failure to submit or the delay was excusable, may waive, and if paid,
5 refund all or any part of such penalty and interest. Unpaid penalties may be
6 enforced in the same manner as the tax imposed by this chapter.

7 3. Whenever a person, including any motor vehicle dealer, has collected from a
8 person acquiring a motor vehicle, a motor vehicle excise tax in excess of the
9 amount prescribed or due under this chapter, and if the person does not refund the
10 excessive tax collected to the person who remitted it, the person who collected the
11 tax shall pay it to the tax commissioner in the quarterly period in which the
12 excessive collection occurred. The penalty and interest provisions of this section
13 apply beginning at the termination of each reporting period.

14 4. If upon audit the commissioner determines that a motor vehicle excise tax has not
15 been paid or an additional tax is due, the commissioner shall give notice of
16 determination of the tax due to the person liable for the tax. The notice of
17 determination of tax due fixes the tax finally and irrevocably unless within fifteen
18 days of the date of the notice the person against whom the tax is assessed applies
19 to the commissioner for a hearing under chapter 28-32 or unless the commissioner
20 reduces the liability relating to assessments on the commissioner's own motion.
21 The provisions of ~~chapter 57-39-2~~ chapters 57-64 through 57-67 not in conflict with
22 the provisions of this chapter govern the administration of the tax levied in this
23 chapter.

24 **SECTION 41. AMENDMENT.** Section 57-40.5-03 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **57-40.5-03. Exemptions.** There are specifically exempted from the provisions of this
27 chapter and from computation of the amount of tax imposed by it, the following:

28 1. Aircraft acquired by disabled veterans as defined by the provisions of Public Law
29 No. 79-663 [38 U.S.C. 1901]. This exemption shall be allowed only with respect to
30 one aircraft owned by any disabled veteran.

- 1 2. Any aircraft owned by or in possession of the federal or state government or any of
- 2 the political subdivisions, departments, agencies, or institutions thereof.
- 3 3. Aircraft which were previously titled or registered in the names of two or more joint
- 4 tenants and subsequently transferred without monetary consideration to one or
- 5 more of the joint tenants; the transfer of aircraft by gift, inheritance, or devise
- 6 between a husband and wife, parent and child, or brothers and sisters; and the
- 7 transfer of aircraft to reflect a new name of the owner caused by a business
- 8 reorganization, if the ownership of the business organization remains in the same
- 9 person or persons as prior to the reorganization.
- 10 4. Aircraft transferred between a lessee and lessor, if the lessee has been in
- 11 continuous possession of the aircraft for a period of one year or longer, and if the
- 12 lessor has paid either the tax imposed under this chapter at the time of registering
- 13 the aircraft in this state or the use tax imposed by chapter ~~57-40.2~~ 57-67.
- 14 5. Aircraft acquired by any parochial or private nonprofit school. To qualify, a school
- 15 must normally maintain a regular faculty and curriculum and must have a regularly
- 16 organized body of students in attendance. The aircraft is not to be used for
- 17 commercial activities.

18 **SECTION 42. AMENDMENT.** Subsection 3 of section 57-63-10 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest
- 21 in, or lien on, any property situated in the state, prior to the commissioner filing in
- 22 the central indexing system maintained by the secretary of state, a notice of the
- 23 lien ~~provided for in section 57-39.2-12~~, takes free of, or has priority over, the lien.

24 **SECTION 43.** Chapter 57-64 of the North Dakota Century Code is created and enacted
25 as follows:

26 **57-64-01. Definitions.** For purposes of this chapter, unless the context otherwise
27 requires:

- 28 1. "Agricultural purposes" means the producing, raising, or growing and harvesting of
29 food or fiber upon agricultural land, including dairy products, livestock, and crops.
30 The services of custom harvesters, chemical applicators, fertilizer spreaders, hay
31 grinders, and cultivators are considered agricultural purposes.

- 1 2. "Business" means any activity engaged in by any person or caused to be engaged
2 in by such person with the object of gain, benefit, or advantage, either direct or
3 indirect.
- 4 3. "Controlled group" means any corporations or other entities eligible to file a
5 consolidated federal income tax return under the Internal Revenue Code as in
6 effect on January 1, 2002, or entitled to only a single surtax exemption for federal
7 corporate income tax purposes under the Internal Revenue Code as in effect on
8 January 1, 2002, and includes a controlled group of corporations as defined in
9 26 U.S.C. 1563 as in effect on January 1, 2002. A controlled group also consists
10 of any subchapter S corporation, limited liability company, limited liability
11 partnership, general partnership, or limited partnership with at least eighty percent
12 common ownership as if the entity was converted to or taxed as a subchapter C
13 corporation under the Internal Revenue Code as in effect on January 1, 2002.
- 14 4. "Delivery charges" means charges by the retailer for preparation and delivery to a
15 location designated by the purchaser of tangible personal property or services,
16 including transportation, shipping, postage, handling, crating, and packing.
- 17 5. a. "Gross receipts" means the total amount or consideration, including cash,
18 credit, property, and services, for which tangible personal property or services
19 are sold, leased, or rented, valued in money, whether received in money or
20 otherwise, without any deduction for the following:
- 21 (1) The retailer's cost of the property or service sold;
22 (2) The cost of materials used, labor or service cost, interest, losses, all
23 costs of transportation to the retailer, all taxes imposed on the retailer,
24 and any other expense of the retailer;
25 (3) Except as provided in chapter 57-67, charges by the retailer for any
26 services necessary to complete the sale whether or not separately
27 stated, including delivery charges; and
28 (4) The value of exempt tangible personal property whether or not
29 separately stated on the invoice, billing, or similar document given to
30 the purchaser when taxable and exempt tangible personal property

1 have been bundled together and sold by the retailer as a single product
2 or piece of merchandise.

3 b. "Gross receipts" does not include.

4 (1) Discounts, including cash, term, or coupons that are not reimbursed by
5 a third party that are allowed by a retailer and taken by a purchaser on
6 a sale;

7 (2) Interest, financing, and carrying charges from credit extended on the
8 sale of tangible personal property or services, if the amount is
9 separately stated on the invoice, bill of sale, or similar document given
10 to the purchaser;

11 (3) Any taxes legally imposed directly on the consumer that are separately
12 stated on the invoice, bill of sale, or similar document given to the
13 purchaser;

14 (4) Any fees or other interest imposed by a retailer for late charges on
15 overdue accounts, no account, or nonsufficient funds checks;

16 (5) The sale price of property returned by customers, if the full sale price
17 thereof is refunded either in cash or by credit; and

18 (6) If any tangible personal property is taken in trade or in a series of trades
19 as a credit or part payment of a retail sale taxable under this chapter,
20 and the tangible personal property taken in trade is subject to the sales
21 tax imposed by this chapter when sold, the credit or trade-in value
22 allowed by the retailer may not be included as gross receipts.

23 6. "Lease" or "rental" means any transfer of possession or control of tangible personal
24 property for a fixed or indeterminate term for consideration. A lease or rental may
25 include future options to purchase or extend. Lease or rental does not include:

26 a. A transfer of possession or control of property under a security agreement or
27 deferred payment plan that requires the transfer of title upon completion of the
28 required payments;

29 b. A transfer or possession or control of property under an agreement that
30 requires the transfer of title upon completion of required payments and

- 1 payment of an option price does not exceed the greater of one hundred
2 dollars or one percent of the total required payments; or
- 3 c. Providing tangible personal property along with an operator for a fixed or
4 indeterminate period of time. A condition of this exclusion is that the operator
5 is necessary for the equipment to perform as designed. For the purpose of
6 this subdivision, an operator shall do more than maintain, inspect, or set up
7 the tangible personal property.
- 8 7. "Person" means any individual, firm, copartnership, joint venture, association,
9 limited liability company, corporation, municipal corporation, estate, trust, business
10 trust, receiver, the state of North Dakota and its political subdivisions, or any group
11 or combination acting as a unit.
- 12 8. "Relief agency" means the state, and any political subdivision thereof, or any
13 agency, engaged in actual relief work.
- 14 9. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose
15 other than for resale, sublease, or subrent.
- 16 10. "Retailer" means any person engaged in the business of selling tangible goods,
17 wares, or merchandise at retail, or the furnishing of gas, electricity, water, and
18 communication service, and tickets or admissions to places of amusement and
19 athletic events as provided in this chapter. The term also includes any person
20 subject to the tax imposed by sections 57-64-07 and 57-64-09. The isolated or
21 occasional sale of tangible personal property at retail by a person who does not
22 hold out as engaging in the business of selling such tangible personal property at
23 retail does not constitute such person a retailer.
- 24 11. "Sale" means any transfer, exchange, or barter, conditional or otherwise, in any
25 manner or by any means whatsoever, for a consideration.
- 26 12. "Service" means all activities engaged in for other persons for a fee, retainer,
27 commission, or other monetary charge, which activities involve predominantly the
28 performance of a service as distinguished from selling property. In determining
29 what is a service, the intended use, principal objective, or ultimate objective of the
30 contracting parties shall not be controlling. For the purposes of this chapter,
31 services rendered by an employee for the person's employer are not taxable.

1 13. "Tangible personal property" means personal property that can be seen, weighed,
2 measured, felt, or touched, or that is in any other manner perceptible to the
3 senses. The term includes electricity, water, gas, steam, and prewritten computer
4 software and includes coal mined in this state which has not been taxed under
5 chapter 57-61 and which is used for heating buildings, except for coal used in
6 agricultural processing or sugar beet refining plants.

7 **57-64-02. Tax on sale of tangible property.** There is hereby imposed upon the
8 privilege of engaging in business as a retailer, a tax of five and seven-tenths percent upon the
9 gross receipts of all sales of tangible personal property consisting of goods, wares, or
10 merchandise, except as taxed by chapter 57-65 and except as otherwise provided in this
11 chapter, sold at retail in this state to consumers or users.

12 **57-64-03. Tax on sales of sectional homes - Sectional homes defined.** Sales of
13 sectional homes are subject to sales tax, which shall be based upon the fair market value of the
14 raw materials used to construct each home.

15 For the purpose of this section, "sectional homes" means any home prebuilt in whole or
16 in part for the purpose of permanent placement on a foundation. Mobile homes are not
17 sectional homes.

18 **57-64-04. Materials incorporated in construction work - Restriction on application**
19 **of rate increase.** No tax increase may be levied on materials incorporated in construction work
20 pursuant to construction contracts bid or entered into on or before the effective date of the tax
21 increase.

22 **57-64-05. Conditional or installment sales - Actual cash receipts subject to tax.**
23 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales
24 contract, or under other forms of sale wherein the payment of the principal sum is extended
25 over a period longer than sixty days from the date of sale, only the portion of the sale amount
26 that has actually been received in cash by the retailer during each reporting period is subject to
27 the tax imposed by this chapter.

28 **57-64-06. Exemption for sale of farm machinery and irrigation equipment.** There
29 are hereby specifically exempted from the provisions of this chapter and from the computation
30 of the amount of tax imposed by it the gross receipts from the sale or resale of farm machinery

1 and attachment units and repair parts, or irrigation equipment, used exclusively for agricultural
2 purposes, by licensed North Dakota retailers.

3 **57-64-06.1. All-terrain vehicles as farm machinery.** For purposes of section
4 57-64-06, farm machinery shall include all-terrain vehicles of three or more wheels used
5 exclusively by the purchaser for agricultural purposes on agricultural land. The purchaser shall
6 sign and deliver to the seller a statement that the all-terrain vehicle will be used exclusively for
7 agricultural purposes.

8 **57-64-07. Tax on receipts from business services.** There is hereby imposed a tax at
9 the same rate as that imposed upon sales of tangible personal property in this state upon the
10 gross receipts of any person from the engaging or continuing in the practice of any business in
11 which a service is rendered. Any service as defined by section 57-64-01 shall be taxable,
12 unless the service is specifically exempt from the provisions of this chapter.

13 **57-64-08. Certain purchases considered for resale purposes.** Services purchased
14 by an engineer, architect, or surveyor on behalf of a client in the performance of a contract for
15 such client shall be considered purchases for resale purposes.

16 **57-64-09. Tax on receipts from specific enumerated businesses and services.**
17 There is imposed a tax at the rate of five and seven-tenths percent upon the gross receipts of
18 any person from engaging in the business of leasing farm machinery or irrigation equipment
19 used for agricultural purposes and upon the gross receipts of any person from engaging or
20 continuing in this state in the businesses or services of abstracters, accountants, architects,
21 barbers, beauty shops, bill collection services, blacksmith shops, car washing, dry cleaning,
22 dyeing, exterminators, garage and service stations, garment alteration, cleaning and pressing,
23 janitorial services and supplies, specialty cleaners, laundry, linen and towel supply, membership
24 or entrance fees for the use of a facility or for the right to purchase tangible personal property or
25 services, photography, photo developing and enlarging, tire recapping, welding and all repair
26 services, cable television, and rentals of tangible personal property except leases of tangible
27 personal property between one telephone company and another telephone company, motor
28 vehicles as defined by section 39-01-01 leased under a single contract for more than
29 twenty-eight days, and mobile homes. However, the specific enumeration of businesses and
30 professions made in this section does not, in any way, limit the scope and effect of section
31 57-64-07.

1 **57-64-09.1. Services enumerated in Standard Industrial Classification Manual**
2 **subject to tax - Other services subject to tax.** The following services enumerated in the
3 Standard Industrial Classification Manual, 1987, as prepared by the statistical policy division of
4 the office of management and budget, office of the president, are specifically subject to the tax
5 levied by this chapter: metal mining services (group no. 108); nonmetallic minerals (except
6 fuels) services (group no. 148); service industries for the printing trade (group no. 279); coating,
7 engraving, and allied services (group no. 347); communication, electric, and gas services
8 (division E except group nos. 483, 494, and 495); hotels, motels, and tourist courts (group
9 no. 701); rooming and boarding houses (group no. 702); camps and recreational vehicle parks
10 (group no. 703); personal services (major group 72); business services (major group 73);
11 automotive repair, services, and parking (major group 75); miscellaneous repair services (major
12 group 76); amusement and recreation services (major group 79); legal services (major
13 group 81); landscape and horticultural services (group no. 078); engineering, accounting,
14 research, management, and related services (major group 87, except industry no. 8733); title
15 abstract offices (group no. 654); consumer credit reporting agencies, mercantile reporting
16 agencies, and adjustment and collection agencies (group no. 732); real estate agents and
17 managers (group no. 653); funeral service and crematories (group no. 726), except that
18 purchases of goods or services with money advanced as an accommodation are retail
19 purchases and are not includable in gross receipts for funeral services and fees paid or donated
20 for religious ceremonies are not includable in gross receipts for funeral services; loan brokers
21 (industry no. 6163); repair shops and related services, not elsewhere classified (industry
22 no. 7699) but only locksmiths and locksmith shops; and floor laying and other floor work not
23 elsewhere classified (industry no. 1752). In addition, the following services are also specifically
24 subject to the tax levied by this chapter: livestock slaughtering services; dog grooming
25 services; airplane, helicopter, balloon, dirigible, and blimp rides for amusement or sightseeing;
26 the collection and disposal of solid waste; and all appraiser's services. The services
27 enumerated in this section may not be construed as a comprehensive list of taxable services
28 but rather as a representative list of services intended to be taxable under this chapter.
29 **57-64-09.2. Tax on oil and gas field services.** There is imposed, at the rate of five
30 and seven-tenths percent, an excise tax on the gross receipts of any person engaging in oil and
31 gas field services (group no. 138) as enumerated in the Standard Industrial Classification

1 Manual, 1987, as prepared by the statistical policy division of the office of management and
2 budget, office of the president.

3 **57-64-10. Coin-operated washers and dryers - License in lieu of tax - Failure to**
4 **pay fee as misdemeanor - Interest - Collection.** The annual license fee for each
5 coin-operated washer and dryer in this state is ten dollars. However, in municipalities having a
6 population of one thousand or fewer persons, the annual license fee is eight dollars. The
7 license fee is in lieu of any sales or gross receipts taxes from the operation or ownership of
8 coin-operated washers and dryers. Any person who fails to pay the fee is guilty of a class B
9 misdemeanor. Any person who fails to pay the fee prescribed on or before December thirty-first
10 of the year prior to the year for which the fee is due is subject to an interest charge on the
11 unpaid fee at the rate of two percent per month or part thereof. The interest charge
12 commences immediately after the date the fee becomes due and is payable immediately. The
13 tax commissioner shall adopt rules under chapter 28-32 concerning:

- 14 1. The procedure for license application;
- 15 2. The collection of the license fee;
- 16 3. The placement of the license or decalcomania; and
- 17 4. The transfer of a license to a new owner.

18 **57-64-10.1. Exemptions for charitable organization devoted exclusively to relief**
19 **of poor, distressed, or underprivileged.** Any nonprofit charitable organization which devotes
20 its resources exclusively to the relief of the poor, distressed, or underprivileged and has been
21 recognized as an exempt organization under section 501(c)(3) of the Internal Revenue Code is
22 specifically exempted from the license fee provided in section 57-64-10 and any sales, use, or
23 gross receipts taxes imposed on the operation or ownership of coin-operated washers and
24 dryers placed and used in living accommodations provided by such organization to the poor,
25 distressed, or underprivileged.

26 **57-64-11. Rented property used or delivered in state.** The tax imposed upon
27 persons engaging or continuing in the business of renting tangible personal property applies if
28 the rented property is used in this state or is delivered to the lessee or sublessee in this state.

29 **57-64-12. Chemicals purchased for use by lawn and garden services considered**
30 **purchases for resale.** Chemicals purchased for use by lawn and garden services (industry
31 no. 0782) as enumerated in the Standard Industrial Classification Manual, 1987, as prepared by

1 the statistical policy division of the office of management and budget, office of the president,
2 and used in such services shall be considered as purchases for resale.

3 **57-64-13. Tax on utility services.** There is hereby imposed a tax of five and
4 seven-tenths percent upon the gross receipts from sales, furnishing, or service of gas,
5 electricity, and water, including the gross receipts from such sales by any municipal corporation
6 furnishing gas or electricity, or both, to the public in its proprietary capacity, except as otherwise
7 provided in this chapter, when sold at retail in this state to consumers or users.

8 **57-64-14. Tax on telecommunication services - Exemptions.** Except as provided in
9 section 57-64-14.1, there is hereby imposed a tax of five and seven-tenths percent upon the
10 gross receipts from providing any telecommunications service that originates or terminates in
11 this state and that is billed or charged to a service address in this state, or that both originates
12 and terminates in this state. However, the tax imposed by this section does not apply to:

- 13 1. Any eight hundred or eight hundred-type service unless the service both originates
14 and terminates in this state;
- 15 2. Any sale of a telecommunication service to a provider of telecommunications
16 services, including access service, for use in providing any telecommunication
17 service; or
- 18 3. Any sale of interstate telecommunications service provided to a call center that has
19 been certified by the tax commissioner to meet the criterion established in section
20 57-64-14.2 and the call center has provided to the telecommunications service
21 provider an exemption certificate issued by the secretary indicating that it meets
22 the criterion.

