

World War and one who shall have served in the Second World War, and which members shall be appointed by the Governor by and with the advice and consent of the Senate; all such appointees must be citizens of the United States and residents of the State of North Dakota.

The compensation of the said trustees shall be five dollars per day each, for not exceeding twenty days in any one year, and their necessary expenses while performing their duties of office.

§ 2. REPEAL.] All Acts or parts of Acts in conflict with this Act are hereby repealed.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and this Act shall be in full force and effect from and its passage and approva

Approved March 9, 1943.

TAXATION

CHAPTER 249

H. B. No. 201—(Hovey and Westby)

ABATEMENT OF TAXES

An Act to amend and re-enact Section 5 of Chapter 276 of the Session Laws of 1931 providing for abatements of real and personal property taxes, due to depreciation or other cause, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 5 of Chapter 276 of the Session Laws of 1931 is hereby amended and re-enacted to read as follows:

§ 5. Whenever taxes on any real estate remain unpaid and such property has not been sold to any purchaser other than the County, or when any personal property taxes remain unpaid, the board of county commissioners may, subject to the approval of the State Tax Commissioner, by reason of depreciation in the value of such property or for other valid cause, compromise with the owner of such property by abating a portion of such delinquent taxes on payment on the remainder.

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

Approved March 18, 1943.

CHAPTER 250

H. B. No. 107—(Callahan and Crockett)

ADJUSTMENT OF DELINQUENT TAXES

An Act to amend and re-enact Subsection 1 and 2 of Section 1, Chapter 273, Session Laws of North Dakota for the year 1941; providing for an adjustment of delinquent taxes for 1939 and prior years, and repealing all acts or parts of acts in conflict therewith including certain exceptions and declaring an emergency.

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

§ 1. AMENDMENT.] That Subsection 1 and 2 of Section 1, Chapter 273, Laws of 1941, be amended and re-enacted to read as follows:

§ 1. (1) ADJUSTMENT OF DELINQUENT TAXES.] All delinquent real and personal property taxes, except as hereinafter provided, for the year 1939 and prior years, together with accrued interest and penalties thereon, shall be cancelled and discharged in full upon the payment of the full amount of the original tax plus a penalty of 5 per cent; provided that all payments hereunder must be made on or before November 1, 1943; and, provided further, that such taxes shall remain payable separately according to years, and any person, or corporation having an interest in, or lien, or mortgage, upon any property affected by this Act shall be entitled to take advantage of the provisions herein. This Act shall not apply to any real estate taxes, the tax certificates for which have been sold or assigned to any purchasers other than the county, nor to special assessments levied for local improvements, nor special assessments levied for drainage or irrigation districts.

(2) DUTIES OF COUNTY AUDITORS AND COUNTY TREASURERS.] The auditors and treasurers of each county shall accept in full payment and discharge of all such delinquent real estate taxes, including interest and penalty thereon, payments made in accordance with the provisions of this Act, and the sheriff of each county shall accept in full payment of all delinquent personal property taxes, including interest and penalties, payments made hereunder.

§ 2. REPEAL.] All Acts and parts of Acts in conflict herewith are hereby repealed, except that such parts of Chapter 240 of the Session Laws of North Dakota for 1937 as amended by Chapter 227 of the Session Laws of North Dakota for the year 1939, as amended by Chapter 273 of the Session Laws of North Dakota for the year 1941, as may be necessary for the enforcement of any contracts made pursuant thereto shall remain in force.

§ 3. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after the date of its passage and approval.

Approved March 6, 1943.

CHAPTER 251

H. B. No. 130—(Fitch, Crockett, Wolf of McIntosh and Bolmeier)

CIGARETTE TAX AND LICENSE

An Act to amend and re-enact Section 2 of Chapter 271 of the Session Laws of 1941, relating to tax upon cigarettes and licensing sale thereof, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 2 of Chapter 271 of the Session Laws of 1941 be and the same is hereby amended and re-enacted to read as follows:

§ 2. DISTRIBUTORS AND DEALERS, TO BE LICENSED.] Each person engaged in the business of selling cigarettes, cigarette papers, or snuff in this State, including any distributor or dealer, shall secure a license from the State Tax Commissioner before engaging in such business or continuing to engage therein after July 1, 1941. A separate application and license shall be required for each distributor at each outlet or place of business within the State, and a separate dealer's license shall be required for each retail outlet when a person shall own or control more than one place of business dealing in cigarettes, cigarette papers or snuff.