23 If a call center uses an exemption certificate to purchase services not meeting the
24 criterion established in section 57-64-14.2, the call center is liable for the applicable tax,
25 penalty, and interest.

26 For the purposes of this section, the term telecommunications service is the
27 transmission of signs, signals, writings, images, sounds, messages, data, or other information
28 of any nature by wire, radio, lightwaves, or electromagnetic means.

29 **57-64-14.1. Tax on certain mobile telecommunications services.** There is hereby
30 imposed a tax of five and seven-tenths percent upon the gross receipts of mobile
31 telecommunications services, as defined in 4 U.S.C. 124(7) as of January 1, 2002, that

1 originate and terminate in the same state and are billed to a customer with a place of primary
2 use in this state or are deemed to have originated or been received in this state and to be billed
3 or charged to a service address in this state if the customer's place of primary use is located in
4 this state regardless of where the service actually originates or terminates. Notwithstanding
5 any other provision of this chapter and for purposes of the tax imposed by this section, the tax
6 imposed upon mobile telecommunications services shall be administered in accordance with
7 4 U.S.C. 116-126 as in effect on July 28, 2000.

8 **57-64-14.2. Call center defined - Exclusions.** As used in section 57-64-14, the term
9 "call center" means any physical location where telephone calls are placed or received for the
10 purpose of making sales, marketing, customer service, or technical support. The term does not
11 include:

- 12 1. Any location where telephone calls are primarily placed to, or received from, the
13 same taxpayer, or affiliates of the same taxpayer, that owns or operates the
14 location; or
- 15 2. Any insurance, real estate, or brokerage company.

16 **57-64-14.3. Certain nontaxable portions of bundled telecommunications**
17 **transactions subject to tax.** In the case of a bundled transaction of telecommunications
18 services, if the charges are attributable to services that are taxable and services that are
19 nontaxable, the portion of the price attributable to the nontaxable services shall be subject to
20 tax unless the provider can reasonably identify such portion from its books and records kept in
21 the regular course of business for other purposes.

22 **57-64-15. Tax on room or parking site rentals to transient guests.** There is hereby
23 imposed a tax at the same rate as that imposed upon sales of tangible personal property in this
24 state upon the gross receipts from rentals of rooms or parking sites by lodging establishments
25 or campgrounds received from transient guests. A lodging establishment is any building,
26 structure, property or premise kept, used, maintained, advertised, or held out to the public to be
27 a place where sleeping accommodations are furnished to transient guests. A campground is
28 any property or premise kept, used, maintained, advertised, or held out to the public to be a
29 place where sites are available for the placing of tents, campers, trailers, mobile homes, or
30 other mobile accommodations to transient guests. A transient guest is any person who resides
31 in a lodging establishment or campground less than twenty-eight consecutive days. The

1 provisions of this section do not apply to the casual or occasional rental of a sleeping
2 accommodation or camping site. For the purposes of this section, casual or occasional is the
3 rental of a sleeping accommodation or camping site by any establishment or campground for
4 ten or fewer days in a calendar year. Any establishment or campground which has a permit or
5 license issued under this chapter is not offering the rental of sleeping accommodations or
6 camping sites on a casual or occasional basis.

7 **57-64-16. Tax on admissions to amusements and athletic contests or events.**

8 There is imposed a tax of five and seven-tenths percent upon the gross receipts from all sales
9 of tickets or admissions to places of amusement and athletic contests or events, except as
10 otherwise provided in this chapter.

11 **57-64-17. Exemption for gross receipts pursuant to contract requiring retailer to**
12 **display products or signage - Exception.** There are hereby exempted from the provisions of
13 this chapter and the tax imposed by it, gross receipts received by a retailer from a
14 manufacturer, wholesaler, or distributor pursuant to a written contract between the retailer and
15 manufacturer, wholesaler, or distributor that requires the retailer to display the manufacturer's,
16 wholesaler's, or distributor's product or signage in a specified manner or location. Any discount
17 or deferred payment received by a retailer from a distributor, wholesaler, or manufacturer for
18 purchasing a product for sale at retail does not constitute gross receipts subject to the tax
19 imposed by this chapter.

20 **57-64-18. Exemption for lodging house or hotel membership fees.** There are
21 hereby exempted from the provisions of this chapter and the computation of the tax imposed by
22 it, gross receipts from membership fees paid to any lodging house and hotel membership
23 organization operated for the benefit of its members. However, this exemption does not apply
24 to any membership fee that represents payment for tangible personal property and services
25 provided by the membership organization.

26 **57-64-19. Exemption of cigarette sales.** Section 57-64-16 does not apply to gross
27 receipts derived from the sale of cigarettes through vending machines.

28 **57-64-20. Constitutional and statutory exemptions from taxation.** There are
29 hereby specifically exempted from the provisions of this chapter and from the computation of
30 the amount of tax imposed by it, the gross receipts from sales of tangible personal property

1 which this state is prohibited from taxing under the constitution or laws of the United States or
2 under the constitution or laws of this state.

3 **57-64-21. Exemption of property sold for lease.** Gross receipts from the sale of
4 tangible personal property to a person who intends to lease the property to persons in this state
5 and actually does so are exempted from the provisions of this chapter and the tax imposed by
6 it.

7 **57-64-22. Exempt sales to states, political subdivisions, charities, and Indian**
8 **tribes.** There are hereby specifically exempted from the provisions of this chapter and from the
9 computation of the amount of tax imposed by it, the gross receipts from sales of tangible
10 personal property and the sale, furnishing, or service of electrical energy, natural and artificial
11 gas, and communication service to the United States, to the state of North Dakota or to any
12 other state of the United States or the District of Columbia if the other state provides a
13 reciprocal exemption for North Dakota, to political subdivisions of the state of North Dakota or of
14 any other state of the United States or the District of Columbia if the other state provides a
15 reciprocal exemption to North Dakota political subdivisions, to any nonprofit charitable
16 organization which devotes its resources exclusively to the relief of the poor, distressed, or
17 underprivileged, and has been recognized as an exempt organization under section 501(c)(3) of
18 the Internal Revenue Code, or to any Indian tribe.

19 **57-64-23. Exemption of freeport merchandise and stocks of merchandise brought**
20 **as foreign merchandise into foreign trade zone - Stocks of merchandise defined.** There
21 is exempted from the provisions of this chapter and from the computation of the tax imposed by
22 it, freeport merchandise and stocks of merchandise brought as foreign merchandise into a
23 foreign trade zone. For the purposes of this section, stocks of merchandise is personal
24 property which is held primarily for sale and not subject to annual depreciation.

25 **57-64-24. Exemption of sales otherwise taxed.** There are specifically exempted
26 from the provisions of this chapter and from the computation of the amount of tax imposed by it,
27 gross receipts from the sale of gasoline, motor fuel, and special fuel subject to tax under
28 chapter 57-43.1, 57-43.2, or 57-43.3.

29 **57-64-25. Exemption of goods and services furnished to meet warranty obligation**
30 **without charge.** There are hereby specifically exempted from the provisions of this chapter
31 and from the computation of the amount of tax imposed by it, the gross receipts from furnishing

1 goods or services to the purchaser or the purchaser's successor in interest of tangible personal
2 property to fulfill a warranty obligation of the manufacturer to the extent that such goods or
3 services are not charged to such purchaser or the purchaser's successor in interest.

4 **57-64-26. Exemption of gross receipts from sale of motor vehicles exempt from**
5 **excise tax - Exception.** There are specifically exempted from the provisions of this chapter
6 and from the computation of the amount of tax imposed by it, gross receipts from the sale of
7 motor vehicles exempt from the motor vehicle excise tax under section 57-40.3-04, with the
8 exception of farm machinery, which shall be subject to the tax imposed by this chapter.

9 **57-64-27. Services specifically exempt from tax.** The following services enumerated
10 in the Standard Industrial Classification Manual, 1987, as prepared by the statistical policy
11 division of the office of management and budget, office of the president, are exempt from the
12 provisions of this chapter: health services (major group 80); educational services (major
13 group 82) except schools and educational services not elsewhere classified (industry no. 8299);
14 social services (major group 83); agricultural services (major group 07) except veterinarian
15 services (group no. 074) and animal specialty services, except veterinary (industry no. 0752);
16 forestry services (group no. 085); radio and television broadcasting (group no. 483); railroad
17 transportation (major group 40); local and suburban passenger transportation (group no. 411)
18 except limousine services; schoolbuses (group no. 415); farm product warehousing and storage
19 (industry no. 4221); establishments primarily engaged in transportation on rivers and canals
20 (group no. 444); establishments primarily engaged in air transportation, certified carriers (group
21 no. 451); establishments primarily engaged in air transportation, noncertified carriers (group
22 no. 452) except chartered flights (industry no. 4522) and airplane, helicopter, balloon, dirigible,
23 and blimp rides for amusement or sightseeing; pipelines, except natural gas (major group 46);
24 arrangement of passenger transportation (group no. 472); arrangement of transportation of
25 freight and cargo (group no. 473); rental of railroad cars (group no. 474); water supply (industry
26 no. 4941); sewerage systems (industry no. 4952); security brokers, dealers, and flotation
27 companies (group no. 621); commodity contracts brokers and dealers (group no. 622); credit
28 counseling services provided by individual and family social services (industry no. 8322);
29 construction services (division c) except industry no. 1752 and locksmiths and locksmith shops;
30 and consumer credit reporting agencies, mercantile reporting agencies, and adjustment and
31 collection agencies (group no. 732), if the debt was incurred out of state and the client does not

1 reside within the state. The following are also specifically exempt from the provisions of this
2 chapter: financial services of institutions subject to tax under chapter 57-35.3, including loan
3 origination fees, late payment charges, nonsufficient funds check charges, stop-payment
4 charges, safe deposit box rent, exchange charges, commission on traveler's checks, charges
5 for administration of trusts, interest charges, and points charged on loans; commissions earned
6 or service fees paid by an insurance company to an agent or representative for the sale of a
7 policy; services of dealers, agents, and others registered with the securities commissioner
8 under chapter 10-04; the sale of trading stamps; rentals of motor vehicles leased under a single
9 contract for more than twenty-eight days; advertising services; services provided by any
10 corporation to another corporation which is centrally assessed having identical ownership and
11 services provided by any corporation to a wholly owned subsidiary which is centrally assessed;
12 continuing education programs; tutoring; vocational counseling, except rehabilitation
13 counseling; and motion picture rentals to a commercially operated theater primarily engaged in
14 the exhibition of motion pictures.

15 **57-64-28. Exemption of engineering, architectural, and surveying services.** There
16 are specifically exempted from the provisions of this chapter and from the computation of the
17 amount of tax imposed by sections 57-64-07 and 57-64-09, the gross receipts from
18 engineering, architectural, and surveying services (group no. 871, Standard Industrial
19 Classification Manual, 1987, as prepared by the statistical policy division of the office of
20 management and budget, office of the president) rendered for a project entirely outside this
21 state.

22 **57-64-29. Certain services provided to rural water system by wholly owned**
23 **cooperative or nonprofit corporation exempt from tax.** There are specifically exempted
24 from the provisions of this chapter and from the computation of the tax imposed by it, gross
25 receipts from management, billing, bookkeeping, administrative, and related services provided
26 to a rural water system by any cooperative or nonprofit corporation which is wholly owned by
27 the water systems receiving such services.

28 **57-64-30. Exemption of certain sales commissions.** Unless otherwise specifically
29 subject to tax, the gross receipts resulting from fees or commissions received for rendering a
30 service which provides for the sale of tangible personal property or services is exempt from the
31 tax imposed by this chapter.

1 **57-64-31. Exemption for credit services by credit bureaus to certain financial**
2 **institutions.** There are specifically exempted from the provisions of this chapter and from the
3 computation of the amount of tax imposed by it, gross receipts from the sale of credit services
4 by credit bureaus to financial institutions that are paying taxes under chapter 57-35.3.

5 **57-64-32. Exemption of receipts used for civic and nonprofit associations and**
6 **purposes.** There are specifically exempted from the provisions of this chapter and from the
7 computation of the amount of tax imposed by it, the gross receipts from the following:

- 8 1. Sales of tickets or admissions to the grounds and grandstand attractions of state,
9 county, district, regional, and local fairs;
- 10 2. Admissions to nonprofit historic sites and repertory theater performances operated
11 by nonprofit organizations;
- 12 3. Admissions to community-operated celebrations and shows sponsored by a
13 chamber of commerce or other similar nonprofit organization if the county or
14 municipality in which the activity takes place officially sponsors the activity and no
15 charge is made to the operators of the celebration or show for the use of county or
16 city facilities or services;
- 17 4. Admissions to events or receipts from activities sponsored and operated by
18 colleges or vocational schools or elementary or high schools or related clubs or
19 supporting organizations approved or supervised by a school or college when the
20 entire net proceeds are spent for educational purposes and any associations of
21 them and receipts from tangible personal property sold at such events. However,
22 receipts from tangible personal property sold at such events or activities are
23 included in the measure of sales tax at the time of purchase by the college or
24 school or related club or supporting organization;
- 25 5. Religious, benevolent, fraternal, youth association, or charitable activities, including
26 any activity conducted by an eligible organization under chapter 53-06.1 or
27 53-06.2, when the entire amount of net proceeds is expended for purposes allowed
28 under section 53-06.1-11.1. However, receipts from tangible personal property or
29 services purchased for use in the activity are included in the measure of sales tax;

- 1 6. Sales of tangible personal property when the net receipts therefrom are used
2 primarily for the restoration or maintenance of the governor's mansion and capitol
3 grounds;
- 4 7. Any charge or entry fee made to persons for engaging in participatory events
5 limited to tournaments, contests, and league activities. However, receipts from
6 tangible personal property or services purchased for use in tournaments, contests,
7 and league activities shall be included in the measure of the tax imposed by this
8 chapter;
- 9 8. Admissions to events or receipts from activities sponsored and operated by county
10 or municipal historical societies or centennial committees when the entire net
11 proceeds are spent for centennial celebration purposes. However, receipts from
12 tangible personal property or services purchased for use in the activity are included
13 in the measure of sales tax;
- 14 9. Religious, benevolent, fraternal, youth association, or charitable activities
15 conducted at county fairs, if the entire amount of such receipts after deducting all
16 costs directly related to the conduct of such activities is expended for religious,
17 benevolent, fraternal, youth association, or charitable purposes, and the receipts
18 are not the result of engaging in business for more than five consecutive days.
19 However, receipts from tangible personal property or services purchased for use in
20 the activity are included in the measure of sales tax;
- 21 10. Admissions to circus performances sponsored or operated by religious,
22 benevolent, fraternal, or youth associations, if the entire amount of the receipts
23 after deducting all costs directly related to the conduct of the circus performances
24 is expended for religious, benevolent, fraternal, youth associations, or charitable
25 purposes; and
- 26 11. Admissions to events or receipts from activities sponsored and operated by
27 religious, benevolent, or charitable organizations for a period not to exceed thirty
28 days in any calendar year, if the entire amount of the receipts after deducting all
29 costs directly related to the conduct of the event or activity is expended for the
30 benefit of homeless persons.

1 **57-64-33. Admissions to rodeos and rodeo-related activities taxable.**

2 Notwithstanding the provisions of section 57-64-32, admissions to rodeos and rodeo-related
3 activities and events are subject to the tax imposed by section 57-64-16 and chapter 57-67.

4 **57-64-34. Exemption of membership organizations.** Membership organizations
5 (major group 86) as enumerated in the Standard Industrial Classification Manual, 1987, as
6 prepared by the statistical policy division of the office of management and budget, office of the
7 president, are exempt from the tax imposed by this chapter on receipts from sales of services
8 by them and their membership fees. This exemption does not apply to the tax imposed upon
9 the gross receipts of sales of tangible personal property by such organizations. This section
10 does not exempt the gross receipts of a retailer which are the result of sales to organizations in
11 major group 86 or exempt such organizations from payment of use tax on goods and services
12 used in the conduct of their activities.

13 **57-64-35. Exemption of fair market value of personal property or service given**
14 **without charge to exempt organization.** There are specifically exempted from the provisions
15 of this chapter and the computation of the tax imposed by it, the fair market value of any
16 tangible personal property or service given without charge to an institution, organization, or
17 group exempt from the tax imposed by this chapter.

18 **57-64-36. Exemption of lottery tickets.** There are specifically exempted from the
19 provisions of this chapter and from the computation of the tax imposed by it, the gross receipts
20 from the sale of lottery tickets made as part of a lottery operated by this state.

21 **57-64-37. Exemption of gross receipts from library copying charges.** There are
22 specifically exempted from the provisions of this chapter and the computation of the tax
23 imposed by it, gross receipts from library copying charges.

24 **57-64-38. Exemption of sales to educational institutions and hospitals -**
25 **Purchases for members or employees taxable - Motor vehicle registration fee - Lists**
26 **maintained by exempt institutions.** There are specifically exempted from the provisions of
27 this chapter and from the computation of the amount of tax imposed by it, the gross receipts
28 from sales of tangible personal property and the gross receipts from sales, furnishing, or service
29 of electrical energy, natural and artificial gas, water, and communication service to and for use
30 by religious educational institutions, private educational institutions currently recognized as
31 exempt under section 501(c)(3) of the Internal Revenue Code as in effect on January 1, 1983,

1 and nonprofit, charitable hospitals when purchases are made by authorized officials, payment
2 made from the institution funds, and title to the property retained in the name of such institution.
3 For the purposes of this section, a private educational institution shall be defined as an
4 institution currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code
5 as in effect on January 1, 1995, maintaining a campus physically located within this state and
6 accredited by the superintendent of public instruction or the north central association of colleges
7 and schools.

8 This exemption does not extend to sales to or purchases of tangible personal property
9 for the personal use of officials, members, or employees of such institutions or to sales to or
10 purchases of tangible personal property used in the operation of a taxable retail business.

11 The exemption provided in this section does not, in any manner, relieve the institution
12 from the payment of the additional and further license fee imposed on the registration of motor
13 vehicles.

14 All institutions claiming this exemption shall prepare and maintain a list of all purchases
15 on which exemption was claimed, fully itemized, showing name and address of vendors,
16 description of property purchased, date or dates of purchase, purchase price, and brief
17 explanation of use or intended use.

18 **57-64-39. Exemption of gross receipts from sale of nutritional supplements.**

19 There are specifically exempted from the provisions of this chapter and from the computation of
20 the amount of tax imposed by it, gross receipts from the sale of nutritional supplements, as
21 defined by rule adopted by the tax commissioner under chapter 28-32, if dispensed by a
22 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

23 **57-64-40. Newspapers, shoppers' guides, ink and newsprint - Shoppers' guides**

24 **defined.** Gross receipts from sales of newspapers or shoppers' guides and gross receipts from
25 sales of ink and newsprint when used in the production of newspapers or shoppers' guides are
26 hereby exempt from the tax imposed under this chapter.

27 For the purposes of this section, the term "shoppers' guide" includes for numerous
28 advertisers advertising publications whose advertisements are solicited from the general public
29 and whose publications are for free distribution to the general public and are published regularly
30 at least once a month, consisting of printed sheets containing advertising, bearing a date of
31 issue, and devoted to advertising of general interest.

1 **57-64-41. Exemption of ostomy care supplies.** The gross receipts from furnishing
2 devices and supplies designed or intended for ostomy care and management are specifically
3 exempt from the provisions of this chapter and from the computation of the amount of tax
4 imposed by it. These devices and supplies include collection devices, colostomy irrigation
5 equipment and supplies, skin barriers or skin protectors, and other supplies designed for use of
6 ostomates.

7 **57-64-42. Exemption of raw material, parts, and newsprint for manufacture of**
8 **products to be sold at retail - Packaging and container materials as tax-exempt raw**
9 **material.** The use in this state of tangible personal property, including containers, labels, and
10 shipping cases thereof, which is intended shall, by means of fabricating, compounding, or
11 manufacturing become a part of other tangible personal property intended to be sold ultimately
12 at retail within or without the state of North Dakota, is hereby specifically exempted from the tax
13 imposed by this chapter. The term tangible personal property shall be construed to include raw
14 material and newspaper print. Containers, labels, cartons, packing cases, wrapping paper,
15 twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids,
16 boxes, pads, dividers, stockinettes, casings, and similar articles and receptacles used or
17 consumed by manufacturers, processors, or fabricators are raw material and are not subject to
18 sales or use tax.

19 **57-64-43. Packaging and container materials sold to retailers exempt.** There are
20 specifically exempted from the provisions of this chapter and from the computation of tax
21 imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine,
22 tape, and similar articles sold to retailers licensed under this chapter if the retailer uses the
23 articles as wrappers or containers to hold other tangible personal property sold by the retailer
24 and subject to sales or use tax and the articles are supplied free by the retailer as a
25 convenience to the customer.

26 **57-64-44. Exemption of hospital meals paid for by public entity.** There are
27 specifically exempted from the provisions of this chapter and the computation of the amount of
28 tax imposed by it, the gross receipts from the sale of meals to inpatients of hospitals if such
29 meals are paid for, by law or by contract, by the United States, this state, or a political
30 subdivision, including meals provided to medicare, medicaid, champus, Indian health service, or
31 county poor relief patients.

1 **57-64-45. Exemption of authorized purchases made with food stamps.** There are
2 hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting
3 from authorized purchases made with food stamps under the provision of the Food Stamp Act
4 of 1977 [Pub. L. 95-113].

5 **57-64-46. Exemption of authorized purchases of food.** There are hereby
6 specifically exempted from the tax imposed by this chapter the gross receipts resulting from
7 authorized purchases of food made under section 17(c) of the Child Nutrition Act of 1966
8 [42 U.S.C. 1786(c)].

9 **57-64-47. Exemption of certain insulin sales.** There are specifically exempted from
10 the provisions of this chapter and from the computation of the amount of tax imposed by it,
11 gross receipts from the sale of insulin to the extent used by humans, that is not sold by
12 prescription.

13 **57-64-48. Exemption of certain drugs.** There are specifically exempted from the
14 provisions of this chapter and from the computation of the amount of tax imposed by it, gross
15 receipts from the sale of drugs as defined by rule adopted by the tax commissioner under
16 chapter 28-32, to the extent used by humans, if the drugs are prescribed by prescription,
17 dispensed, or administered by a physician, chiropractor, optometrist, dentist, podiatrist, or
18 audiologist.

19 **57-64-49. Exemption of certain durable medical equipment and prosthetic**
20 **devices.** There are specifically exempted from the provisions of this chapter and from the
21 computation of the amount of tax imposed by it, gross receipts from the sale of durable medical
22 equipment, mobility-enhancing equipment, and prosthetic devices as defined by rule adopted
23 by the tax commissioner under chapter 28-32 to the extent used by humans, if the durable
24 medical equipment, mobility-enhancing equipment, and prosthetic devices are prescribed by
25 prescription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

26 **57-64-50. Exemption of certain medical devices.** There are specifically exempted
27 from the provisions of this chapter and from the computation of the amount of tax imposed by it,
28 gross receipts from the sale of any medical device to the extent used by humans, if the medical
29 device is prescribed by prescription by a physician, chiropractor, optometrist, dentist, podiatrist,
30 or audiologist. The term "medical device" means any instrument, apparatus, implement,

1 contrivance, or other similar or related article, including a component, part, or accessory, that is
2 prescribed for use on a single patient and that is:

- 3 1. Recognized in the official national formulary or the United States pharmacopoeia,
4 or any supplement to them;
- 5 2. Intended for use in the diagnosis of disease or other conditions or in the cure,
6 mitigation, treatment, detection, or prevention of disease of the human body; or
- 7 3. Intended to affect the structure or any function of the human body and that does
8 not achieve any of its primary intended purposes through chemical action within or
9 on the human body and that is not dependent upon being metabolized for the
10 achievement of any of its primary intended purposes.

11 A medical device is not durable medical equipment, mobility-enhancing equipment, or a
12 prosthetic device.

13 **57-64-51. Exemption of seed used for agricultural purposes.** There are hereby
14 specifically exempted from the provisions of this chapter and from the computation of the
15 amount of tax imposed by it, gross receipts from the sale of seed legumes, seed grasses, and
16 seed grains, when twenty-five pounds [11.34 kilograms] or more are sold in a single sale to be
17 used exclusively for agricultural purposes.

18 **57-64-52. Exemption of commercial fertilizer used for agricultural purposes.**
19 There are hereby specifically exempted from the provisions of this chapter and from the
20 computation of the amount of tax imposed by it, gross receipts from the sale of commercial
21 fertilizers, either liquid or solid, when five hundred pounds [226.80 kilograms] or more are sold
22 in a single sale to be used exclusively for agricultural purposes.

23 **57-64-53. Exemption of pesticides used for agricultural purposes.** There are
24 hereby specifically exempted from the provisions of this chapter and from the computation of
25 the amount of tax imposed by it, gross receipts from the sale of insecticides, herbicides,
26 pesticides, rodenticides, and fumigants to be used exclusively by the purchaser for agricultural
27 purposes.

28 **57-64-54. Exemption of gross receipts from rental of certain devices used to**
29 **apply agricultural chemicals.** There are specifically exempted from the tax imposed by this
30 chapter, gross receipts from the rental of devices primarily used to apply fertilizers, pesticides,

1 herbicides, and insecticides for agricultural purposes, if sales tax or use tax was paid upon the
2 original purchase of the device.

3 **57-64-55. Exemption of gross receipts from rental of agricultural devices owned**
4 **by conservation district.** There are specifically exempted from the provisions of this chapter
5 and from the computation of the tax imposed by it, gross receipts from the rental of devices
6 used primarily for agricultural purposes if such devices are owned by a soil conservation district
7 organized pursuant to chapter 4-22.

8 **57-64-56. Exemption of sales of livestock, poultry, ostriches, emus, or rheas**
9 **other than ultimate retail sale.** No gross receipts from sales of livestock or live poultry,
10 ostriches, emus, or rheas, if such sales are a part of a series of transactions incident to
11 producing a finished product intended to be offered for an ultimate retail sale, are taxable under
12 this chapter, except that an ultimate retail sale interrupting the series of transactions with an
13 intended final use or consumption is taxable.

14 **57-64-57. Exemption of gross receipts from sale of live game birds by producer**
15 **to certain nonprofit organizations.** There are specifically exempted from the provisions of
16 this chapter and the computation of the tax imposed by it, the gross receipts from the sale of
17 live game birds sold by the producer to nonprofit organizations which release such birds or to
18 commercial hunting operators who charge fees to hunt such birds.

19 **57-64-58. Exemption of gross receipts from sales of certain animals.** There are
20 hereby specifically exempted from the provisions of this chapter and from the computation of
21 the amount of tax imposed by it, gross receipts from the sale of live cattle, buffalo, sheep,
22 goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals, used or to
23 be used as breeding or production stock, and horses and other animals within the family
24 equidae. The term "poultry" does not include any fowl other than domestic fowl kept and raised
25 for the market or the production of eggs for human consumption.

26 **57-64-59. Exemption of gross receipts from sale of feed for certain animals.**
27 There are hereby specifically exempted from the provisions of this chapter and from the
28 computation of the amount of tax imposed by it, gross receipts from the sale of feed for cattle,
29 buffalo, sheep, goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing
30 animals if such feed is used by farmers or ranchers who are regularly engaged in the business
31 of raising and feeding such animals, or producing milk for sale for human consumption, and

1 horses and other animals within the family equidae. The term "poultry" does not include any
2 fowl other than domestic fowl kept and raised for the market or the production of eggs for
3 human consumption.

4 **57-64-60. Exemption for sale of certain live nontraditional livestock.** There are
5 hereby specifically exempted from the provisions of this chapter and from the computation of
6 the amount of tax imposed by it, gross receipts from the sale of any live nontraditional livestock
7 regulated by the board of animal health under chapter 36-01, if the animal is to be used by a
8 farmer or rancher who is regularly engaged in the breeding and raising of such animals.

9 **57-64-61. Exemption for sale of feed for certain nontraditional livestock.** There
10 are hereby specifically exempted from the provisions of this chapter and from the computation
11 of the amount of tax imposed by it, gross receipts from the sale of feed for any nontraditional
12 livestock regulated by the board of animal health under chapter 36-01, if the feed is to be used
13 by a farmer or rancher who is regularly engaged in the breeding and raising of such animals.

14 **57-64-62. Exemption of fuel used for agricultural or railroad purposes.** Motor fuel,
15 including kerosene, tractor fuel, liquefied petroleum gas, natural and artificial gas, diesel fuels,
16 and distillate, when used for agricultural or railroad purposes, is exempt from excise taxes
17 imposed under this chapter.

18 For the purposes of this section, "agricultural purposes" includes hay grinding but does
19 not include the lighting or heating of any farm residence.

20 For the purposes of this section, "railroad purposes" includes only locomotives or track
21 motor cars being operated on railroad tracks in road service in this state.

22 **57-64-63. Power charges for irrigation pumps exempt.** There are hereby
23 specifically exempted from the provisions of this chapter and from the amount of tax imposed
24 by it, gross receipts from the sale of electricity used to power irrigation pumps and the gross
25 receipts from the horsepower charge on electric motors powering irrigation pumps whenever
26 the purchaser has made the purchase exclusively for agricultural purposes.

27 **57-64-64. Exemption of bulk water for domestic use.** There are specifically
28 exempted from the provisions of this chapter and from the computation of tax imposed by it, the
29 gross receipts from the sales of bulk water which are delivered for domestic use.

1 **57-64-65. Exemptions applied to taxable services.** The exemptions from sales tax
2 relative to sales of tangible personal property shall apply to services included in sections
3 57-64-07 and 57-64-09.

4 **57-64-66. Exemption of payments between members of controlled group.**
5 Payments made by one member of the controlled group to another member of a controlled
6 group which represent an allocation, reimbursement, or charge for services provided by or
7 rendered by the members of the controlled group are specifically exempted from the provisions
8 of this chapter and the computation of the tax imposed by it.

9 **57-64-67. Exemption of payments between members of controlled group -**
10 **Reimbursement for third-party services to group.** Payments made by one member of a
11 controlled group to another member of a controlled group which represent an allocation,
12 reimbursement, or charge for third-party services rendered to the controlled group and upon
13 which a sales or use tax has been paid may not be considered as gross receipts under this
14 chapter.

15 **57-64-68. Exemption of gross receipts from sale or rendering of services -**
16 **Related corporation defined.** There are specifically exempted from the provisions of this
17 chapter and the computation of the tax imposed by it, gross receipts from the sale of services
18 rendered by a related corporation for use by a financial institution or on any service rendered by
19 a financial institution for use by a related corporation. For the purposes of this section, the term
20 "related corporation" means a corporation associated with another as its parent or subsidiary or
21 in a brother-sister relation and includes a corporation which together with the financial institution
22 is part of a controlled group of corporations as defined in 26 U.S.C. 1563 as in effect on
23 January 1, 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.
24 1563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent.

25 **57-64-69. Exemption of gross receipts from sale of certain replacement parts.**
26 There are exempted from the provisions of this chapter and from the computation of the tax
27 imposed by it, the gross receipts from the sale of replacement parts that are sold to retailers
28 and which will be installed in tangible personal property that will ultimately be for resale.

29 **57-64-70. Exemption of natural gas transportation services by pipeline.** The
30 provision of natural gas transportation services by a pipeline is exempted from the provisions of
31 this chapter and from the computation of the tax imposed by this chapter.

1 **57-64-71. Exemption for the sale of credit card processing services.** There are
2 specifically exempted from the provisions of this chapter and from the computation of the
3 amount of tax imposed by it, gross receipts from the sale of credit card processing services to
4 retailers.

5 **57-64-72. Gross receipts from charge of interest exempted - Pawnbrokers not**
6 **eligible for exemption.** There are exempted from the provisions of this chapter and from the
7 computation of the amount of tax imposed by it, the gross receipts from the charge of interest
8 as defined in section 47-14-04. This exemption does not apply to the gross receipts from
9 interest paid any pawnbroker from the tax imposed by this chapter. For the purposes of this
10 section, a pawnbroker means any person who is engaged in the business of lending money and
11 who accepts the possession of tangible personal property as security for the loan.

12 **57-64-73. Fee or commission not subject to tax.** Any fee or commission received by
13 a retailer for arranging or assisting in the arrangement of a loan for a customer to pay for
14 tangible personal property sold by such retailer does not constitute gross receipts subject to the
15 tax imposed by this chapter.

16 **57-64-74. Exemption for gross receipts from certain rodeo services.** There are
17 exempted from the provisions of this chapter and from the computation of the amount of tax
18 imposed by it, gross receipts resulting from services performed for rodeos by promoters, stock
19 contractors, stock handlers, announcers, judges, and clowns.

20 **57-64-75. Exemption for gross receipts from international sale of agricultural and**
21 **industrial equipment.** There are hereby exempted from the provisions of this chapter and the
22 computation of the tax imposed by it, gross receipts resulting from the sale of agricultural and
23 industrial production equipment in international commerce if, under the terms of the sales
24 agreement, physical delivery of the goods takes place in this state. However, the exemption
25 only applies if written evidence of the contract of sale is retained and such contract indicates
26 that the goods are to be shipped in international commerce to a point outside the United States
27 not to be returned to a point within the United States.

28 **57-64-76. Mailing service - Gross receipts.** There are hereby exempted from the
29 provisions of this chapter and the computation of the tax imposed by it, the gross receipts
30 received by a mailing service for the cost of United States postage paid by such mailing service

1 if the cost of postage is listed by the mailing service as a separate line item on the customer's
2 bill and the cost of the postage is no greater than the cost of the postage to the mailing service.

3 For the purposes of this section, a mailing service is any business that uses the United
4 States postal service to deliver items for another customer of the mail service in which said
5 mailing service has no financial interest.

6 **57-64-77. Materials used for floor laying as purchases for resale.** Carpet, floor
7 covering, tacks, glue, and other materials purchased for use for floor laying and other floor work
8 not elsewhere classified (industry no. 1752) as enumerated in the Standard Industrial
9 Classification Manual, 1987, as prepared by the statistical policy division of the office of
10 management and budget, office of the president, and used for such work are purchases for
11 resale.

12 **57-64-78. Materials purchased by locksmiths are purchases for resale.** Locks,
13 lock parts, and other materials purchased for use by locksmiths as classified in repair shops
14 and related services, not elsewhere classified (industry no. 7699) as enumerated in the
15 Standard Industrial Classification Manual, 1987, as prepared by the statistical policy division of
16 the office of management and budget, office of the president, and used for such work are
17 purchases for resale.

18 **57-64-79. Computation of tax to third decimal place.** In computing the tax to be
19 remitted under this chapter as the result of any transaction, the tax amount shall be carried to
20 the third decimal place. Amounts of tax less than one-half of one cent shall be disregarded and
21 amounts of tax of one-half cent or more shall be considered an additional cent.

22 **57-64-80. Schedule for collection of tax from consumer.** The schedules for
23 collection of the tax imposed by this chapter and sales taxes imposed by cities or counties shall
24 be established by rule by the tax commissioner under chapter 28-32. The schedules
25 established by rule shall spread the tax proportionately on fractions of dollars.

26 **57-64-81. Tax additional to other occupation and privilege taxes.** The taxes
27 imposed under this chapter shall be in addition to all other occupation or privilege taxes
28 imposed by the state, or by any political subdivision of this state, unless otherwise specifically
29 exempted by this chapter.

30 **57-64-82. Addition of tax to price of product or service.** Retailers may add the tax
31 imposed by this chapter to the price of their product or service as provided by law. If no

1 provision is made, the average equivalent of the tax may be added. Any person or retailer
2 subject to taxation under this chapter may add the tax under this chapter, or the average
3 equivalent thereof, to the price or charge.

4 **57-64-83. Application for retailer permit - Contents and execution - Application**
5 **for statewide permit - Exceptions.** Each retailer or person engaging in a business in this
6 state whose receipts are subject to sales tax shall file with the tax commissioner an application
7 for a permit. Each application shall be made on a form prescribed by the tax commissioner and
8 shall require the name under which the applicant transacts or intends to transact business, the
9 location of each business, and other information as the tax commissioner may require. The
10 applicant shall have a permit for each place of business, unless the tax commissioner grants a
11 request for a statewide permit. A statewide permit may be granted if the applicant
12 demonstrates the ability to comply with the filing, auditing, and recordkeeping requirements
13 specified in rules promulgated under section 57-64-101 for each location specified in the
14 application.

15 Any seller registering under the streamlined sales tax agreement shall be registered in
16 this state provided this state has entered into the agreement. Any seller who is registered
17 under such agreement may cancel its registration at any time but is liable for remitting any sales
18 taxes previously collected.

19 **57-64-84. Issuance of retailer permit - Limited to person and place designated -**
20 **Display in place of business - Effective until canceled or revoked.** The tax commissioner
21 shall grant and issue to each applicant a permit for each place of business within the state,
22 unless a statewide permit is granted. If a statewide permit is granted, the tax commissioner
23 shall issue a copy of the statewide permit for each place of business within the state. A permit
24 is not assignable and shall be valid only for the person in whose name it is issued and for the
25 transaction of business at the place designated therein. The permit shall at all times be
26 conspicuously displayed at the place for which issued. Each permit is valid and effective
27 without further payment of fees until canceled or revoked.

28 **57-64-85. Refusal of permit to delinquent taxpayer - Bond to secure payment of**
29 **tax.** The tax commissioner may refuse to issue a permit to any person who is delinquent in the
30 payment of occupation taxes levied by the state. The tax commissioner may also require an
31 applicant to furnish a bond to the state, or other adequate security, as security for payment of

1 any sales tax that may become due, or require a bond or security as a condition precedent to
2 remaining in business as a retailer.