No retailer shall be granted a distributor's license except a retailer who also performs, in the usual course of business, a distributor's or wholesaler's function, and has performed such functions for at least one year prior to filing application for said license. Such licenses shall be issued by the State Tax Commissioner on applications stating, on forms prescribed by the State Tax Com-

missioner, the name and address of the applicant, the address and place of business at which it is proposed to engage in such business, the type of business, and such other information as the Tax Commissioner may require for the proper administration of this Act. Each application for a wholesale or distributor's outlet license shall be accompanied by a fee of Ten Dollars (\$10.00) and a surety bond to be approved by the Tax Commissioner in the sum of not less than One Thousand Dollars (\$1000.00), nor more than Five Thousand Dollars (\$5,000.00). Each application for a dealer's outlet license shall be accompanied by a fee of Five Dollars (\$5.00). Stamps or insignia provided for in this Act shall be sold to and affixed by "Licensed Distributors" only; "Licensed Dealers", under this Act, may sell or buy or have in their possession only cigarettes, cigarette papers, or snuff upon which such stamps or insignia have been previously affixed. A distributor's license does not authorize the holder thereof to make sales at retail, as provided in this Act. Each license so issued shall be prominently displayed on the premises covered by the license.

§ 2. EMERGENCY.] An emergency is hereby declared to exist, therefore this Act shall take effect and be in force from and after its passage and approval.

Approved March 10, 1943.

CHAPTER 252

S. B. No. 96—(Bridston and Day)

CITIES TAX LIMITATION

An Act to Amend and Re-enact Sub-section (b) of Section 5 of Chapter 235 of the Session Laws of North Dakota for the year 1929, as Amended and Re-enacted by Chapter 297 of the Session Laws of North Dakota for the year 1931, and as Amended and Re-enacted by Chapter 208 of the Session Laws of North Dakota for the year 1935, and as Amended and Re-enacted by Chapter 175 of the Session Laws of North Dakota for the year 1937, as Amended and Re-enacted by Chapter 210 of the Session Laws of North Dakota for the year 1941, Relating to Tax Limitations of Cities.

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

AMENDMENT. That Sub-section (b) of Section 5 of Chapter 235 of the Session Laws of North Dakota for the year 1929, as amended and re-enacted by Chapter 297 of the Session Laws of North Dakota for the year 1931, and as amended and re-enacted

by Chapter 208 of the Session Laws of North Dakota for the year 1935, and as amended and re-enacted by Chapter 175 of the Session Laws of North Dakota for the year 1937, as amended and re-enacted by Chapter 210 of the Session Laws of North Dakota for the year 1941, be and the same is hereby amended and re-enacted to read as follows:

(b) The aggregate amount levied for general city purposes shall not exceed such an amount as will be produced by a levy of fourteen mills on the net taxable assessed valuation of property in the city, provided that in cities supporting bands or public libraries an additional levy not to exceed two mills on the net taxable assessed valuation of property in such cities may be made for these purposes; provided further, that in cities having a population of 25,000 or less, supporting airports for which no levy has been made by a Park Board or other taxing district a levy, in addition to the above but not to exceed three mills on the net taxable assessed valuation of property in such city may be made for this purpose for a period not to exceed two years after the passage and approval of this Act.

Approved March 18, 1943.

CHAPTER 253

H. B. No. 198—(Graham and Twichell)

ESTATE TAXES, ABATEMENT PART OF PENALTIES

An Act authorizing and permitting the payment and discharge of delinquent estate taxes where such estate is of an appraised value of less than \$30,000.00 and consists of at least two-thirds in value of agricultural lands and farm equipment and livestock, or products on such lands, and where such estate tax shall have been due and payable since prior to July 1, 1939, by the payment of the principal of such original estate tax, with one percent per annum penalty thereon from date such estate tax became due, and declaring an emergency.

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

§ 1. ABATEMENT PART PENALTY ON CERTAIN ESTATE TAXES.]
The estate tax upon the estate of any deceased person, as provided by Chapter 267 of the Session Laws of 1927 and Acts amendatory thereof, where payment thereof has been made payable and delinquent since July 1, 1939, in all cases where such estate consists of at least two-thirds as appraised in farm lands, farm implements and equipment, products or farm livestock, and the appraised value

thereof does not exceed Thirty Thousand Dollars (\$30,000.00), may be paid and fully discharged by the payment of the principal of such estate tax with annual interest thereon from date due to date of payment at the rate of one percent per annum, if such payment be so made prior to July 1, 1944.

§ 2. EMERGENCY.] An emergency is hereby declared to exist in that the penalty upon non-payment of delinquent estate taxes is in the case of an estate consisting of farm property excessive for the past depression period and should be in part abated, therefore this Act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1943.

CHAPTER 254

H. B. No. 42—(Hogboom, Morland and Olson of Bowman)

FARM MACHINERY, TAX EXEMPTION

An Act to Amend and Reenact Chapter 275 of the Session Laws of 1941, Relating to the Exemption of Farm Machinery from Personal Property Taxes for the First Year after its Purchase, on which sales or use tax is paid.

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

§ 1. AMENDMENT.] That Section 1 of Chapter 275 of the Session Laws of 1941 be amended and reenacted to read as follows:

§ 1. FARM MACHINERY, TAXATION, EXEMPTION.] All farm machinery, on which sales or use tax is paid, purchased after August first, to be used by the buyer in his farming operations, shall be exempt to the buyer from the personal property tax which would be assessed and levied against it in the first year after its purchase, were this act not in force.