3 **57-64-86. Return and remittance - Extension of time - Delinquency.** Any person
4 who is the holder of a sales tax permit or is a retailer whose receipts are subject to sales tax in
5 this state during the periods specified by this section shall make a return and remittance to the
6 tax commissioner on forms prescribed and furnished by the tax commissioner in the following
7 manner:

8 1. Any person whose tax liability is one thousand dollars or more annually shall file
9 the return and remit the tax on or before the twentieth day of the month following
10 each monthly period;

11 2. Any person whose tax liability is less than one thousand dollars annually shall file
12 the return and remit the tax on or before the last day of the month following each
13 two-month period; and

14 3. Any person whose tax liability is one thousand dollars or more annually and who
15 remits the tax by electronic transfer to the state shall file the return by electronic
16 means on or before the twenty-third day of the month following each monthly
17 period and remit the tax on or before the second to the last day of the month
18 following each monthly period.

19 The tax commissioner may grant an extension of not more than five days for filing a
20 return and remittance. However, the tax commissioner may grant an extension for remitting the
21 tax to a qualified business as provided in sections 57-64-126 through 57-64-134 for six months.

22 Unless an extension is granted, penalty or interest under section 57-64-87 shall be paid
23 if a return or remittance is not made on time.

24 **57-64-87. Penalty for failure to file return - Penalty reduced or eliminated -**
25 **Interest charged for late payment - Interest tolled during appeal - Maximum interest rate**
26 **for mistake of law.** Any person required to file returns or reports under this chapter who fails
27 to file a return or report which includes all taxable transactions within thirty days following the
28 month the return or report is due is subject to an additional amount, assessed as a penalty,
29 equal to ten percent of the tax or ten dollars whichever is greater. However, for reasonable
30 cause shown, the tax commissioner may reduce or eliminate such penalty. Any person subject
31 to tax under this chapter who fails to pay the tax within the time prescribed is subject to an

1 interest charge for each month or part thereof for which the payment is late, which interest shall
2 be one and one-quarter percent or five dollars whichever is greater for the first month, and one
3 and one-quarter percent per month thereafter. If the failure to pay tax was with the intent to
4 intentionally avoid or delay the payment of tax, the person who fails to pay the tax within the
5 time prescribed is subject to an interest charge for each month or part thereof for which the
6 payment is late, which interest shall be one and one-half percent or five dollars, whichever is
7 greater. Interest is tolled during any appeal taken by the department or during any period the
8 hearing examiner extends the time in which to submit a proposed decision or during any period
9 the secretary fails to rule within thirty days after receiving the proposed decision. Penalty and
10 interest are considered the same as tax for the purposes of collection and enforcement
11 including liens, distress warrants, and criminal violations. Any payment received for taxes,
12 penalty, or interest is applied first to tax, beginning with the oldest delinquency, then to interest,
13 and then to penalty.

14 The secretary may, upon application of the taxpayer, establish a maximum interest rate
15 of thirty percent upon delinquent taxes if the tax commissioner determines that the delinquent
16 payment was caused by a mistake of law and was not caused by an intent to evade the tax.

17 **57-64-88. Change of reporting periods.** The tax commissioner may require or allow
18 some returns and remittances to be filed on a monthly, bimonthly, semiannual, or annual basis
19 and the return and remittance is due the last day of the month following the reporting period.
20 For persons issued a temporary or seasonal sales tax permit, the returns and remittances may
21 be required at a time determined by the tax commissioner.

22 **57-64-89. Deduction allowed for sales refunds.** Refunds made by a retailer during
23 the reporting period shall be allowed as a deduction in case the retailer included the receipts for
24 which a refund is made in the net taxable sales or has previously paid the sales tax.

25 **57-64-90. Deduction allowed attorneys and accountants for amounts spent on**
26 **behalf of clients.** In determining the amount of tax due under this chapter, attorneys and
27 accountants licensed in this state may deduct from gross receipts amounts which represent
28 charges to clients for tangible personal property or services purchased by the attorney or
29 accountant on behalf of a client. However, the sale of the property or service to the attorney or
30 accountant is not a sale for resale if this deduction is taken. This deduction may only be taken
31 if the amount to be deducted represents an expense specifically incurred for a particular client

1 and the amount is itemized and separately billed as a reimbursable expense by the attorney or
2 accountant.

3 **57-64-91. Bad debts - Deduction from amount upon which tax is calculated - Time**
4 **for deduction.** For purposes of this chapter, a bad debt is any portion of the purchase price of
5 a transaction that a seller has reported as taxable and for which the seller or any party related
6 to the seller within the meaning of section 267 or 707 of the Internal Revenue Code (related
7 party), as of January 1, 2003, or any disregarded entity for federal income tax purposes that is
8 owned by the seller or a related party, legally claims as a bad debt deduction for federal income
9 tax purposes. In computing the amount of tax due, a seller may deduct bad debts from the total
10 amount upon which the tax is calculated for any return. Any deduction taken or refund paid
11 which is attributed to bad debts may not include interest. Bad debts include worthless checks,
12 worthless credit card payments, and uncollectible credit accounts. Bad debts do not include
13 financing charges or interest, sales or use taxes charged on the purchase price, uncollectible
14 amounts on property that remain in the possession of the seller until the full purchase price is
15 paid, expenses incurred in attempting to collect any debt, debts sold, or assigned to unrelated
16 third parties for collection, and repossessed property. No bad debt deduction may be claimed
17 by any person who has purchased accounts receivable for collection unless the person is a
18 successor who has acquired the entire business of the seller that incurred the bad debt, the
19 person is a related party, or the person is a disregarded entity for federal income tax purposes
20 that is owned by the seller or a related party.

21 Bad debts shall be deducted within twelve months following the month in which the bad
22 debt has been charged off for federal income tax purposes. If a deduction is taken for a bad
23 debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so
24 collected shall be paid and reported on the next return due after the collection.

25 A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount
26 of taxable sales within the twelve-month period defined by that bad debt. A refund under this
27 section may not include interest.

28 If a seller's filing responsibilities have been assumed by a certified service provider, the
29 service provider may claim, on behalf of the seller, any bad debt allowance provided by this
30 section. The service provider shall credit or refund the full amount of any bad debt allowance or
31 refund received to the seller.

1 **57-64-92. Cash basis reporting and payment.** Notwithstanding other provisions of
2 this chapter, the tax commissioner shall allow retailers to report and pay sales tax measured by
3 gross receipts upon a cash basis if:

- 4 1. The retailer has not changed the retailer's basis in the previous calendar year;
- 5 2. The retailer's records are kept in a manner which may be audited to determine
6 whether sales tax is paid upon all taxable sales;
- 7 3. The retailer has made a written request to the tax commissioner for authority to pay
8 tax on the cash basis; and
- 9 4. Authority to pay tax on the cash basis applies only to sales made after the authority
10 is granted.

11 **57-64-93. Accrual basis reporting and payment.** If the tax commissioner has
12 granted a retailer the authority to report and pay sales tax on the cash basis and a retailer
13 requests in writing for the authority to report and pay sales tax upon the accrual basis, the tax
14 commissioner may grant such authority if assessment and collection of taxes are not
15 jeopardized.

16 **57-64-94. Receipts not issued for taxes remitted.** The tax commissioner is not
17 required to issue receipts for sales tax remitted to the office of the tax commissioner.

18 **57-64-95. Revocation of retailer's license for failure to file return or pay tax -**
19 **Continuation in business a misdemeanor.** Every person who is the holder of a sales tax
20 license and who has failed to file a return, or who has filed a return and has failed to pay the tax
21 due the state under this law on or before the fifteenth of the second month following the quarter,
22 or any other reporting period authorized, shall no longer continue as a retailer and that person's
23 sales tax license is hereby revoked and canceled. Any person who shall continue in a taxable
24 business after that person's license has been revoked or canceled, as herein provided, is guilty
25 of a class A misdemeanor.

26 **57-64-96. Appeals from decisions of tax commissioner.** Appeals from decisions of
27 the tax commissioner in contested cases may be taken in accordance with chapter 28-32.

28 **57-64-97. Reinstatement of revoked retailer's license - Fee.** The license of a retailer
29 which has been canceled or revoked shall not be reinstated by the tax commissioner until all
30 the sales tax due the state and a ten dollar reinstatement fee has been paid.

1 **57-64-98. Jeopardy assessment of sales tax - Lien and distress warrant - Bond to**
2 **pay tax.** If the tax commissioner believes that the assessment or collection of taxes will be
3 jeopardized by delay, the tax commissioner may immediately make an assessment of the
4 estimated tax and penalty and demand payment thereof from the taxpayer. If such payment is
5 not made, a lien may be filed and a distress warrant issued. The tax commissioner shall be
6 permitted to accept a bond from the taxpayer to satisfy collection until the amount of tax legally
7 due shall be determined and paid.

8 **57-64-99. Endorsement and return of uncollectible warrant - Liability of officer for**
9 **failure to issue or execute warrant.** When the sheriff is unable to find property of the
10 taxpayer which may be seized and sold, within thirty days after receipt of the warrant, the sheriff
11 shall endorse upon the case of the warrant the word "uncollectible" and return the warrant to
12 the county treasurer. Failure or refusal of the county treasurer to issue a distress warrant when
13 requested to do so, or of the sheriff to attempt to execute the same, shall make the officer
14 failing to perform that officer's duty personally liable for the delinquent tax, and said tax may be
15 recovered in an action brought against that officer and that officer's sureties by the tax
16 commissioner.

17 **57-64-100. Records preserved by persons subject to tax - Inspection by**
18 **department.** Every person subject to tax under this chapter shall keep records and books of all
19 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other
20 pertinent papers and documents. At all times during business hours of the day, such books and
21 records and other papers and documents shall be subject to inspection by the tax
22 commissioner or the tax commissioner's duly authorized agents and employees to determine
23 the amount of tax due. Such books and records shall be preserved for a period of three years
24 unless the tax commissioner, in writing, authorized their destruction or disposal at an earlier
25 date.

26 **57-64-101. Rules.** The tax commissioner may adopt rules under chapter 28-32
27 concerning:

- 28 1. Licensing, including bonding and filing license applications;
- 29 2. The filing of returns and payment of the tax;
- 30 3. Determining the application of the tax and exemptions;
- 31 4. Taxpayer recordkeeping requirements; and

1 5. Determining auditing methods.

2 **57-64-102. Violations as criminal offenses - Classification.** Any person who:

3 1. Makes any false or fraudulent return in attempting to defeat or evade the tax
4 imposed by this chapter is guilty of a class A misdemeanor;

5 2. Fails to pay tax due under this chapter within thirty days from the date the tax
6 becomes due is guilty of a class A misdemeanor;

7 3. Fails to keep the records and books required by this chapter or refuses to exhibit
8 these records to the tax commissioner or the tax commissioner's agents for the
9 purpose of examination is guilty of a class A misdemeanor;

10 4. Fails to file a return required by this chapter within thirty days from the date the
11 return is due is guilty of a class A misdemeanor;

12 5. Engages in business as a retailer under this chapter without obtaining a sales tax
13 license is guilty of a class A misdemeanor;

14 6. Engages in business as a retailer under this chapter after that person's sales tax
15 license has been revoked by the tax commissioner is guilty of a class A
16 misdemeanor;

17 7. Willfully violates any rule of the tax commissioner for the administration and
18 enforcement of the provisions of this chapter is guilty of a class A misdemeanor;

19 8. Violates either subsection 2 or subsection 4 two or more times in any twelve-month
20 period is guilty of a class C felony; or

21 9. Engages in business as a retailer under this chapter without obtaining a sales tax
22 license after having been notified in writing by the tax commissioner that the
23 person is a retailer subject to the provisions of the sales and use tax laws is guilty
24 of a class A misdemeanor. It is not a violation of this subsection if the person
25 engaging in business as a retailer files an application for a sales tax license and
26 meets all lawful prerequisites for obtaining such license within three days from
27 receipt of written notice from the tax commissioner.

28 For purposes of this section, "person" includes corporate officers having control or supervision
29 of or charged with the responsibility for making tax returns or payments pursuant to this
30 chapter.

1 **57-64-103. Allocation to state general fund and political subdivisions.** All taxes
2 and license fees collected by the tax commissioner pursuant to this chapter shall immediately
3 be turned over to the state treasurer and credited to the state general fund, except five percent
4 of net sales, use, and motor vehicle excise tax collections under chapters 57-64 through 57-67
5 and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The
6 state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor
7 vehicle excise tax net revenues that must be deposited in the state aid distribution fund as
8 determined under this section. Revenues deposited in the state aid distribution fund are
9 provided as a standing and continuing appropriation and must be allocated as follows:

10 1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties
11 in the first month after each quarterly period as provided in this subsection.

12 a. Sixty-four percent of the amount must be allocated among the seventeen
13 counties with the greatest population in the following manner:

14 (1) Thirty-two percent of the amount must be allocated equally among the
15 counties; and

16 (2) The remaining amount must be allocated based upon the proportion
17 each such county's population bears to the total population of all such
18 counties.

19 b. Thirty-six percent of the amount must be allocated among all counties,
20 excluding the seventeen counties with the greatest population in the following
21 manner:

22 (1) Forty percent of the amount must be allocated equally among the
23 counties; and

24 (2) The remaining amount must be allocated based upon the proportion
25 each such county's population bears to the total population of all such
26 counties.

27 A county shall deposit all revenues received under this subsection in the county
28 general fund. Each county shall reserve a portion of its allocation under this
29 subsection for further distribution to, or expenditure on behalf of, townships, rural
30 fire protection districts, rural ambulance districts, soil conservation districts, county
31 recreation service districts, county hospital districts, the Garrison Diversion

- 1 Conservancy District, the southwest water authority, and other taxing districts
2 within the county, excluding school districts, cities, and taxing districts within cities.
3 The share of the county allocation under this subsection to be distributed to a
4 township must be equal to the percentage of the county share of state aid
5 distribution fund allocations that township received during calendar year 1996. The
6 governing boards of the county and township may agree to a different distribution.
- 7 2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the
8 first month after each quarterly period as provided in this subsection.
- 9 a. Nineteen and four-tenths percent of the amount must be allocated among
10 cities with a population of eighty thousand or more based upon the proportion
11 each city's population bears to the total population of all such cities.
- 12 b. Thirty-four and five-tenths percent of the amount must be allocated among
13 cities with a population of twenty thousand or more but fewer than eighty
14 thousand based upon the proportion each such city's population bears to the
15 total population of all such cities.
- 16 c. Sixteen percent of the amount must be allocated among cities with a
17 population of ten thousand or more but fewer than twenty thousand based
18 upon the proportion each such city's population bears to the total population
19 of all such cities.
- 20 d. Four and nine-tenths percent of the amount must be allocated among cities
21 with a population of five thousand or more but fewer than ten thousand based
22 upon the proportion each such city's population bears to the total population
23 of all such cities.
- 24 e. Thirteen and one-tenth percent of the amount must be allocated among cities
25 with a population of one thousand or more but fewer than five thousand based
26 upon the proportion each such city's population bears to the total population
27 of all such cities.
- 28 f. Six and one-tenth percent of the amount must be allocated among cities with
29 a population of five hundred or more but fewer than one thousand based upon
30 the proportion each such city's population bears to the total population of all
31 such cities.

- 1 g. Three and four-tenths percent of the amount must be allocated among cities
2 with a population of two hundred or more but fewer than five hundred based
3 upon the proportion each such city's population bears to the total population
4 of all such cities.
- 5 h. Two and six-tenths percent of the amount must be allocated among cities with
6 a population of fewer than two hundred based upon the proportion each such
7 city's population bears to the total population of all such cities.
- 8 A city shall deposit all revenues received under this subsection in the city general
9 fund. Each city shall reserve a portion of its allocation under this subsection for
10 further distribution to, or expenditure on behalf of, park districts and other taxing
11 districts within the city, excluding school districts. The share of the city allocation
12 under this subsection to be distributed to a park district must be equal to the
13 percentage of the city share of state aid distribution fund allocations that park
14 district received during calendar year 1996, up to a maximum of thirty percent. The
15 governing boards of the city and park district may agree to a different distribution.

16 **57-64-104. Personal liability of officers of corporation failing to file returns or pay**
17 **tax - Security in lieu of liability - Bonded municipal officials exempt.** If a corporation
18 subject to tax under this chapter fails for any reason to file the required returns or to pay the tax
19 due, any of its officers having control, or supervision of, or charged with the responsibility for
20 making such returns and payments shall be personally liable for such failure. The dissolution of
21 a corporation shall not discharge an officer's liability for a prior failure of the corporation to make
22 a return or remit the tax due. The sum due for such a liability may be assessed and collected
23 as provided by law.

24 If the corporate officers elect not to be personally liable for the failure to file the required
25 returns or to pay the tax due, the corporation shall provide the tax commissioner with a surety
26 bond or certificate of deposit as security for payment of any tax that may become due. The
27 bond or certificate of deposit provided for in this section shall be in an amount equal to the
28 estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This
29 section does not apply to elected or appointed officials of a municipality if they are bonded.

30 **57-64-105. Exemption certificate - Responsibilities of seller taking certificate -**
31 **Responsibilities of purchaser - Violation as misdemeanor - Retention of certificate -**

1 **Rules and forms.** A seller, who possesses an exemption certificate from a purchaser of
2 tangible personal property or services which indicates the items or services being purchased
3 are exempt, may rely on the exemption certificate and not charge sales tax to the provider of
4 the exemption certificate until the provider of the exemption certificate gives notice that the
5 items or services being purchased are no longer exempt by filing a new exemption certificate
6 with the seller.

7 The exemption certificate shall be signed by the purchaser, provide the purchaser's
8 name, address, and valid state tax license number, if applicable, and shall describe the types of
9 tangible personal property and services being purchased exempt by the purchaser. However,
10 any person filing an electronic exemption certificate is not required to sign the exemption
11 certificate.

12 The purchaser claiming the protection of an exemption certificate is responsible for
13 assuring that the goods and services delivered thereafter are of a type covered by the
14 exemption certificate. If there are items covered under the exemption certificate which are not
15 being purchased exempt, it is the responsibility of the purchaser when ordering goods from a
16 seller to indicate if any of the items purchased are not exempt, and the appropriate sales tax
17 shall be charged on the portion of the sale that is not exempt. A seller of property or services
18 which are generally described under the exemption certificate is not responsible for the
19 collection of the tax unless otherwise directed by the purchaser.

20 If the purchaser later determines there is any tax due and owing, the purchaser shall
21 remit the tax owed by the purchaser to the state. If the purchaser makes an exempt purchase
22 and later determines that the goods or services purchased are not exempt, the purchaser shall
23 report the transaction and pay the use tax on the next filing of the purchaser's return.

24 Any purchaser who knowingly and intentionally lists on an exemption certificate
25 personal property or services which the purchaser knows, at the time the exemption certificate
26 is filed with the seller, are not exempt, or provides an invalid exemption certificate with the intent
27 to evade payment of the tax, and fails to timely report the same with the tax commissioner is
28 guilty of a class A misdemeanor. The tax commissioner may assess a penalty of up to fifty
29 percent of the tax owed in addition to the tax owed. No interest may be charged on the penalty.