Approved March 10, 1943.

CHAPTER 255

S. B. No. 107—(Senators Bridston, Hoenck and Braun)

INCOME TAX, AMENDMENT

An Act to amend and re-enact Section 2346a16 of the 1925 Supplement to the Compiled Laws of 1913, as amended by Chapter 253 of the Session Laws of 1933, and as further amended by Chapter 278 of the Session Laws of 1941; providing for allocation and apportionment of income of individuals doing business within and without the State, and declaring an emergency.

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

§ 1. AMENDMENT.] Section 2346a16 of the 1925 Supplement to the Compiled Laws of 1913 as amended by Chapter 253 of the Session Laws of 1933, and as further amended by Chapter 278 of the Session Laws of 1941, is hereby amended and re-enacted to read as follows:

§ 2346a16. GROSS INCOME DEFINED.] (1) The words "gross income" include gains, profits, and income derived from salaries, wages, or compensations for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use or interest in such property; also from interest, rent dividends, securities or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatsoever, including all salaries, wages and commissions of whatever kind received from the State of North Dakota or any of its political subdivisions, and includes and applies to the salaries and compensation of the following officers of the State of North Dakota: Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, Commissioner of Insurance, Commissioners of Railroads (now called Public Service Commission), Attorney General, Commissioner of Agriculture and Labor, Tax Commissioner, all judges of the Supreme Court and of the District Courts, all county officials including Sheriffs, State's Attorneys, County Auditors, Treasurers, Register of Deeds, Superintendent of Schools; Clerks of Court, County Judges, County Surveyors; Coroners, and each and every selected state or county official who is now in office or who may be elected to office, any salary, wages or compensation of officers or employees of the United States or agencies or instrumentalities including those in the military, naval and postal forces of the United States to the extent the collection of state taxes thereon is not prohibited by the terms of the "Public Salary Act of 1939" (it being hereby declared the policy of this state to comply

with the provisions of said act) and all other gains, profits, and income which the state may now or hereafter constitutionally tax.

(2) The term "gross income" does not include the following items, which shall be exempt from taxation under this Act:

a. Proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured.

b. The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

c. The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

d. Interest upon obligations of the United States or its possessions or upon obligations of the State of North Dakota or any political subdivisions of the State of North Dakota except that interest upon non-tax-exempt securities at present or in future shall be included in gross income and be subject to tax.

e. Any amount received through accident or health insurance or under Workmen's Compensation Acts as compensation for personal injuries or sickness, plus the amount of damages received whether by suit or agreement on account of such injuries or sickness.

§ 2. RECIPROCITY CLAUSE.] The Tax Commissioner of the State of North Dakota is hereby charged with the administration of this Act. Such Tax Commissioner shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this Act, necessary and advisable for its detailed and efficient administration, and may enter into reciprocal agreements with the authorized tax officials of other states to assist in the enforcement and to avoid injustices to taxpayers from double taxation.

§ 3. ALLOCATION AND APPORTIONMENT OF GROSS INCOME OF INDIVIDUALS.] (1) "a" The entire income from personal or professional services and from intangible personal property shall follow the domicile of the taxpayer, except in the case of non-residents where the income is from personal service performed within this State.

"b" The compensation received for services performed within this State by an individual who resides and has his place of abode in another State shall be excluded from gross income tax imposed by the State of his residence. Compensation received by residents of this State for services performed without this State shall be excluded from gross income to the extent that such compensation is

subject to an income tax imposed by the State in which such services are performed.

(2) Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and the collection of income and gains therefrom, shall be assigned to this State if such property has a situs within the State.

(3) Income derived from carrying on a trade or business by individuals shall be assigned to this State if the trade or business is conducted wholly within this State, and to other states, if conducted wholly without this State. This provision shall not apply to business income subject to the provisions of Subdivision 1-a of this Section.

(4) Whenever a trade or business is carried on partly within and partly without this State, the entire income therefrom shall be allocated to this State and to other states, according to the provisions of Sections 2346a6 of the Supplement to the Compiled Laws of 1913, providing for allocation and apportionment of income of corporations doing business within and without the State, and 2346a7 of the Supplement to the Compiled Laws of 1913, as amended by Chapter 283, Session Laws of 1931, providing for allocation in special cases. This provision shall not apply to business income derived from personal or professional services, as provided in Subsection (1).

(5) All other items of gross income shall be assigned to the taxpayer's domicile.

(6) The privileges granted non-residents shall apply only where other states grant to the residents of North Dakota the same privilege.

§ 4. DATE OF EFFECT.] This Act shall be effective on all income received during the year ending December 31, 1942.

§ 5. REPEAL.] All Acts or parts of Acts in conflict herewith are repealed.

§ 6. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 10, 1943.

CHAPTER 256

S. B. No. 180—(Blank, Thatcher, Lofthus, Page and Lynch)

INCOME TAX, DEDUCTIONS

An Act to amend and re-enact 2346a18 of the 1925 Supplement to the Compiled Laws of North Dakota, as amended by Section 4 of Chapter 283, Session Laws of 1931, as further amended by Section 2 of Chapter 241, Session Laws of 1937, and as further amended by Section 1 of Chapter 228, Session Laws of 1939; providing for net operating loss carry over and additional deductions in computing net income for income tax purposes, and declaring an emergency.

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

§ 1. AMENDMENT.] Section 2346a18 of the 1925 Supplement to the Compiled Laws of North Dakota, as amended by Section 4 of Chapter 283, Session Laws of 1931, as further amended by Section 2 of Chapter 241, Session Laws of 1937, and as further amended by Section 1 of Chapter 228, Session Laws of 1939, is hereby amended and re-enacted to read as follows:

§ 2346a18. DEDUCTIONS ALLOWED.] In computing net income, there shall be allowed as deductions;

(1) All the ordinary and necessary expenses paid during the income year in the carrying on of any trade or business including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for the purpose of the trade or business, of property to which the taxpayer has not taken or is not taking title, or in which he has no equity.

(2) Interest paid or accrued within the year on taxpayer's indebtedness.

(3) Taxes paid or accrued within the income year upon property or business, but not including those assessed against local benefits of a kind tending to increase the value of the property assessed. Federal income taxes may be deducted to the extent such taxes represent a tax paid on income taxable under this act, but State income taxes are not deductible.

(4) a Losses sustained during the income year that are not compensated for by insurance or otherwise, if incurred in connection with the business or transaction, the gains from which, if any, would be includable in gross income; or if arising from fires not attributable to arson by the taxpayer, or from storms, wrecks or theft. Losses from wagering or illegal acts shall not be allowed.

(4) b [NET OPERATING LOSS CARRY-OVER.] If for any taxable year beginning after December 31, 1941, a taxpayer has a net operating loss from trade or business, such net operating loss may be carried forward by the taxpayer as a credit against the net income, both taxable and nontaxable, received in either of the two succeeding years, subject to the following limitations:

1. No carry-over loss shall accrue from any taxpayer, except to the extent that the loss of such year shall exceed any income not taxable under this Act received in the same year;

2. The carry-over loss from any prior year or years may be deducted from the taxable income of any tax year only to the extent that such carry-over loss shall exceed any nontaxable income received in such tax year.

3. That the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income (both taxable and nontaxable) for the intervening taxable year.

c. Taxpayers entitled to net loss carry-over privileges are:

1. Corporation
2. Partnerships
3. Individuals
4. Estates and trusts if engaged in trade or business

(5) Debts ascertained to be worthless and charged off within the income year, except a worthless debt arising from unpaid wages, salaries, rent, or other similar items of taxable income is not an allowable deduction unless the income which such item represents has been included as income by the taxpayer in a return previously rendered under this Act.

(6) A reasonable allowance for necessary repairs and a reasonable allowance for depreciation by use, wear and tear of property used in business or trade, and in case of mines, oil and gas wells or other natural deposits, a reasonable allowance for depletion of ores and other natural deposits on the basis of their actual original cost in cash or in the equivalent of cash, and including cost of development, and in case of property acquired prior to January 1, 1919, the fair market value on that date shall be taken in lieu of cost up to that date.

(7) Dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this act, received by the taxpayer and included in the gross income within the income year; provided that when only part of the income of any corporation shall have been assessed and income tax paid under this act, only a corresponding part of the dividends or income received therefrom shall be deducted; and providing further that such corporation has reported the name

and address of each person owning stock and the amount of dividends or income paid each such person during the year.

(8) Contributions or gifts made within the income year to (a) the State of North Dakota, or any political subdivision thereof, exclusively for public purposes, or (b) to any community chest, corporation, association or trust, or fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or (c) to posts or organizations of war veterans or auxiliary units or societies of such organizations, if such posts, organizations, units or societies are within North Dakota and if no part of their net income inures to the benefit of any private shareholder or individual; provided, that such contributions or gifts may be deducted only to an amount which in all the above cases combined does not exceed fifteen percent (15%) of the taxpayer's net income as computed without the benefit of this subdivision.

(9) Payments for expenses for hospital, nursing, medical, surgical, dental and other healing services, for drugs and medical supplies and for funeral expenses of the taxpayer or his dependents, and not compensated for by insurance or otherwise.

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

Approved March 10, 1943.

CHAPTER 257

S. B. No. 61—(Committee on Taxes and Tax Laws)

INCOME TAX LAW, FIELD AUDITORS

An Act to amend and re-enact Section 8 of Chapter 241, Laws of 1937, pertaining to Field Auditors.

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

§ 1. AMENDMENT.] That Section 8 of Chapter 241, Session Laws of 1937, be amended and re-enacted to read as follows:

§ 8. FIELD AUDITORS.] To provide for the enforcement and administration of this Act, the State Tax Commissioner is hereby authorized to appoint field auditors who are versed in the knowledge of income tax and who have had at least three years' experience in the examination of auditing books of account.