1 The seller shall retain the exemption certificate for a period of three years from the date
2 it is filed by the purchaser and provide the exemption certificate to the tax commissioner upon
3 request.

4 The tax commissioner may adopt rules under chapter 28-32 to adopt forms for
5 exemption certificates.

6 **57-64-106. Tangible property transportation gross receipts tax imposed -**
7 **Transportation to be within state.** There is imposed a tax of five and seven-tenths percent
8 on the gross receipts from the transportation of tangible personal property. The tax imposed by
9 this section shall apply to any transportation of tangible personal property if both the origin and
10 destination of the tangible personal property are within this state.

11 **57-64-107. Passenger transportation gross receipts tax imposed - Transportation**
12 **to be within state.** There is imposed a tax of five and seven-tenths percent on the gross
13 receipts from the transportation of passengers. The tax imposed by this section shall apply to
14 any transportation of passengers if the passenger boards and exits the mode of transportation
15 within this state.

16 **57-64-108. Inapplicability of tax.** The tax imposed by sections 57-64-106 through
17 57-64-115 does not apply to any transportation service which the state is prohibited from taxing
18 by federal law or the United States constitution.

19 **57-64-109. Agricultural products transportation by producer exempt.** The
20 transportation of agricultural products by the agricultural producer thereof is exempt from the
21 tax imposed by sections 57-64-106 through 57-64-115 if the producer transports such products
22 in a mode of transportation which is owned, leased, or rented by the producer. However, if an
23 agricultural producer transports another person's products for hire, such transportation is
24 subject to the tax imposed by sections 57-64-106 through 57-64-115.

25 **57-64-110. Transportation services sold for resale.** Transportation services may
26 only be sold for resale under the following circumstances:

- 27 1. A transportation company may sell its services for resale to another transportation
28 company; or
29 2. A retailer that regularly delivers a majority of the tangible personal property which it
30 sells to its customers by truck or other mode of transportation owned, leased, or

1 rented by such retailer may purchase for resale the services of a transportation
2 company for the delivery of such retailer's tangible personal property.

3 **57-64-111. Definition of terms.** As used in sections 57-64-112 through 57-64-114:

- 4 1. "Cargo vessel" means a single transport truck;
5 2. "Fuel" means gasoline, ethanol, methanol, liquefied petroleum gas, petroleum
6 distillates, lubricating oils and greases, glycol-based antifreezes, fuels used for
7 off-highway racing, solvents such as petroleum naphtha, mineral spirits, or
8 stoddard solvents, and any other petroleum product delivered to a terminal by
9 pipeline, truck, or rail, any other motor vehicle fuel as defined in section 57-43.1-01
10 and special fuels as defined in section 57-43.2-01;
11 3. "Fuel terminal transportation" means the transportation of fuel from a terminal to a
12 location in this state at which the fuel is unloaded. Fuel terminal transportation
13 does not include the transportation of fuel from a location other than a terminal;
14 4. "Terminal" means as defined in section 57-43.2-01; and
15 5. "Trip" means the distance in road miles traveled by a cargo vessel from the fuel
16 terminal at which it was loaded with fuel to the most distant location in this state at
17 which the fuel is unloaded, excluding miles not traveled within this state.

18 **57-64-112. Tax of fuel terminal transportation services.** In lieu of the tax imposed
19 by sections 57-64-106 and 57-67-86 on the transportation of fuel, a transportation company
20 may elect to be taxed on the fuel terminal transportation services under sections 57-64-111
21 through 57-64-114.

22 **57-64-113. Tax on gross receipts of transportation company engaged in fuel**
23 **terminal transportation - Calculation of imputed gross receipts.** There is imposed a tax on
24 the imputed gross receipts of any transportation company engaged in fuel terminal
25 transportation who elects to be taxed under this section. The tax imposed by this section shall
26 be on the imputed gross receipts as provided in this section. The imputed gross receipts from
27 fuel terminal transportation shall be calculated on the basis of the number of cargo vessels and
28 distance traveled on each trip as follows:

<u>Length of Trip</u>	<u>Number of Cargo Vessels</u>	<u>Imputed Gross</u>
<u>(in miles)</u>	<u>Per Trip Transportation</u>	<u>Receipts From</u>
<u>50 or less</u>	<u>1</u>	<u>\$64.00</u>

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1	<u>50 or less</u>	<u>2 or more</u>	<u>\$88.00</u>
2	<u>More than 50, but less than 100</u>	<u>1</u>	<u>\$120.00</u>
3	<u>More than 50, but less than 100</u>	<u>2 or more</u>	<u>\$165.00</u>
4	<u>100 or more, but less than 150</u>	<u>1</u>	<u>\$176.00</u>
5	<u>100 or more, but less than 150</u>	<u>2 or more</u>	<u>\$242.00</u>
6	<u>150 or more, but less than 200</u>	<u>1</u>	<u>\$224.00</u>
7	<u>150 or more, but less than 200</u>	<u>2 or more</u>	<u>\$308.00</u>
8	<u>200 or more</u>	<u>1</u>	<u>\$280.00</u>
9	<u>200 or more</u>	<u>2 or more</u>	<u>\$385.00</u>

10 **57-64-114. Exemption of tax on subsequent transportation of fuel.** For the fuel
11 terminal transportation subject to tax under sections 57-64-111 through 57-64-113, all
12 subsequent transportation of that fuel is exempt from the tax imposed under this chapter.

13 **57-64-115. Effect of special reporting election.** The provisions of section 57-64-82
14 also apply to any taxes imposed by sections 57-64-111 through 57-64-113 on transportation
15 services regardless of any special reporting election the taxpayer may have made.

16 **57-64-116. Temporary vendor to maintain inventory records.** A temporary vendor
17 shall maintain, for a minimum of three years, inventory records, including a beginning inventory
18 of merchandise. The vendor shall provide such records for immediate inspection and review to
19 any agent or representative of the tax commissioner upon request. Failure to comply with this
20 section is a class A misdemeanor.

21 **57-64-117. Temporary vendor to maintain sales receipts - Requests for**
22 **inspection.** A temporary vendor shall maintain daily sales receipts, such as cash register
23 tapes, handwritten receipts, credit card receipts, or other receipts, for a minimum of three years.
24 The vendor shall provide such receipts for immediate inspection and review to any agent or
25 representative of the tax commissioner upon request. Failure to comply with this section is a
26 class A misdemeanor.

27 **57-64-118. Temporary vendor to furnish list of supplies.** A temporary vendor shall
28 maintain for a minimum of three years a complete list of suppliers, including names and
29 addresses. The vendor shall provide for immediate inspection and review of such list to any
30 agent or representative of the tax commissioner upon request. Failure to comply with this
31 section is a class A misdemeanor.

1 **57-64-119. Review and audit of temporary vendors.** A temporary vendor operating
2 in this state may be subjected to reviews and audits without notice.

3 **57-64-120. Failure to maintain records - Revocation of temporary license.** The
4 secretary shall revoke the temporary license of any person that fails to comply with the
5 provisions of sections 57-64-116 through 57-64-120.

6 **57-64-121. Allowable deductions for auctioneers.** In determining the amount of tax
7 due under this chapter, auctioneers may deduct from gross receipts amounts which represent
8 direct expense charges for clients for tangible personal property or services purchased by the
9 auctioneer on behalf of a client. However, the sale of the property or service to the auctioneer
10 is not a sale for resale if this deduction is taken. This deduction may only be taken if the
11 amount to be deducted represents an expense specifically incurred for a particular client and
12 the amount is itemized and paid from the client's auction proceeds by the auctioneer or closing
13 agent. The deduction shall be disallowed if the auctioneer receives any profit or remuneration
14 directly or indirectly from the client's expense.

15 **57-64-122. Auction clerk to file return and remit sales tax - Responsibilities of**
16 **auctioneer - Records.** All auction sales and consignment sales of tangible personal property
17 and services are sales at retail. The auction clerk shall file the return and remit the tax imposed
18 by this chapter on the gross receipts from each auction after applying the deductions provided
19 by section 57-64-121. However, the auctioneer is responsible for the payment of the tax
20 imposed by this chapter if the auction clerk is an employee of the auctioneer or if the auction
21 clerk does not have a permit as required by this chapter. In addition to any other information
22 required to be kept by this chapter, each auction clerk shall keep records that identify the owner
23 of the property sold at auction and the auctioneer who conducts the sale of such property.

24 **57-64-123. Tax on gross receipts of professional employer organization -**
25 **Deduction available.** The gross receipts of a professional employer organization are
26 specifically subject to the tax imposed by this chapter. However, a professional employer
27 organization may deduct from its taxable gross receipts its actual disbursements, including
28 appropriate reserves, for the wages, salaries, payroll taxes, payroll deductions, workers'
29 compensation costs, insurance premiums, welfare benefits, retirement benefits, and other
30 employee benefits of its co-employees.

1 **57-64-124. Professional employer organization defined.** For the purposes of
2 section 57-64-123, the term "professional employer organization" means a firm which:

- 3 1. Enters into a contractual agreement with a client company to create a
4 co-employment relationship for the provision of payroll, benefits, and other human
5 resources functions;
- 6 2. Covers at least seventy-five percent of the client company's full-time or full-time
7 equivalent employees domiciled in North Dakota; and
- 8 3. Maintains separate books and records of account for each client company.

9 **57-64-125. Temporary help services not professional employer organization.** The
10 provisions of sections 57-64-123 and 57-64-124 do not apply to the providing of temporary help
11 services or to any other arrangement whereby a firm temporarily assigns employees of the firm
12 to support or supplement a client company's regular workforce in special situations such as
13 employee absences, temporary skill shortages, seasonal workloads, and special assignments
14 or projects.

15 **57-64-126. Definitions.** As used in section 57-64-86 and sections 57-64-126 through
16 57-64-134:

- 17 1. "Business" means a business that has purchased and is installing tangible
18 personal property in the form of equipment or machinery for direct use in a
19 manufacturing, fabricating, or processing business, which is subject to sales or use
20 tax pursuant to this chapter or chapter 57-67;
- 21 2. "Department" means the office of the tax commissioner;
- 22 3. "Project" means the purchase and installation of equipment or machinery; and
- 23 4. "Project cost" means the amount paid in money for a project.

24 **57-64-127. Extension for remitting sales and use tax on manufacturing**
25 **equipment.** Any manufacturing, fabricating, or processing business may apply for and obtain
26 an extension for remitting the sales and use tax imposed and due under the provisions of this
27 chapter for equipment or machinery that will be for direct use in a manufacturing, fabricating, or
28 processing business. The extension shall end after six months.

29 **57-64-128. Requirements for extension.** The extension pertains only to equipment
30 and machinery purchased and installed. No extension may be made unless:

- 31 1. The project cost exceeds twenty thousand dollars; and

1 2. The business applying for the extension obtains a permit from the tax
2 commissioner as set forth in section 57-64-130.

3 **57-64-129. Extension applies to full costs and installation fees.** The amount of the
4 tax extension shall apply to one hundred percent of the equipment and machinery costs and
5 installation fees.

6 **57-64-130. Application for extension permit - Permit nontransferable.** Any
7 business desiring an extension pursuant to section 57-64-86 and sections 57-64-126 through
8 57-64-134 shall apply for a permit from the tax commissioner at least thirty days prior to
9 commencement of the project. The application for a permit shall be submitted on a form
10 prescribed by the tax commissioner. A separate application shall be made and submitted for
11 each project. Upon approval of the application, the tax commissioner shall issue a permit
12 entitling the applicant to an extension as provided by section 57-64-86 and sections 57-64-126
13 through 57-64-134. The permit or extension is not assignable or transferable.

14 **57-64-131. Tax commissioner to prescribe form and documentation**
15 **requirements.** Any extension shall be submitted on forms prescribed by the tax commissioner
16 and shall be supported by such documentation as the tax commissioner may require. The tax
17 commissioner may deny any extension if the business has failed to provide information or
18 documentation requested or considered necessary by the tax commissioner to determine the
19 validity of the extension.

20 **57-64-132. Fraudulent claim - Tax due constitutes lien in favor of state.** If any
21 extension has been fraudulently presented or supported as to any item in the claim, or if the
22 business fails to meet all the conditions of section 57-64-86 and sections 57-64-126 through
23 57-64-134, then the business may be rejected in its entirety and any tax due from the business
24 shall constitute a debt to the state and a lien in favor of the state upon all property and rights to
25 property whether real or personal belonging to the business and may be recovered in an action
26 of debt.

27 **57-64-133. Right to hearing on denial of extension request.** Any business
28 aggrieved by the denial in whole or in part of an extension requested under section 57-64-86
29 and sections 57-64-126 through 57-64-134 within thirty days after service of the notice of a
30 denial by the tax commissioner, may demand and is entitled to a hearing, upon notice, before
31 the tax commissioner. The hearing shall be conducted pursuant to chapter 28-32.

1 **57-64-134. Rules.** The tax commissioner may adopt rules, under chapter 28-32,
2 concerning the procedures for filing extensions and the requirements necessary to qualify for an
3 extension.

4 **57-64-135. Sourcing of sales and services.** For purposes of the tax imposed by this
5 chapter, a retailer shall source sales of tangible personal property and services to the location
6 where the tangible personal property or service is received. The tax commissioner shall adopt
7 rules, pursuant to chapter 28-32, defining the location of receipt. The rules adopted pursuant to
8 this section may provide an alternative method of sourcing telecommunications services.

9 **57-64-136. Registration and tax collection does not create nexus for other taxes.**
10 Registration under the agreement and collection of tax imposed under this chapter or chapter
11 57-69 does not in and of itself create nexus for other taxes or fees imposed by this state.

12 **SECTION 44.** Chapter 57-65 of the North Dakota Century Code is created and enacted
13 as follows:

14 **57-65-01. Definitions.** Terms as used in this chapter, unless the context otherwise
15 requires:

- 16 1. "Commissioner" means the tax commissioner.
- 17 2. "Department" means the office of the tax commissioner.
- 18 3. "Disabled" means a person receiving or having qualified to receive monetary
19 payments, pursuant to title II, X, or XVI of the Social Security Act, as amended, and
20 in effect on January 1, 1974, for all or part of the year for which a refund is claimed.
- 21 4. "Household" means the association of persons who live in the same dwelling,
22 share its furnishings, facilities, and accommodations, but not including bona fide
23 lessees, tenants, or roomers and boarders on contract.
- 24 5. "Household income" means all income received by all persons of a household
25 while members of the household.
- 26 6. "Income" means the sum of adjusted gross income as defined in the United States
27 Internal Revenue Code, as amended, and in effect on January 1, 2003, and all
28 nontaxable income, including the amount of capital gains excluded from adjusted
29 gross income, alimony, support money, nontaxable strike benefits, cash public
30 assistance and relief, not including relief granted under this chapter, the gross
31 amount of any pension or annuity, including Railroad Retirement Act benefits and

1 veterans' disability pensions, all payments received under the federal social
2 security and state unemployment insurance laws, nontaxable interest received
3 from the federal government or any of its instrumentalities, workers' compensation,
4 and the gross amount of loss of time insurance, but not including gifts from
5 nongovernmental sources, food stamps, or surplus foods, or other relief in kind
6 provided by a public agency, less real estate taxes payable or ten percent of rent
7 paid on the applicant's principal residence for the year in which application is
8 made. However, the reduction in the individual's income may not exceed four
9 hundred dollars.

10 7. "Single-family dwelling" means a house, condominium, apartment, or
11 manufactured home as defined in section 41-09-02 which is assessed and taxed
12 as a separate unit, including the platted lot upon which the structure is situated or
13 one acre [.405 hectare], whichever is less, and the garage, whether attached or
14 unattached.

15 8. "Tax year" or "taxable year" means the calendar year or the fiscal year ending
16 during a calendar year used for computing household income under this chapter.
17 A claimant's tax year is the same period as is covered by the claimant's federal
18 income tax return.

19 **57-65-02. Reduction in income allowed for taxes paid - Determination of amount.**

20 The amount of the reduction in income allowed for taxes paid pursuant to subsection 6 of
21 section 57-65-01 shall be equal to the real property taxes paid on the principal residence of the
22 claimant. If the residence is a single family dwelling, then the amount of the reduction shall
23 equal the taxes paid on the residence structure, the platted lot upon which the structure is
24 located or one acre [.405 hectare], whichever is less, and the garage, whether attached or
25 unattached. If the residence is not a single family dwelling, then the reduction shall be equal to
26 the amount of the tax paid on or allocated to the structure and the platted lot upon which the
27 structure is situated or one acre [.405 hectare], whichever is less, used as a residence by the
28 claimant, including the garage, whether attached or unattached.

29 **57-65-03. Refund of sales and service taxes to elderly and disabled persons.** Any
30 person sixty-five years of age or older prior to January first in the year for which a claim for
31 refund is made, and any disabled person, and resident of this state for that entire calendar year,

1 shall be reimbursed and repaid as a refund for retail sales and service taxes paid, within sixty
2 days after the deadline, as prescribed in section 57-65-09, for the filing of a claim with the
3 commissioner, according to the schedules in sections 57-65-06 through 57-65-08.

4 **57-65-04. Right to file lost on death - Filing by guardian or attorney.** The right to
5 file a claim under this chapter is personal to the claimant and does not survive the claimant's
6 death, but such right may be exercised on behalf of a claimant by the claimant's guardian or
7 attorney-in-fact.

8 **57-65-05. Relief limited to one claimant per household - Commissioner to resolve**
9 **disputes.** Only one claimant per household per year is entitled to relief under this chapter.
10 When two or more individuals of a household are able to meet the qualifications for a claimant,
11 they may determine among them as to who shall be the claimant. If they are unable to agree,
12 the matter shall be referred to the commissioner and the commissioner's decision is final.

13 **57-65-06. Refund amounts for single member households.** The amount of any
14 claim made under this chapter by a claimant from a household consisting solely of one
15 individual shall be determined as follows:

- 16 1. If the claimant's income is three thousand five hundred dollars or less, a sum of
17 two hundred fifty-eight dollars;
- 18 2. If the claimant's income is three thousand five hundred one dollars and not more
19 than nine thousand seven hundred fifty dollars, a sum of forty-six dollars plus three
20 and four-tenths percent of the difference between nine thousand seven hundred
21 fifty dollars and the income of the claimant; and
- 22 3. If the claimant's income is more than nine thousand seven hundred fifty dollars, no
23 refund.

24 **57-65-07. Refund schedule for multiple member households.** The amount of any
25 claim made pursuant to this chapter by a claimant from a household consisting of more than
26 one individual shall be determined as follows:

- 27 1. If household income is six thousand two hundred fifty dollars or less, the sum of
28 five hundred eighty-one dollars;
- 29 2. If household income is six thousand two hundred fifty-one dollars and not more
30 than twelve thousand seven hundred fifty dollars, a sum of seventy-four dollars

1 plus seven and eight-tenths percent of the difference between twelve thousand
2 seven hundred fifty dollars and total household income; and

3 3. If household income is more than twelve thousand seven hundred fifty dollars, no
4 refund.