Approved March 12, 1943.

CHAPTER 258

S. B. No. 119—(Committee on Education)

LEVY LIMIT, SCHOOL DISTRICTS

An Act to amend and re-enact Section 7 of Chapter 235 of the Session Laws of 1929 fixing the limits for the levy of taxes by School Districts.

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

§ 1. AMENDMENT.] Section 7 of Chapter 235 of the Session Laws for 1929 is hereby amended and re-enacted to read as follows:

§ 7. SCHOOL TAXES.] School District taxes shall be levied by the governing body of each school district on or before the last day of July of each year. Taxes for school district purposes shall be based upon an itemized budget statement which statement shall show the complete expenditure program of the district for the current fiscal year and the sources of the revenue from which it is to be financed. The Board of Education or Board of Directors of each school district, whether common, independent or special, in levying taxes shall be limited by the amount necessary to raise for the purpose of meeting the appropriations included in the school budget of

the current fiscal year, and the sum necessary to be provided as an interim fund together with a tax sufficient in amount to pay the interest on the bonded debt of the district and provide a sinking fund to pay and discharge the principal thereof at maturity:

- (1) The aggregate amount levied by any school district whether common, independent or special, shall not exceed such amount as will be produced by a levy of 15 mills on the dollar of the net assessed valuation of the district, except that:
- (2) Any school district giving two years of standard high school work may levy taxes not to exceed 17 mills, and;
- (3) Any school district giving three years of standard high school work may levy taxes not to exceed 19 mills, and;
- (4) Any school district giving four years of standard high school work may levy taxes not to exceed 22 mills, and;
- (5) Any school district maintaining a consolidated elementary school may levy not to exceed 17 mills on the dollar of its net taxable valuation, provided, however, that where high school work is offered the regular high school levy shall apply.
- (6) The governing body of any school district may levy taxes annually for a school building fund not in excess of one mill annually and not in excess of the limitations prescribed in this section and Section 13, when authorized to do so by 60% of electors voting upon the question at a regular or special election. Such fund shall be used exclusively for erecting school buildings. All amounts received from such levy shall be kept in a special fund and such fund shall be known as a school building fund. Such fund may be used in connection with the proceeds of any bond issue made for the same purpose. It shall be illegal to use such fund or any part thereof for any purpose except for the purpose for which the fund was created. Such fund shall be subject to all requirements which now govern the sinking fund of any such school district and shall be retained by or deposited with the custodian of the sinking funds of the district. All payments from such fund shall be upon warrant of the proper fiscal officer of the district for whose benefit the tax was levied. Whoever uses or authorizes to be used such fund or any part thereof for any purpose except the purpose for which the fund was created shall be liable therefor and upon his official bond. If any unexpended balance of such fund is no longer needed for the purpose for which the fund was created or the project is abandoned, such balance shall be transferred to the general fund of the municipality or to the sinking fund or funds of the municipality as

directed by the governing board. No such transfer shall be made until the object of the levy is satisfied or abandoned.

- (7) The foregoing limitations shall not apply to levies for the purpose of paying interest on bonded debt or to levies made to pay and discharge the principal thereof at maturity.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 19, 1943.

CHAPTER 259

H. B. No. 91—(Committee on Education)

LEVIES OF SCHOOL DISTRICTS

An Act relating to taxation in school districts, providing that the voters of school district may authorize levies in excess of the legal limitations for certain periods, and providing for the time and manner of holding such elections, and repealing that portion of Section 13 of Chapter 235 of the Session Laws for North Dakota for 1929 relating to school districts, and all other acts or parts of acts in conflict herewith.

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

§ 1. The electors of any school district may authorize the levy of taxes in such school district in excess of the limitations otherwise provided by law by an election for that purpose, which may be either a special election or at any regular election, in the manner herewith provided.

§ 2. The governing body of any school district may, at any time prior to September first in any year, by a two-thirds vote of all the members of said board, declare by resolution that the amount of taxes which may be raised at the maximum rate authorized by law will be insufficient to provide an adequate amount for the necessary requirements of the school district and that it is necessary to levy taxes in excess of said limitations for the purpose of meeting the current expenses of the school district, and that such excess so required is an increase over the legal limitation of a specified percentage not to exceed 75%.

§ 3. The governing body of the school district shall thereupon have the power to call a special election for the purpose of voting upon the question of authorizing an excess levy. Such election shall

be held not later than October first of the year in which the tax is to be levied and shall be conducted as other elections of such school district except as herein provided. The notice of election, in addition to the usual requirements, shall contain a statement of the question to be voted upon pursuant to the terms of this act, and shall also show the total amount of income and expenditures of such school district for the fiscal year preceding; the estimated expenditures for the year for which the taxes are to be levied; the aggregate amount of tax levy which the governing body seeks authority to make, the aggregate amount of tax levy permissible without special authority from the electors; and the amount of tax levy in excess of the statutory limit which the board seeks authority to make. A copy of the notice of election shall be mailed by the clerk of the school district to the tax commissioner at Bismarck, North Dakota on or before the date of the posting or first publication of the notice and shall be open to public inspection in his office.