5 **57-65-08. Commissioner to prepare table.** The commissioner shall prepare a table
6 under which claims shall be determined. The amount of the claim as shown in the table for
7 each bracket shall be computer only to the nearest dollar.

8 **57-65-09. Deadline for claims - Forms and assistance from county treasurers -**
9 **Extension of deadline.** A claim for refund under section 57-65-03 shall be made annually on
10 or before July first upon forms prescribed by the commissioner. Forms shall be made available
11 to county treasurers who shall, upon request of a claimant, assist the claimant in completing the
12 application and shall forward the same to the department. In case of sickness, absence, or
13 other disability of the claimant, or if other good cause exists, the commissioner may extend for a
14 period not to exceed six months the time for filing a claim.

15 **57-65-10. Claim computed by department at election of claimant.** The claimant is
16 not required to record on the claim the amount claimed. The claim allowable to persons making
17 this election shall be computed by the department.

18 **57-65-11. Documentary evidence with claim.** A claim for refund shall include such
19 documentary evidence as the commissioner deems necessary to assure validity of the claim.

20 **57-65-12. Commissioner to determine disability claims.** The commissioner shall
21 make the final determination as to whether a claimant seeking a refund as a disabled person is
22 qualified.

23 **57-65-13. Death of claimant - Disposition of claim.** If a claimant dies after having
24 filed a timely claim, the amount thereof shall be disbursed to another member of the household
25 as determined by the commissioner. If the claimant was the only member of the household, the
26 claim may be paid to the claimant's personal representative, but if none is appointed and
27 qualified within two years of the filing of the claim, the amount of the claim shall escheat to the
28 state.

29 **57-65-14. Proration of funds insufficient to pay all claims.** In the event that funds
30 appropriated are not sufficient to pay all claims authorized by this chapter, funds so
31 appropriated shall be prorated to such claimants as have timely filed.

1 **57-65-15. Denial of claim - Hearing before commissioner - Appeals.** Any person
2 aggrieved by the denial in whole or in part of relief claimed under this chapter, may within thirty
3 days after receiving notice of such denial by the commissioner, demand and shall be entitled to
4 a hearing, upon notice, before the commissioner on the question. The procedures therein shall
5 be conducted and appeals allowed and perfected pursuant to chapter 28-32.

6 **57-65-16. Fraudulent claims - Recovery of excess payment - Filing as petty**
7 **offense.** If it is determined that a claim is excessive and was filed with fraudulent intent, the
8 claim shall be disallowed in full, and, if the claim has been paid, the department may initiate
9 appropriate legal actions to recover the amount paid. Fraudulently filing an excessive claim is
10 an infraction.

11 **57-65-17. Rules.** The commissioner shall adopt rules under chapter 28-32 concerning:

- 12 1. The procedure for filing a refund claim;
- 13 2. The requirements necessary to qualify for a refund; and
- 14 3. The definition of income.

15 **SECTION 45.** Chapter 57-66 of the North Dakota Century Code is created and enacted
16 as follows:

17 **57-66-01. Definitions.** As used in this chapter, unless the context or subject matter
18 otherwise requires:

- 19 1. "Commissioner" means the tax commissioner.
- 20 2. "Department" means the office of the tax commissioner.
- 21 3. "New agricultural processing facility" means a new building or structure, the
22 construction of which is subject to sales or use taxes. A new agricultural
23 processing facility is any new building or structure constructed for the initial or
24 subsequent processing of any form of agricultural commodity, product, or
25 byproduct. A new agricultural processing facility does not include any building or
26 structure constructed for raising or feeding of livestock or the expansion of an
27 existing agricultural processing facility.
- 28 4. "Person" means any individual, firm, copartnership, joint venture, association,
29 limited liability company, corporation, estate, trust, business trust, receiver, or any
30 group or combination acting as a unit.

1 5. "Project" means the construction of a new agricultural processing facility at a single
2 site.

3 6. "Project cost" means the amount paid in money, credits, property, or other money's
4 worth for a project.

5 **57-66-02. Refund for sales or use taxes.** Any person may apply for and obtain a
6 refund or credit for taxes imposed and paid under the provisions of chapters 57-64 and 57-67
7 for the purchase or use of agricultural processing equipment.

8 **57-66-03. Requirements for refunds.** The refund pertains only to project costs
9 incurred and paid after June 30, 2005, and within thirty-six months of the approval of the
10 application required by section 57-66-05. No refund may be made unless:

- 11 1. The project cost exceeds the sum of four million five hundred thousand dollars; and
12 2. The person applying for the refund obtains a permit from the commissioner as set
13 forth in section 57-66-05.

14 **57-66-04. Calculation of refund.** If the project cost exceeds four million five hundred
15 thousand dollars, the refund shall be one hundred percent of the taxes attributed to purchase or
16 use of agricultural processing equipment in the project cost.

17 **57-66-05. Application for permit - Approval.** Any person desiring to claim a refund
18 pursuant to section 57-66-02 shall apply for a permit from the commissioner at least thirty days
19 prior to commencement of the project. The application for a permit shall be submitted on a form
20 prescribed by the commissioner. A separate application shall be made and submitted for each
21 project. Upon approval of the application, the commissioner shall issue a permit entitling the
22 applicant to submit refund claims as provided by sections 57-66-06 and 57-66-07. Such permit
23 or refund claims are not assignable or transferable.

24 **57-66-06. Claim for refund - Documentation.** Any claim for refund shall be submitted
25 on forms prescribed by the commissioner and shall be supported by such documentation as the
26 commissioner may require. The commissioner may deny any claim when the claimant has
27 failed to provide information or documentation requested or considered necessary by the
28 commissioner to determine the validity of the claim.

29 **57-66-07. Time limit to submit claim - Payment - Portion withheld - No interest.**
30 Any person issued a permit pursuant to this chapter shall submit a return to the department on
31 or before the last day of the month following each quarterly period. The commissioner shall

1 determine the amount of the tax refund. Ninety percent of the amount of the refund shall be
2 paid to the claimant and ten percent shall be withheld by the department. No interest shall be
3 paid on the refund amount.

4 **57-66-08. Payment of withheld portion of refund.** The amounts withheld by the
5 department in accordance with section 57-66-07 shall be retained until the project has been
6 completed and the claimant has met all the conditions of this chapter, at which time all sums
7 retained shall be paid to the claimant.

8 **57-66-09. Rejection of fraudulent claim.** If any claim has been fraudulently
9 presented or supported as to any item in the claim or if the claimant fails to meet all the
10 conditions of this chapter, then such claim may be rejected in its entirety and all sums
11 previously refunded to the claimant shall constitute a debt to the state and a lien in favor of the
12 state upon all property and rights to property whether real or personal belonging to the claimant
13 and may be recovered in an action of debt.

14 **57-66-10. Hearing upon denial of refund.** Any person aggrieved by the denial in
15 whole or in part of a refund claimed under this chapter may within thirty days after service of the
16 notice of such denial by the commissioner, demand and is entitled to a hearing, upon notice,
17 before the commissioner. The hearing shall be conducted pursuant to chapter 28-32.

18 **57-66-11. Rules.** The commissioner shall adopt rules, pursuant to chapter 28-32,
19 concerning the procedures for filing refund claims and the requirements necessary to qualify for
20 a refund.

21 **SECTION 46.** Chapter 57-67 of the North Dakota Century Code is created and enacted
22 as follows:

23 **57-67-01. Definitions.** As used in this chapter, unless the context or subject matter
24 otherwise requires:

25 1. "Business" means any activity engaged in by any person or caused to be engaged
26 in by such person with the object of gain, benefit, or advantage either direct or
27 indirect.

28 2. "Commissioner" means the tax commissioner or any duly authorized and
29 appointed assistant, deputy, or agent of the commissioner charged with the
30 administration or enforcement of this chapter.

- 1 3. "Delivery charges" means charges by the retailer for preparation and delivery to a
2 location designated by the purchaser of tangible personal property or services
3 including transportation, shipping, postage, handling, crating, and packing.
- 4 4. "Fair market value" means the price at which a willing seller and willing buyer will
5 trade. Fair market value shall be determined at the time of purchase. If a public
6 corporation is supplying tangible personal property that will be used in the
7 performance of a contract, fair market value is the purchase price or fair market
8 value, whichever is greater. This definition also applies to chapter 10-45.
- 9 5. "In this state" or "in the state" means within the exterior limits of North Dakota and
10 includes all territory within such limits owned by or ceded to the United States of
11 America.
- 12 6. "Included in the measure of tax" means the tangible personal property or the
13 service was purchased from a retailer licensed under chapter 57-64 and that
14 retailer has included the tax in the amount received from the sale.
- 15 7. "Lease" or "rental" means any transfer of possession or control of tangible personal
16 property for a fixed or indeterminate term for consideration. A lease or rental may
17 include future options to purchase or extend. Lease or rental does not include:
- 18 a. A transfer of possession or control of property under a security agreement or
19 deferred payment plan that requires the transfer of title upon completion of the
20 required payments;
- 21 b. A transfer of possession or control of property under an agreement that
22 requires the transfer of title upon completion of required payments and
23 payment of an option price does not exceed the greater of one hundred
24 dollars or one percent of the total required payments; or
- 25 c. Providing tangible personal property along with an operator for a fixed or
26 indeterminate period of time. A condition of this exclusion is that the operator
27 is necessary for the equipment to perform as designed. For the purpose of
28 this subdivision, an operator shall do more than maintain, inspect, or set up
29 the tangible personal property.
- 30 8. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in
31 any manner or by any means whatsoever, for a consideration. A transaction,

1 whereby the possession of property is transferred but the seller retains the title as
2 security for the payment of the price, is a purchase.

3 9. "Purchase price" has the same meaning as gross receipts defined in section
4 57-64-01.

5 10. "Retailer" means any person performing services in this state or engaged in the
6 business of selling tangible personal property for use, storage, or other
7 consumption within the meaning of this chapter. However, if in the opinion of the
8 tax commissioner, it is necessary for the efficient administration of this chapter to
9 regard any salesperson, representative, trucker, peddler, or canvasser as an agent
10 of the dealer, distributor, supervisor, employer, or person under whom they operate
11 or from whom they obtain the tangible personal property sold by them irrespective
12 of whether they are making sales on their own behalf or on behalf of such dealer,
13 distributor, supervisor, employer, or person, the tax commissioner may so regard
14 them and may regard the dealer, distributor, supervisor, employer, or person as a
15 retailer for purposes of this chapter.

16 11. "Retailer maintaining a place of business in the state" means any retailer having or
17 maintaining within this state, directly or by a subsidiary, an office, distribution
18 house, sales house, warehouse, or other place of business, or any agents
19 operating within the state under the authority of the retailer or its subsidiary,
20 irrespective of whether such place of business or agent is located in this state
21 permanently or temporarily or whether such retailer or subsidiary is admitted to do
22 business within this state pursuant to the laws of the state granting the rights of
23 foreign corporations to do business in this state.

24 12. "Storage" means any keeping or retention in this state for use or other
25 consumption in this state for any purpose except sale in the regular course of
26 business.

27 13. "Tangible personal property" means personal property that can be seen, weighed,
28 measured, felt, or touched, or that is in any other manner perceptible to the senses
29 if furnished or delivered to consumers or users within this state. The term includes
30 electricity, water, gas, steam, and prewritten computer software.

1 14. "Use" means the exercise of right or power over tangible personal property
2 incidental to the ownership of that property, except that it does not include the sale
3 of that property in the regular course of business. Use also includes the use of the
4 types of services, the gross receipts from the sale of which are to be included in
5 the measure of the tax imposed by chapter 57-64, and the delivery or causing
6 delivery into this state of tangible personal property intended to advertise products
7 or services or promote or facilitate sales to North Dakota residents.

8 **57-67-02. Tax on tangible personal property purchased for use in state - Rate**
9 **based on purchase price.** An excise tax is hereby imposed on the privilege of the use,
10 storage, and consumption in this state of tangible personal property purchased for use in this
11 state at the same rate of percentage of the purchase price of said property as is imposed
12 pursuant to chapter 57-64.

13 **57-67-03. Tax imposed on use of services - Exemptions - Related corporation**
14 **defined.** For the privilege of using services in North Dakota, there is imposed on the person
15 using the service an excise tax equal to five and sixty-five hundredths percent of the value of
16 the services at the time they are rendered. However, this tax may not be imposed on any
17 service rendered by a related corporation as defined in section 57-64-68 for use by a financial
18 institution or on any service rendered by a financial institution for use by a related corporation.
19 For the purposes of this section, the term related corporation includes a corporation which
20 together with the financial institution is part of a controlled group of corporations as defined in
21 26 U.S.C. 1563 as in effect on January 1, 1989, except that the eighty percent ownership
22 requirements set forth in 26 U.S.C. 563(a)(2)(A) for a brother-sister controlled group are
23 reduced to fifty-one percent. For the purpose of this chapter, services rendered by an
24 employee for the use of the person's employer are not taxable.

25 **57-67-04. Tax on use of rented property.** An excise tax is imposed upon the
26 privilege of the use of rented tangible personal property in this state at the rate of five and
27 sixty-five hundredths percent of the rental payments upon the property.

28 **57-67-05. Exemption of use of property leased.** The use, storage, or consumption
29 of tangible personal property actually leased to persons in this state is exempted from the
30 provisions of this chapter and the tax imposed by it.

1 **57-67-06. Certain purchases considered for resale purposes.** Services purchased
2 by an engineer, architect, or surveyor on behalf of a client in the performance of a contract for
3 such client shall be considered purchases for resale purposes.

4 **57-67-07. Chemicals purchased for use by lawn and garden services considered**
5 **purchases for resale.** Chemicals purchased for use by lawn and garden services (industry
6 no. 0782) as enumerated in the Standard Industrial Classification Manual, 1987, as prepared by
7 the statistical policy division of the office of management and budget, office of the president,
8 and used in such services shall be considered as purchases for resale.

9 **57-67-08. Materials purchased for floor laying service considered purchases for**
10 **resale.** Carpet, floor covering, tacks, glue, and other materials purchased for use by floor
11 laying and other floor work not elsewhere classified (industry no. 1752) as enumerated in the
12 Standard Industrial Classification Manual, 1987, as prepared by the statistical policy division of
13 the office of management and budget, office of the president, and used for such work are
14 purchases for resale.

15 **57-67-09. Exemption for gross receipts pursuant to contract requiring retailer to**
16 **display products or signage - Exception.** There are hereby exempted from the provisions of
17 this chapter and the tax imposed by it, gross receipts received by a retailer from a
18 manufacturer, wholesaler, or distributor pursuant to a written contract between the retailer and
19 manufacturer, wholesaler, or distributor that requires the retailer to display the manufacturer,
20 wholesaler, or distributor's product or signage in a specified manner or location. Any discount
21 or deferred payment received by a retailer from a distributor, wholesaler, or manufacturer for
22 purchasing a product for sale at retail does not constitute gross receipts subject to the tax
23 imposed by this chapter.

24 **57-67-10. Tax on tangible personal property not purchased for use in state - Rate**
25 **based on fair market value - Property more than seven years old.** An excise tax is
26 imposed on the privilege of the use, storage, or consumption in this state of tangible personal
27 property not originally purchased for use in this state, but thereafter used, stored, or consumed
28 in this state, at the same rate of percent of the fair market value of the property at the time it is
29 brought into this state as is imposed by section 57-64-02. The use, storage, or consumption of
30 tangible personal property more than seven years old at the time it is brought into the state by
31 the person who purchased such property for use in another state is exempt from the tax

1 imposed herein. The commissioner may adopt rules under chapter 28-32 relating to the
2 determination of the age and value of the tangible personal property brought into this state.

3 **57-67-11. Tax imposed on person using property.** The tax under section 57-67-10
4 is also imposed upon every person using, storing, or otherwise consuming such property within
5 this state until such tax has been paid directly to a retailer or the commissioner as hereinafter
6 provided.

7 **57-67-12. Contractors and subcontractors taxed on property used in performance**
8 **of contract - Fabrication costs excluded.** If a contractor or subcontractor uses tangible
9 personal property in the performance of that person's contract or to fulfill contract or subcontract
10 obligations, whether the title to the property is in the name of the contractor, subcontractor,
11 contractee, subcontractee, or any other person, or whether the titleholder of the property would
12 be subject to pay the sales or use tax, the contractor or subcontractor shall pay a tax at the rate
13 prescribed by section 57-64-02, measured by the purchase price or fair market value of the
14 property, whichever is greater, unless the property has been previously subjected to a sales or
15 use tax in this state and the tax due thereon has been paid. However, if the contractor or
16 subcontractor fabricates tangible personal property for use in the performance of that person's
17 contract, fair market value excludes the value of the contractor's or subcontractor's fabrication
18 costs.

19 **57-67-13. Sectional homes not vehicles - Contractors taxed on materials used in**
20 **construction - Sectional homes defined.** If a sectional home is permanently affixed to real
21 property, it is not a vehicle subject to registration and shall be classified as real property. A
22 contractor who erects such a home shall hold a sales tax or use tax license and pay use tax
23 based upon the fair market value of the raw materials used to construct and erect the home.

24 For the purpose of this section, sectional home means any home prebuilt in part or in
25 whole for the purpose of permanent placement on a foundation. A mobile home is not a
26 sectional home.

27 **57-67-14. Materials incorporated in construction work - Restriction on application**
28 **of rate increase.** No tax increase may be levied on materials incorporated in construction work
29 pursuant to construction contracts bid or entered into on or before the effective date of the tax
30 increase.

1 **57-67-15. Value of molds and dies.** The value of molds and dies produced in
2 connection with the fabrication or manufacture of other tangible personal property is limited to
3 the cost of materials incorporated in the molds or dies to the extent the cost of such materials
4 have not previously been subjected to sales or use tax.

5 **57-67-16. Exemption of materials becoming part of out-of-state signage or**
6 **advertising.** Notwithstanding the provisions of section 57-67-12, the use in this state of
7 tangible personal property that becomes an integral and component part of a final product
8 manufactured by a business classified in signs and advertising specialties (industry no. 3993) in
9 the Standard Industrial Classification Manual, 1987, as prepared by the statistical policy division
10 of the office of management and budget, office of the president, that is installed by such
11 manufacturer outside of this state is exempt from the tax imposed by this chapter.

12 **57-67-17. Exemption of property and services subject to sales tax.** The use in this
13 state of tangible personal property or services, the gross receipts from the sale of which are to
14 be included in the measure of the tax imposed by chapter 57-64, is hereby specifically
15 exempted from the tax imposed by this chapter.

16 **57-67-18. Credit for sales or use tax paid to another state - Reciprocity required.**
17 The amount of any use tax imposed with respect to tangible personal property or services shall
18 be reduced by the amount of any sales or use tax previously paid by the taxpayer with respect
19 to the property on account of liability to another state or its political subdivisions. Provided,
20 however, no credit shall be given under this section if taxes paid on tangible personal property
21 or services in another state or its political subdivisions of that state does not reciprocally grant a
22 credit for taxes paid on similar tangible personal property.

23 **57-67-19. Exemption for credit services by credit bureaus to certain financial**
24 **institutions.** There are specifically exempted from the provisions of this chapter and from the
25 computation of the amount of tax imposed by it the use of credit services provided by credit
26 bureaus to financial institutions that are paying taxes pursuant to chapter 57-35.3.

27 **57-67-20. Constitutional exemptions from tax - Property of public agencies.**
28 Tangible personal property, the storage, use, or other consumption of which this state is
29 prohibited from taxing under the constitution or laws of the United States or under the
30 constitution of this state, or tangible personal property sold to the United States, the state of
31 North Dakota, or any public or municipal corporation of the state, which is for the use, storage,

1 or consumption of such public corporations is hereby specifically exempt from the tax imposed
2 by this chapter.

3 **57-67-21. Exemption of property brought in for personal use of nonresident.** The
4 use in this state of all articles of tangible personal property brought into the state by a
5 nonresident individual thereof for personal use or enjoyment while within the state is hereby
6 specifically exempted from the tax imposed by this chapter.

7 **57-67-22. Exemption of raw material, parts, and newsprint for manufacture of**
8 **products to be sold at retail.** The use in this state of tangible personal property, including
9 containers, labels, and shipping case thereof which is intended shall by means of fabrication,
10 compounding, or manufacture become a part of other tangible personal property intended to be
11 sold ultimately at retail within or without this state, is specifically exempted from the tax imposed
12 by this chapter. The term tangible personal property includes raw material and newsprint.
13 Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shipping
14 cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes,
15 casings, and similar articles and receptacles used or consumed by manufacturers, processors,
16 or fabricators are raw material.

17 **57-67-23. Ink and newsprint used to produce shoppers' guides exempt -**
18 **Shoppers' guides defined.** Ink and newsprint when used in the production of shoppers'
19 guides are hereby exempt from the tax imposed under this chapter.

20 For the purposes of this section, "shoppers' guide" includes advertising publications
21 whose advertisements are solicited from the general public and whose publications are for free
22 distribution to the general public and are published regularly at least once a month, consisting
23 of printed sheets containing advertising, bearing a date of issue, and devoted to advertising of
24 general interest.

25 **57-67-24. Brokers' and agents' services exempt from tax.** The tax imposed by this
26 chapter shall not apply to services of brokers and agents registered with the securities
27 commissioner under chapter 10-04.

28 **57-67-25. Packaging and container materials sold to retailers exempt.** There are
29 specifically exempted from the provisions of this chapter, and from the computation of tax
30 imposed by it, gross receipts from the sale of paper bags and plastic bags, wrapping paper,
31 twine, tape, and similar articles sold to retailers licensed under this chapter if the retailer uses

1 the articles as wrappers or containers to hold other tangible personal property sold by the
2 retailer and subject to sales or use tax and the articles are supplied free by the retailer as a
3 convenience to the customer.

4 **57-67-26. Exemption of certain sales commissions.** Unless otherwise specifically
5 subject to tax, the gross receipts resulting from fees or commissions received for rendering a
6 service which provides for the sale of tangible personal property or services is exempt from the
7 tax imposed by this chapter.

8 **57-67-27. Exemption of gross receipts from sale of certain replacement parts.**
9 There are exempted from the provisions of this chapter and from the computation of the tax
10 imposed by it, the gross receipts from the sale of replacement parts that are sold to retailers
11 and which will be installed in tangible personal property that will ultimately be for resale.

12 **57-67-28. Exemption of motor vehicles exempt from excise tax - Exception.** The
13 use in this state of motor vehicles exempt from the motor vehicle excise tax under section
14 57-40.3-04 is specifically exempted from the tax imposed by this chapter, with the exception of
15 farm machinery, which shall be subject to the tax imposed by this chapter.

16 **57-67-29. Exemption of commodities otherwise taxed.** The use in this state of
17 gasoline, motor fuel, and special fuel subject to tax under chapter 57-43.1, 57-43.2, or 57-43.3
18 is specifically exempted from the tax imposed by this chapter.

19 **57-67-30. Exemption of property of educational institutions and hospitals - Use of**
20 **property by individuals taxable - Registration of motor vehicles - Quarterly report by**
21 **exempt institution.** The gross receipts from sales of tangible personal property and the gross
22 receipts from sales, furnishing, or service of electrical energy, natural and artificial gas, water
23 and communication service to and for use by religious educational institutions and private
24 educational institutions currently recognized as exempt under section 501(c)(3) of the Internal
25 Revenue Code as in effect on January 1, 1983, and nonprofit, charitable hospitals when
26 purchases are made by authorized officials, payment made from the institution's funds and title
27 to the property retained in the name of the institutions are specifically exempted from the tax
28 imposed by this chapter. For purposes of this section, a private educational institution shall be
29 defined as an institution currently recognized as exempt under section 501(c)(3) of the Internal
30 Revenue Code as in effect on January 1, 1995, maintaining a campus physically located within
31 this state, and accredited by the north central association of colleges and schools.

1 This exemption does not extend to sales to or purchases of tangible personal property
2 for the personal use of officials, members, or employees of such institutions or to sales to or
3 purchases of tangible personal property used in the operation of a taxable retail business. The
4 exemption provided in this section does not relieve the institution from the payment of the
5 additional and further license fee imposed on the registration of motor vehicles. At the end of
6 each quarter of each calendar year, all institutions claiming this exemption shall file with the
7 commissioner a list of all purchases on which exemption was claimed, fully itemized, showing
8 the name and address of vendors, description of property purchased, purchase price, and brief
9 explanation of use or intended use.

10 **57-67-31. Exemption of insulin for human use.** The use in this state of insulin, to the
11 extent used by humans, that is not sold by prescription is specifically exempt from the tax
12 imposed by this chapter.

13 **57-67-32. Exemption of authorized purchases made with food stamps.** There are
14 hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting
15 from authorized purchases made with food stamps under the provisions of the Food Stamp Act
16 of 1977 [Pub. L. 95-113; 7 U.S.C. 2012(g); as amended through January 1, 2001].

17 **57-67-33. Exemption of authorized purchases of food.** There are hereby
18 specifically exempted from the tax imposed by this chapter the gross receipts resulting from
19 authorized purchases of food made under section 17(c) of the Child Nutrition Act of 1966
20 [42 U.S.C. 1786(c)].

21 **57-67-34. Exemption of fair market value of personal property or service given**
22 **without charge to exempt organization.** There are specifically exempted from the provisions
23 of this chapter and the computation of the tax imposed by it, the fair market value of any
24 tangible personal property or service given without charge to an institution, organization, or
25 group exempt from the tax imposed by this chapter.

26 **57-67-35. Exemption of prescribed drugs used by humans.** The use in this state of
27 drugs as defined by rule adopted by the commissioner under chapter 28-32 to the extent used
28 by humans, if the drugs are prescribed by prescription, dispensed, or administered by a
29 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist, is specifically exempt from
30 the tax imposed by this chapter.

1 **57-67-36. Exemption of prescribed medical equipment or prosthetic devices used**
2 **by humans.** The use in this state of durable medical equipment, mobility-enhancing
3 equipment, and prosthetic devices as defined by rule adopted by the commissioner under
4 chapter 28-32 to the extent used by humans, if the durable medical equipment,
5 mobility-enhancing equipment, and prosthetic devices are prescribed by prescription by a
6 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist, is specifically exempt from
7 the tax imposed by this chapter.

8 **57-67-37. Exemption of prescribed medical devices used by humans.** There are
9 specifically exempted from the provisions of this chapter and from the computation of the
10 amount of tax imposed by it, the use of any medical device, as that term is defined in this
11 section, to the extent used by humans, if the medical device is prescribed by prescription by a
12 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist. The term "medical
13 device" means any instrument, apparatus, implement, contrivance, or other similar or related
14 article, including a component, part, or accessory, that is prescribed for use on a single patient
15 and that is:

- 16 1. Recognized in the official national formulary or the United States pharmacopoeia,
17 or any supplement to them;
- 18 2. Intended for use in the diagnosis of disease or other conditions or in the cure,
19 mitigation, treatment, detection, or prevention of disease of the human body; or
- 20 3. Intended to affect the structure or any function of the human body and that does
21 not achieve any of its primary intended purposes through chemical action within or
22 on the human body and that is not dependent upon being metabolized for the
23 achievement of any of its primary intended purposes.

24 A medical device is not durable medical equipment, mobility-enhancing equipment, or a
25 prosthetic device.

26 **57-67-38. Exemption of livestock, poultry, ostriches, emus, or rheas used in**
27 **producing taxable final product.** Gross receipts from sales of livestock or live poultry,
28 ostriches, emus, or rheas, if such sales are part of a series of transactions incident to producing
29 a finished product intended to be offered for an ultimate retail sale, are not taxable under this
30 chapter, except that an ultimate retail sale interrupting the series of transactions with an
31 intended final use or consumption is taxable.

1 **57-67-39. Exemption of gross receipts from sale of live game birds by producer**
2 **to certain nonprofit organizations.** There are specifically exempted from the provisions of
3 this chapter and the computation of the tax imposed by it, gross receipts from the sale of live
4 game birds sold by the producer to nonprofit organizations which release such birds or to
5 commercial hunting operators who charge fees to hunt such birds.

6 **57-67-40. Exemption of gross receipts from sales of certain animals.** There are
7 hereby specifically exempted from the provisions of this chapter and from the computation of
8 the amount of tax imposed by it, gross receipts from the sale of live cattle, buffalo, sheep,
9 goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals, used or to
10 be used as breeding or production stock, and horses and other animals within the family
11 equidae. The term "poultry" does not include any fowl other than domestic fowl kept and raised
12 for the market or the production of eggs for human consumption.

13 **57-67-41. Exemption of gross receipts from sale of feed for certain animals.**
14 There are hereby specifically exempted from the provisions of this chapter and from the
15 computation of the amount of tax imposed by it, gross receipts from the sale of feed for cattle,
16 buffalo, sheep, goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing
17 animals, if such feed is used by farmers or ranchers who are regularly engaged in the business
18 of raising and feeding such animals, or producing milk for sale for human consumption, and
19 horses and other animals within the family equidae. The term "poultry" does not include any
20 fowl other than domestic fowl kept and raised for the market or the production of eggs for
21 human consumption.

22 **57-67-42. Exemption for sale of certain live nontraditional livestock.** There are
23 hereby specifically exempted from the provisions of this chapter and from the computation of
24 the amount of tax imposed by it, gross receipts from the sale of any live nontraditional livestock
25 regulated by the state board of animal health under chapter 36-01 if the animal is to be used by
26 a farmer or rancher who is regularly engaged in the breeding and raising of such animals.

27 **57-67-43. Exemption for sale of feed for certain live nontraditional livestock.**
28 There are hereby specifically exempted from the provisions of this chapter and from the
29 computation of the amount of tax imposed by it, gross receipts from the sale of feed for any live
30 nontraditional livestock regulated by the state board of animal health under chapter 36-01 if the

1 feed is to be used by a farmer or rancher who is regularly engaged in the breeding and raising
2 of such animals.

3 **57-67-44. Exemption of motor fuel used for agricultural purposes.** Motor fuel,
4 including kerosene, tractor fuel, natural and artificial gas, liquefied petroleum gas, and distillate,
5 when used for agricultural purposes, is exempt from excise taxes imposed under this chapter.

6 For the purposes of this section, agricultural purposes includes hay grinding but does
7 not include the lighting or heating of any farm residence.

8 **57-67-45. Power for irrigation pumps exempt from tax.** There are hereby
9 specifically exempted for the provisions of this chapter and from the amount of tax imposed by
10 it, gross receipts from the sale of electricity used to power irrigation pumps and the gross
11 receipts from the horsepower charge on electric motors powering irrigation pumps whenever
12 the purchaser has made the purchase exclusively for agricultural purposes.

13 **57-67-46. Exemption of goods and services furnished to meet warranty obligation**
14 **- Services enumerated in Standard Industrial Classification Manual and power changes**
15 **for irrigation pumps exempt.** The use in this state of the types of services specifically exempt
16 under section 57-64-25, 57-64-27, or 57-64-63 from the tax imposed by chapter 57-64 is
17 exempt from the tax imposed by this chapter.

18 **57-67-47. Exemption of freeport merchandise and stocks of merchandise brought**
19 **as foreign merchandise into foreign trade zone - Stocks of merchandise defined.** There
20 is exempted from the provisions of this chapter and from the computation of the tax imposed by
21 it, freeport merchandise and stocks of merchandise brought as foreign merchandise into a
22 foreign trade zone. For the purposes of this section, "stocks of merchandise" means personal
23 property held primarily for sale and not subject to annual depreciation.

24 **57-67-48. Exemption of pesticides used for agricultural purposes.** The use in this
25 state of insecticides, herbicides, pesticides, rodenticides, and fumigants to be used exclusively
26 for agricultural purposes is specifically exempted from the tax imposed by this chapter.

27 **57-67-49. Exemption of use of certain parts or repairs on agricultural or irrigation**
28 **equipment.** There are exempted from the provisions of this chapter and the tax imposed by it,
29 the use of parts or repairs on machinery or equipment which are clearly identifiable as used
30 primarily for agricultural purposes, including irrigation equipment, if the part replaces a farm

1 machinery or irrigation equipment part assigned a specific or generic part number by the
2 manufacturer of the farm machinery or irrigation equipment.

3 **57-67-50. Delivery in state as prima facie evidence of sale for use in state.** For the
4 purpose of the proper administration of this chapter and to prevent the evasion of the tax,
5 evidence that tangible personal property was sold by any person for delivery in this state shall
6 be prima facie evidence that such tangible personal property was sold for use in this state.

7 **57-67-51. Use of service in state prima facie evidence of taxability.** For the
8 purposes of proper administration of this chapter and to prevent evasion of tax, evidence that a
9 service is used in this state shall be prima facie evidence that the service is subject to tax.

10 **57-67-52. Money paid as evidence of value of service - Reasonable value**
11 **governs.** In determining the amount of tax due on the use of a service it is presumed, in the
12 absence of preponderant evidence of another value, that the value means the total amount of
13 money or the reasonable value of other consideration paid for the service exclusive of any type
14 of time and price differential. However, in an exchange in which the amount paid does not
15 represent the value of the service purchased, the tax shall be imposed on the reasonable value
16 of the service purchased.

17 **57-67-53. List of sales property or services to residents - Cost.** Any person selling
18 property or services to residents of this state, when the property is delivered to this state or the
19 beneficial use of the service occurs in this state, shall provide a list of such sales to the
20 commissioner. The list shall include the names and addresses of the purchasers and the
21 amount of the sale. The commissioner shall pay to any person furnishing a list under this
22 section an amount equal to the reasonable cost of reproducing the list.

23 **57-67-54. Collection of tax by retailer maintaining place of business in state -**
24 **Receipt given to purchaser - Agents and places of business listed with commissioner.**
25 Any retailer maintaining a place of business in this state and making sales of tangible personal
26 property or services for storage, use, or other consumption in this state, not exempted under
27 this chapter, at the time of making such sale, whether within or without the state, shall collect
28 the tax imposed by this chapter from the purchaser and give to the purchaser a receipt therefor
29 in the manner and form prescribed by the commissioner, if the commissioner by rule adopted
30 under chapter 28-32, shall require such receipt. Such retailer shall list with the commissioner
31 the name and address of all of the retailer's agents operating in this state and the location of

1 any and all of the retailer's distribution or sales houses or offices or other places of business in
2 this state.

3 **57-67-55. Semiannual report of sales by retailer maintaining place of business in**
4 **state - Contents.** Every retailer maintaining a place of business in this state and making sales
5 of tangible personal property for storage, use, or other consumption in this state, twice annually
6 shall furnish the commissioner with a list, covering the six-month period just preceding the
7 submission of such list, which shall contain the names and addresses of all persons within the
8 state who have made purchases of tangible personal property from said retailer for use,
9 storage, or consumption, and which list shall contain the total amount of the purchase price of
10 all such personal property so purchased during said period by such persons. Said list required
11 to be submitted as above stated need not contain any information on the sale of tangible
12 personal property when exempt under this chapter.

13 **57-67-56. Permit for collection of tax by retailer not maintaining place of business**
14 **in state - Security for collection and payment - Cancellation of permit.** Upon application,
15 the commissioner may authorize the collection of the tax imposed by this chapter by any retailer
16 not maintaining a place of business within this state, who, to the satisfaction of the
17 commissioner furnishes adequate security to ensure collection and payment of the tax. Such
18 retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject
19 to such requirements as the commissioner may prescribe by rule adopted under chapter 28-32.
20 If so authorized, the retailer shall collect the tax upon all tangible personal property sold to the
21 retailer's knowledge for use, storage, or other consumption within this state, in the same
22 manner and subject to the same requirements as a retailer maintaining a place of business
23 within this state. Such authority and permit may be canceled when, at any time, the
24 commissioner considers the security inadequate, or that such tax can more effectively be
25 collected from the person using such property in this state.

26 **57-67-57. Collection and remittance of tax by retailer.** The tax upon the use,
27 storage, or other consumption of all tangible personal property which is sold by a retailer
28 maintaining a place of business in this state, or by such other retailer as the commissioner shall
29 authorize pursuant to section 57-67-56, shall be collected by such retailer and remitted to the
30 commissioner pursuant to sections 57-67-59 through 57-67-66.

1 **57-67-58. Surety bond filed by retailer.** To ensure the collection of the tax levied
2 under this chapter, the commissioner may authorize any person subject to such tax, and any
3 retailer required or authorized to collect such tax pursuant to sections 57-67-54 through
4 57-67-56 to file with the commissioner a bond issued by a surety company authorized to
5 transact business in this state and approved by the commissioner, in such amount as the
6 commissioner may fix, to secure the payment of any tax or penalties due or which may become
7 due from such person.

8 **57-67-59. Securities deposited by retailer in lieu of bond.** In lieu of a bond under
9 section 57-67-58, securities approved by the commissioner, in such amount as the
10 commissioner may prescribe, may be deposited with the commissioner, which securities shall
11 be kept in the custody of the commissioner and may be sold by the commissioner at public or
12 private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to
13 recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts
14 due under this chapter shall be returned to the person who deposited the securities.

15 **57-67-60. Tax collected as debt of retailer.** The tax required to be collected by any
16 retailer pursuant to sections 57-67-54 through 57-67-56 and any tax collected by any retailer
17 pursuant to said sections, shall constitute a debt owed by the retailer to this state.

18 **57-67-61. Payment of tax collected by retailer.** Every retailer required or authorized,
19 pursuant to sections 57-67-54 through 57-67-56, to collect the tax herein imposed, shall pay to
20 the commissioner the amount of such tax as provided in sections 57-64-85 and 57-64-87.