§ 4. The governing body of the school district shall be authorized to submit the question of authorizing an excess levy for the current year and not to exceed four succeeding years, and the notice of election shall give the year or years for which authorization is sought for an excess levy as well as the percentage of excess which is to be voted upon.

§ 5. If the question submitted is for any increase of not to exceed 25% in the levy over the legal limit, a favorable vote for such question of a majority of the electors voting shall be sufficient to authorize such excess levy; if the question submitted is for an increase of more than 25% and not to exceed 50% in the levy over the legal limit, a favorable vote for such question of 60% of the electors voting shall be sufficient to authorize such excess levy; if the question submitted is for an increase of more than 50% and not to exceed 75% in the levy over the legal limit, a favorable vote for such question of 70% of the electors voting on such question shall be sufficient to authorize such excess levy.

§ 6. Upon the ballot the question shall be submitted in substantially the following form:

"Shall _____ school District levy taxes for the year (or years) _____, which shall exceed the legal limit by _____ per centum, so that the taxes levied for this current year instead of being _____ Dollars, which is the limit authorized by law, shall be _____ Dollars?

Yes _____
 No _____

§ 7. If the percentage of the votes cast in favor of the question submitted are as specified in Section 5 herein, such excess levy shall thereby be authorized. In such case, the election board shall certify the result of such election to the county auditor within ten days after

such election. The certificate shall include a statement of the question as it appeared upon the ballot, together with the total number of votes cast upon the question, the number of votes cast in favor of it, and the number of votes cast against authorizing the excess levy. If the question proposed carried by the required majority the county auditor shall extend such excess levy upon the tax lists of the school district.

§ 8. Those portions of Section 13, of Chapter 235 of the Session Laws of North Dakota for 1929 relating to and governing school districts, and all other acts or parts of acts in conflict with this act, are hereby repealed.

Approved March 19, 1943.

CHAPTER 260

H. B. No. 202—(Belzer, Fitch, Fleck and Schnell)

LIQUOR TRANSACTION TAX

An Act to amend and re-enact Sections 1, 3, 4, and 5 of Chapter 242 of the 1939 Session Laws of the State of North Dakota, as amended and re-enacted by Sections 1 and 2 of Chapter 290 of the 1941 Session Laws of the State of North Dakota, Relating to the Wholesale Liquor Transaction Tax, Providing the Method of Taxing the Same, and Providing for the Collection Thereof, Repealing Section 2 of Chapter 242 of the 1939 Session Laws, and all Acts or Parts of Acts in Conflict Therewith, and Declaring an Emergency.

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

§ I. . AMENDMENT.] That Section I of Chapter 242 of the 1939 Session Laws, as amended by Section I of Chapter 290 of the 1941 Session Laws, of the State of North Dakota, is hereby amended and re-enacted to read as follows:

§ I. A tax is hereby imposed upon all sales by licensed wholesale liquor dealers to licensed retail liquor dealers within the State of North Dakota, of alcohol and alcoholic beverages, excluding malt beverages, containing more than four per cent (4%) of alcohol by weight, according to the following schedule:

(a) On all sales of alcoholic beverages, excluding malt beverages, containing more than 4% of alcohol by weight but not more than 24% of alcohol by weight, a tax equal to the sum of twenty cents (20c) per gallon.

(b) On all sales of alcoholic beverages containing not more

than 50% but not less than 24% of alcohol by weight, a tax equal to the sum of One Dollar and Ten Cents (\$1.10) per gallon.

(c) On all sales of alcohol and alcohol substitutes regardless of proof, a tax equal to the sum of Two Dollars and Sixty-five Cents (\$2.65) per gallon.

The authority is hereby vested in the State Treasurer of the State of North Dakota to determine what constitutes alcohol substitutes.

Provided, that in computing the tax on any package of spirits a proportionate tax at a like rate on all fractional parts of a gallon shall be paid, except that all fractional parts of a gallon less than 1-16 shall be taxed at the same rate as shall be taxed for 1-16 of a gallon.

Thirty-six percent (36%) of the revenue from the tax provided for under subdivisions (a) and (b) of Section 1 shall be placed in a fund to be known as the Charitable Institutions Revolving Fund. The State Treasurer shall cover into said fund monthly said revenue as herein provided, for the benefit of the State Hospital for the Insane; the Grafton State School and the State Tuberculosis Sanatorium. There is hereby appropriated to the Board of Administration all of the moneys so collected and covered by the State Treasurer into the Charitable Institutions Revolving Fund during each biennium to pay the expenses of maintenance and operation of the State Hospital for the Insane, the Grafton State School and the Tuberculosis Sanatorium. The Board of Administration shall allocate from such fund and credit to each county the proportion that the total quarterly charges against said county for institutional care bears to the total quarterly charges against all counties for such institutional care; and shall allocate to each of said institutions its portion of the amounts so credited to all counties. The remainder of all funds collected by and paid to the State Treasurer under the terms of this Act shall be promptly credited to the general funds of the State of North Dakota.