21 **57-67-62. Report by retailer collecting tax - Filing - Contents - Payment.** At the
22 time specified in section 57-67-61, the retailer shall file with the commissioner a return for the
23 preceding reporting period in such form as may be prescribed by the commissioner showing the
24 sales price of any or all tangible personal property or services sold by the retailer during such
25 preceding reporting period, the use, storage, or consumption of which is subject to the tax
26 imposed by this chapter, and such other information as the commissioner may deem necessary
27 for the proper administration of this chapter. Returns shall be accompanied by a remittance of
28 the amount of such tax for the period covered by the return.

29 **57-67-63. Retailers' returns and payments on other than quarterly basis -**
30 **Extension of time.** The commissioner, if necessary to ensure payment to the state of the
31 amount of such tax, may require returns and payments of such amounts to be made other than

1 by the quarter. Upon request and a proper showing of the necessity therefor, the commissioner
2 may grant an extension of not more than five days for making any return and payment.

3 **57-67-64. Execution of retailers' returns.** Returns shall be signed and certified to be
4 correct by the retailer or the retailer's duly authorized agent.

5 **57-67-65. Amounts of tax paid on conditional sales or installment contract**
6 **receipts.** If tangible personal property is sold under a conditional sales contract or under any
7 other form of sale wherein the payment of the principal sum, or a part thereof, is extended over
8 a period longer than sixty days from the date of the sale thereof, the retailer may collect and
9 remit for each month that portion of the tax equal to the rate of tax as provided for in this
10 chapter of that portion of the purchase price actually received during such month.

11 **57-67-66. Direct payment of tax by user.** The tax upon the use, storage, or
12 consumption of all tangible personal property not paid under section 57-67-57 shall be paid to
13 the commissioner directly by any person using such property within this state, under section
14 57-67-67.

15 **57-67-67. Liability of user for tax - Returns and payments.** Any person who uses,
16 stores, or otherwise consumes any property or services subject to tax hereunder upon which
17 the tax herein imposed has not been paid, either to a retailer or direct to the commissioner as
18 herein provided, is liable therefor, and shall on or before the time specified in sections 57-64-85
19 and 57-64-87 pay the tax herein imposed upon all such property used by that person during the
20 preceding month in such manner and accompanied by such returns as the commissioner shall
21 prescribe. Sections 57-67-61 through 57-67-65, with reference to such returns and payments,
22 are applicable to the returns and payments herein required.

23 **57-67-68. Credit for sales or use tax paid to another state - Reciprocal grant of**
24 **credit required.** The amount of use tax imposed with respect to tangible personal property in
25 the form of equipment brought into this state on a permanent basis for direct use in a
26 manufacturing, fabricating, or processing business shall be reduced by the amount of any sales
27 or use tax previously paid by the taxpayer with respect to the property on account of liability to
28 another state or its political subdivisions to the extent that such tax equals or exceeds the rate
29 of the tax in this state. If the sales or use tax of the other state is less than the tax of this state,
30 the taxpayer shall be subject to the payment of the balance to this state. No credit shall be
31 given under this section for taxes paid on tangible personal property subject to the credit of this

1 section in another state or its political subdivisions if that state does not reciprocally grant a
2 credit for taxes paid on similar tangible personal property in this state.

3 **57-67-69. Rules.** The commissioner may adopt rules under chapter 28-32 concerning:

4 1. Licensing, including bonding and filing license applications;

5 2. The filing of returns and payment of the tax;

6 3. Determining the application of the tax and exemptions;

7 4. Taxpayer recordkeeping requirements; and

8 5. Determining auditing methods.

9 **57-67-70. False or fraudulent return in attempt to evade tax as misdemeanor.** Any
10 person required to make, render, sign, or certify any return or supplementary return who makes
11 any false or fraudulent return in attempt to defeat or evade the tax imposed by this chapter is
12 guilty of a class A misdemeanor.

13 **57-67-71. Failure to file return as misdemeanor.** Any retailer or other person failing
14 or refusing to furnish any return by this chapter required to be made or failing or refusing to
15 furnish a supplemental return or other data required by the commissioner is guilty of a class A
16 misdemeanor.

17 **57-67-72. Administration and enforcement - Sales tax procedural and collection**
18 **provisions applicable.** The commissioner shall enforce and administer this chapter in the
19 same manner and subject to all of the provisions contained in chapter 57-64. Sections
20 57-64-81, 57-64-88, 57-64-90, 57-64-97, 57-64-98, and 57-64-99 are by reference incorporated
21 as part of this chapter.

22 **57-67-73. Rules for administration - Uniformity of application.** The commissioner
23 may adopt rules under chapter 28-32 for the administration and enforcement of this chapter and
24 for adding such tax, or the average equivalent thereof, providing this method applies uniformly
25 to retailers within the same general classification for the purpose of enabling such retailers to
26 add and collect, as far as practicable, the amount of such tax.

27 **57-67-74. Determination of tax by commissioner in absence of correct return -**
28 **Sales tax provisions applicable.** If any return required by this chapter is not filed, or if any
29 return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to
30 file a corrected or sufficient return within ten days after the same is required by notice from the

1 commissioner, the commissioner shall have the same power to determine the amount due as is
2 vested in the commissioner by sections 57-64-85 and 57-64-87.

3 **57-67-75. Certificate as prima facie evidence of failure to file return or pay tax.**

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

7 **57-67-76. Records maintained by retailers and users - Examination and**

8 **investigations by commissioner - Access to records.** Every retailer required or authorized
9 to collect taxes imposed by this chapter and every person using, storing, or otherwise
10 consuming in this state tangible personal property shall keep such records, receipts, invoices,
11 and other pertinent papers as the commissioner requires, in such form as the commissioner
12 requires. The commissioner and any of the commissioner's duly authorized agents are hereby
13 authorized to examine the books, papers, records, and equipment of any person either selling
14 tangible personal property or liable for the tax imposed by this chapter and investigate the
15 character of the business of any such person in order to verify the accuracy of any return made,
16 or if such return was made by such person, to ascertain and determine the amount due under
17 this chapter. Any such books, papers, and records shall be made available within this state for
18 such examination upon reasonable notice when ordered by the commissioner.

19 **57-67-77. Revocation of retailer's sales tax permit on failure to comply -**

20 **Revocation of corporate authority to do business.** If any retailer maintaining a place of
21 business in this state, who is authorized to collect the tax under section 57-67-56, fails to
22 comply with any of the provisions of this chapter or any orders or rules of the commissioner
23 adopted under this chapter, the commissioner may, upon notice and hearing as hereinafter
24 provided, by order revoke the permit, if any, issued to such retailer under section 57-64-83, or if
25 such retailer is a corporation authorized to do business in this state, may certify to the secretary
26 of state a copy of an order finding that such retailer has failed to comply with certain specified
27 provisions, orders, or rules. Upon receipt of such certified copy, the secretary of state shall
28 revoke the permit authorizing said corporation to do business in this state and shall issue a new
29 permit only when such corporation has obtained from the commissioner an order finding that
30 said corporation has complied with its obligations under this chapter.

1 **57-67-78. Notice and hearing on revocation of permit or authority to do business.**
2 No order authorized in section 57-67-77 shall be made until the retailer is given an opportunity
3 to be heard and show cause why such order should not be made and shall be given ten days'
4 notice of the time, place, and purpose of such hearing. Such notice shall be served in the
5 manner provided for service of summons in civil actions.

6 **57-67-79. Restoration of revoked sales tax permit.** The commissioner may restore
7 revoked licenses.

8 **57-67-80. Liens.** Section 57-40.3-07.1, providing for creation, notice, recording, and
9 enforcement of liens, applies to and is available for collection of the tax imposed by this chapter
10 and chapter 57-64.

11 **57-67-81. Personal liability of officers of corporation failing to file returns or pay**
12 **tax - Security in lieu of liability - Bonded municipal officials exempt.** If a corporation
13 subject to tax under this chapter fails for any reason to file the required returns or to pay the tax
14 due, any of its officers having control, or supervision of, or charged with the responsibility for
15 making such returns and payments shall be personally liable for such failure. The dissolution of
16 a corporation shall not discharge an officer's liability for a prior failure of the corporation to make
17 a return or remit the tax due. The sum due for such a liability may be assessed and collected
18 as provided by law.

19 If the corporate officers elect not to be personally liable for the failure to file the required
20 returns or to pay the tax due, the corporation shall provide the commissioner with a surety bond
21 or certificate of deposit as security for payment of any tax that may become due. The bond or
22 certificate of deposit provided for in this section shall be in an amount equal to the estimated
23 annual gross receipts multiplied by the applicable sales or excise tax rate. This section does
24 not apply to elected or appointed officials if they are bonded.

25 **57-67-82. Revenue credited to general fund.** All revenue arising under the operation
26 of this chapter shall immediately be turned over to the state treasurer and credited to the
27 general fund.

28 **57-67-83. Floor laying service subject to tax.** The service enumerated in the
29 Standard Industrial Classification Manual, 1987, as prepared by the statistical policy division of
30 the office of management of budget, office of the president, as industry no. 1752 floor laying
31 and other floor work, not elsewhere classified, is subject to the tax levied by this chapter.

1 **57-67-84. Exemption of natural gas transportation services by pipeline.** The
2 provision of natural gas transportation services by a pipeline is exempt from the provisions of
3 this chapter and from the computation of the tax imposed by this chapter.

4 **57-67-85. Exemption for the use of credit card processing services.** There are
5 specifically exempted from the provisions of this chapter and from the computation of the
6 amount of tax imposed by it, the use of credit card processing services by retailers.

7 **57-67-86. Tangible property transportation gross receipts tax imposed -**
8 **Transportation to be within state.** There is imposed a tax of five and sixty-five hundredths
9 percent on the privilege of the use of any transportation of tangible personal property. The tax
10 imposed by this section shall apply to any transportation of tangible personal property if both
11 the origin and destination of the tangible personal property are within this state.

12 **57-67-87. Passenger transportation tax imposed - Transportation to be within**
13 **state.** There is imposed a tax of five and sixty-five hundredths percent on the privilege of the
14 use of any transportation of passengers. The tax imposed by this section shall apply to any
15 transportation of passengers if the passenger boards and exits the mode of transportation
16 within this state.

17 **57-67-88. Inapplicability of tax.** The tax imposed by sections 57-67-86 through
18 57-67-89 does not apply to any transportation service which the state is prohibited from taxing
19 by federal law or the United States constitution.

20 **57-67-89. Agricultural products transportation by producer exempt from tax -**
21 **Exemptions.** The transportation of agricultural products by the agricultural producer thereof is
22 exempt from the tax imposed by sections 57-67-86 through 57-67-88 if the producer transports
23 such products in a mode of transportation which is owned, leased, or rented by the producer.
24 However, if an agricultural producer transports another person's products for hire, such
25 transportation is subject to the tax imposed by sections 57-67-86 through 57-67-88.

26 **57-67-90. Gross receipts from charge of interest exempted.** There are exempted
27 from the provisions of this chapter and from the computation of the amount of tax imposed by it,
28 the gross receipts from the charge of interest.

29 **57-67-91. Exemption for use of certain rodeo services.** There are exempted from
30 the provisions of this chapter and from the computation of the amount of tax imposed by it, the

1 use of services provided by promoters, stock contractors, stock handlers, announcers, judges,
2 and clowns.

3 **57-67-92. Exemption of repair shops, locksmiths, locksmith shops, and lock**
4 **parts.** The following services enumerated in the Standard Industrial Classification Manual,
5 1987, as prepared by the statistical policy division of the office of management and budget,
6 office of the president, are subject to the tax levied by this chapter: repair shops and related
7 services, not elsewhere classified (industry no. 7699) but only locksmiths, locksmith shops, and
8 lock parts made to individual order.

9 **57-67-93. Exemptions.** There are hereby exempted from the provisions of this chapter
10 and the computation of the tax imposed by it, the use of United States postage.

11 **57-67-94. Auction clerk to file return and remit sales tax - Responsibilities of**
12 **auctioneer - Records.** All auction sales and consignment sales of tangible personal property
13 and services are sales at retail. The auction clerk shall file the return and remit the tax imposed
14 by this chapter on the gross receipts from each auction after applying the deductions provided
15 by section 57-64-121. However, the auctioneer is responsible for the payment of the tax
16 imposed by this chapter if the auction clerk is an employee of the auctioneer or if the auction
17 clerk does not have a permit as required by this chapter. In addition to any other information
18 required to be kept by this chapter, each auction clerk shall keep records that identify the owner
19 of the property sold at auction and the auctioneer who conducts the sale of such property.

20 **57-67-95. Department authorized to issue direct payment permits to certain**
21 **retailers - Application procedure - Direct payment permit defined - Liability for sales tax**
22 **on sale to permitholder - Rules.** The commissioner may authorize a retailer to use a direct
23 payment permit if the retailer purchases goods or services subject to the tax imposed by
24 chapter 57-64. Applicants for a direct payment permit shall apply in writing to the
25 commissioner. A retailer may appeal the denial of a direct payment permit or contest a
26 revocation of a direct payment permit pursuant to chapter 28-32. For purposes of this section,
27 the term "direct payment permit" means a permit issued by the department that allows a holder
28 of the permit to accrue and pay the taxes imposed by chapter 57-64 directly to the department.
29 A retailer that makes a sale to a direct payment permitholder has no liability for sales tax on
30 such sale if the retailer has written evidence of the sale. Such written evidence shall clearly
31 indicate the name of the buyer, the product or service purchased, and the amount of the

1 purchase. The commissioner may adopt rules under chapter 28-32 concerning the
2 administration and use of a direct payment permit.

3 **57-67-96. Exemption for lodging house or hotel membership fees.** There are
4 hereby exempted from the provisions of this chapter and the computation of the tax imposed by
5 it, gross receipts from membership fees paid to any lodging house and hotel membership
6 organization operated for the benefit of its members. However, this exemption does not apply
7 to any membership fee that represents payment for tangible personal property and services
8 provided by the membership organization.

9 **57-67-97. Tax on use of certain mobile telecommunications services.** There is
10 hereby imposed a tax of four percent upon the privilege of the use of mobile
11 telecommunications services, as defined in 4 U.S.C. 124(7) as of January 1, 2002, that
12 originate and terminate in the same state and are billed to a customer with a place of primary
13 use in this state. Notwithstanding any other provision of this chapter and for purposes of the tax
14 imposed by this section, the tax imposed upon mobile telecommunication services shall be
15 administered in accordance with 4 U.S.C. 116-126 as in effect on July 28, 2000.

16 **SECTION 47.** Chapter 57-68 of the North Dakota Century Code is created and enacted
17 as follows:

18 **59-68-01. Definitions.** Words used in this chapter have the same meaning as
19 provided in chapters 57-64 through 57-67. As used in this chapter:

- 20 1. "Attachment unit" means any part or combination of parts having an independent
21 function, other than farm machinery repair parts, which when attached or affixed to
22 farm machinery is used exclusively for agricultural purposes.
- 23 2. "Farm machinery" means all vehicular implements and attachment units, designed
24 and sold for direct use in planting, cultivating, or harvesting farm products or used
25 in connection with the production of agricultural produce or products, livestock, or
26 poultry on farms, which are operated, drawn, or propelled by motor or animal
27 power. "Farm machinery" does not include vehicular implements operated wholly
28 by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm
29 machinery" does not include machinery that may be used for other than agricultural
30 purposes, including tires, farm machinery repair parts, tools, shop equipment, grain
31 bins, feed bunks, fencing materials, and other farm supplies and equipment.

1 **57-68-01.1. Trade-in deduction.** When tangible personal property is taken in trade or
2 in a series of trades as a credit or partial payment of a retail sale taxable under this chapter, if
3 the tangible personal property traded in will be subject to gross receipts taxes imposed by this
4 chapter, sales taxes, or motor vehicle excise taxes, the credit or trade-in value allowed by the
5 retailer is not gross receipts.

6 **57-68-02. Imposition - Exemptions.** There is imposed a tax of four percent upon the
7 gross receipts of retailers from all sales at retail, including the leasing or renting, of farm
8 machinery or irrigation equipment used exclusively for agricultural purposes. Gross receipts
9 from sales at retail of farm machinery or irrigation equipment are exempted from the tax
10 imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is
11 entitled to a sales and use tax exemption on otherwise taxable sales at retail.

12 **57-68-03. Replacement of insured machinery credit.** When new farm machinery is
13 purchased as a replacement for machinery on which the insured has previously paid the gross
14 receipts, sales, or use tax and which was stolen or totally destroyed, a credit or trade-in credit is
15 allowed in an amount equal to the compensation received for the loss from the insurance
16 company. The purchaser shall provide the seller with a notarized statement from the insurance
17 company verifying that the original farm machinery was a total loss and indicating the amount of
18 compensation. The notarized statement must be retained by the seller to verify the amount of
19 credit or trade-in credit allowed.

20 **57-68-04. Administration.** The provisions of chapters 57-64 through 57-67 pertaining
21 to administration of the retail sales tax, including provisions for refund, credits, or adoption of
22 rules, not in compliance with this chapter or federal law, govern the administration of the gross
23 receipts tax imposed in this chapter.

24 **SECTION 48. AMENDMENT.** Section 65-04-26 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **65-04-26. Lien priority and filing - Remedies available in action for delinquent**
27 **premiums - Exemptions restricted.** The claim of the organization in bankruptcy, probate,
28 insolvency, and receivership proceedings for premiums in default and penalties is a lien with the
29 same priority as prior income tax liens, except that this lien is not enforceable against a
30 purchaser (including a lien creditor) of real estate or personal property for valuable
31 consideration without notice. Notice of this lien must be filed in the place and manner provided

1 for in section ~~57-38-49~~ 57-01-19. A certificate of the organization that premiums and penalties
2 are due for the period stated in the certificate is prima facie evidence of this fact. In any action
3 brought for the recovery of premiums in default and penalties, the remedies of garnishment or
4 attachment, or both, are available. No exemptions except absolute exemptions under section
5 28-22-02 may be allowed against any levy under execution pursuant to judgment recovered in
6 the action.

7 **SECTION 49. REPEAL.** Chapter 10-30.1, sections 10-33-124 and 40-63-09, chapters
8 52-02.1, 57-38, 57-38.1, 57-38.3, 57-38.4, 57-38.5, and 57-38.6, and section 57-59-02 of the
9 North Dakota Century Code are repealed.

10 **SECTION 50. REPEAL.** Chapters 57-39.2, 57-39.3, 57-39.5, 57-39.6, and 57-40.2 of
11 the North Dakota Century Code are repealed.

12 **SECTION 51. CONTINGENT EFFECTIVE DATE.** If Senate Concurrent Resolution
13 No. 4004, as adopted by the fifty-ninth legislative assembly, is approved by the voters, sections
14 3, 6, 7, 9, 10, 11, 15, 16, 17, 18, 20, 22, 27, 30, 31, 32, 33, 34, 35, 36, 48, and 49 of this Act are
15 effective for taxable years beginning after December 31, 2006; sections 1, 2, 4, 5, 8, 12, 13, 14,
16 19, 21, 23, 24, 26, 28, 29, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 50 of this Act are
17 effective for taxable events occurring after June 30, 2007; and section 25 of this Act is effective
18 for tax liability accruing after December 31, 2006.