§ 2. AMENDMENT.] That Section 3 of Chapter 242 of the 1939 Session Laws of the State of North Dakota, as amended by Section 2 of Chapter 290 of the 1941 Session Laws is hereby amended and re-enacted to read as follows:

§ 3. Within thirty days, and thereafter annually, after the passage and approval of this Act, every liquor distiller and rectifier doing business in the State of North Dakota, must file with the State Treasurer a list of all their wholesale dealer accounts, together with a description, including the boundary lines, of their wholesale dealers' territories, which give the wholesale dealer sole right of sale of distilleries and rectifiers brands, consisting of spirituous liquors and wines containing more than four per cent (4%) of alcohol by weight, within said territories.

§ 3. AMENDMENT.] That Section 4 of Chapter 242 of the 1939 Session Laws is hereby amended and re-enacted to read as follows:

§ 4. On the fifteenth day of each and every month from and after the approval and passage of this Act, all licensed wholesale liquor dealers are required to transmit to the State Treasurer copies of all invoices of liquor sold during the preceding thirty day period, which invoices shall show the name and address of the purchaser, the date of sale, the sale price of the merchandise sold, the kind of merchandise, the number and size of containers, and the tax computed on the number of gallons sold, and the wholesaler is required to remit with such invoices the amount of the tax thus charged during the period covered by the transmitted invoices.

§ 4. AMENDMENT.] That Section 5 of Chapter 242 of the 1939 Session Laws of North Dakota, is hereby amended and re-enacted to read as follows:

§ 5. The tax herein imposed shall be computed on the number of gallons, or fraction thereof, sold and delivered by the wholesaler to the retailer, as shown by the invoices filed under the provisions of this Act. Such invoices filed with the State Treasurer may be destroyed by the State Treasurer at the expiration of three years from such filing date.

§ 5. REPEAL.] Section 2 of Chapter 242 of the 1939 Session Laws of the State of North Dakota is hereby repealed, and all Acts or parts of Acts in conflict herewith are hereby repealed.

§ 6. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 9, 1943.

CHAPTER 261

H. B. No. 244—(Delayed Bills Committee)

MOTOR FUEL TAX EXEMPTION TO STATE &
POLITICAL SUBDIVISIONS

An Act to permit the purchase by the state, county, township, and other municipalities of tax exempt motor fuel for the construction, reconstruction, or maintenance of highways, public roads, streets, and airports and to permit the purchase of tax exempt motor fuels for agricultural or industrial purposes and declaring an emergency.

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

§ 1. When any construction, reconstruction or maintenance of public road, highway, street or airport is undertaken by the state or any county, city, village, township, park district, or other municipalities in this state, and where public funds of the state, county, township, city, village, park district or other municipalities are directly used for the purchasing of motor fuel to be used in publicly owned vehicles for such construction, reconstruction or maintenance, such motor fuel may be purchased without the payment of the tax thereon on a tax exempt license issued to the state or municipality.

§ 2. Any purchases made by any municipality mentioned in this act heretofore made of motor fuel on a tax exempt license and actually used by such municipality for the construction, reconstruction or maintenance of a highway, public road, street or airport and upon which purchase the motor fuel tax provided by law has not been paid, are hereby validated and any tax which would otherwise be required to be paid shall not be paid and shall not constitute a claim against such municipality.

§ 3. Motor fuel, except motor fuel used in the construction, reconstruction, or repair of State or County highways, may be sold in this state for agricultural or industrial purposes, without the payment of the motor fuel tax, by any dealer who is licensed to sell the same as provided in this chapter. A delivery of such tax exempt motor fuel shall be made only from a duly licensed station to a person licensed to purchase tax exempt motor fuel as provided in this chapter.

§ 4. Any person desiring to sell tax exempt motor fuel in this state shall procure a license so to do by making application to the state auditor. The application shall be made on a form approved by the state auditor and shall state the name and location of the station to be licensed.

§ 5. Upon the payment of a fee of two dollars by the applicant,

the state auditor, if satisfied that the applicant for a license to sell tax exempt motor fuel is a resident of this state, may issue to such applicant a license to sell such motor fuel from a station designated in the license. A separate license shall be secured for each station at which tax exempt motor fuel is sold.

§ 6. Any person desiring to purchase tax exempt motor fuel may procure a license so to do by applying to the state auditor and paying a fee of fifty cents. The application for such license shall be filed in the office of the state auditor and shall state:

1. The name, occupation, residence, and post office address of the applicant.
2. A description of the machinery or implement in the operation of which the tax exempt motor fuel is to be used.
3. The rated horse power if an engine or tractor.
4. The year the implement was purchased.
5. The total probable amount of tax exempt motor fuel to be used during the year.
6. The legal description of the land owned or operated by the applicant.
7. The make and year of manufacture and rated horse power of each automobile and motor fuel truck owned and operated by the applicant.

§ 7. If the state auditor is satisfied that an application for a license to purchase tax exempt motor fuel is made in good faith and for the purposes stated in sections 1 and 3, he shall issue to the applicant a license to purchase tax exempt motor fuel for the calendar year. The license shall expire on the thirty-first day of December of the year in which the license is issued unless revoked as provided by this chapter. The license shall be in book form and shall contain the license number, the name and address of the licensee, and shall provide space to be filled in by the dealer for the date of purchase of motor fuel, and from whom, and the number of gallons purchased.

§ 8. Prior to the expiration of a license to purchase tax exempt motor fuel, the licensee shall file with the state auditor a statement made under oath of the amount of tax exempt motor fuel purchased, the date of purchase, and the price paid. There also shall be attached to such affidavit the dealer's receipt with a detailed statement of all other motor fuel purchased during the period covered by the license subject to a motor fuel tax and delivered in bulk by the dealer to the place of residence of such purchaser.

§ 9. A dealer in tax exempt motor fuel shall issue for each sale a receipt in triplicate which shall be in the form and colors prescribed by the state auditor and shall show the date, name, resi-

dence, and license number of the dealer and the purchaser and the number of gallons sold. Each receipt shall be signed by the purchaser. Two copies of the receipt shall be retained by the licensed dealer, and one shall be delivered to the licensed purchaser. One copy shall be delivered by the licensed dealer to the dealer importing the motor fuel into this state and originally liable for the payment of the motor fuel tax. Such receipt shall be accepted by the state auditor from importing dealer in lieu of the payment by such dealer of the motor fuel tax provided by law, to the extent of the number of gallons of motor fuel shown on said receipt to have been sold for purposes herein declared tax exempt to a licensed purchaser thereof.

§ 10. The provisions of this chapter shall not be construed to exempt any motor fuel used as motor fuel in propelling any motor fuel truck or engine to be operated in whole or in part on any public highway in this state, nor to exempt motor fuel used for any purpose not solely for the purposes specified in sections 1 and 3 from the payment of the tax upon motor fuel as provided in this chapter.

§ 11. The state auditor may formulate rules and regulations for the administration of the provisions of this chapter relating to the sale and purchase of tax exempt motor fuel.

§ 12. An emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.

Approved March 12, 1943.

CHAPTER 262

S. B. No. 211—(Delayed Bills Committee)

MOTOR FUEL USE TAX

An Act imposing a Motor Fuel Use Tax upon products used for propelling motor vehicles on the highways and streets of this State other than gasoline; providing for the licensing and bonding of users and for the administration, report and payment of such tax and the repeal of all acts or parts of acts in conflict with the provisions of this act.

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

§ 1. DEFINITIONS.] The words and phrases defined in the gasoline tax laws of this State shall have the same meaning when

used in this act. The following additional terms are defined for the purpose of this act as follows:

(1) "Fuels" shall mean and include all combustible gases and liquids suitable for the generation of power in an internal combustion engine, except motor fuel as otherwise defined by law.

(2) "Use" shall mean and include the consumption of fuel in internal combustion engines in generating power to propel motor vehicles upon the public highways of this State, or to propel motor vehicles used in the construction, reconstruction or repair of State or county highways, but shall not include fuel purchased by the State or any municipality as defined in House Bill No. 244 for use in any State or municipally owned vehicle where public funds are directly expended in purchasing such fuel for use in the construction, reconstruction, repair or maintenance of any public highway, street or airport.

(3) "user" shall mean any person who uses fuel in this State, within the meaning of the term "use" as above defined; "Duly licensed user" shall mean and include any user holding an unrevoked license issued by the State Auditor as hereinafter provided.

§ 2. LEVY OF TAX.] For the privilege of using the public highways in this state, an excise tax is imposed hereby on the use of fuel by any person within this State, at the rate of four cents per gallon, computed and paid in the manner hereinafter provided.

§ 3. APPLICATION FOR LICENSE; BOND; LICENSE.] I. It shall be unlawful for any person to use any fuel in this State as defined in this Act, unless such person is a duly licensed user or is operating a motor vehicle for and on behalf of a duly licensed user;

2. Such license shall be procured by filing with the State Auditor an application under oath and in such form as the State Auditor may prescribe, setting forth the name and address of the applicant, a detailed statement of the motor vehicles to be operated by the applicant in which fuel will be used, and such other information as the State Auditor may require reasonably;

3. Such license may be refused by the State Auditor, after a hearing on five days' written notice, if it appears that the application is made by a person whose license, within one year previous, has been cancelled for cause, or that the application is not made in good faith, or that the application is made as a subterfuge for the real person in interest whose license has been cancelled for cause within one year previous;

4. Upon such application a fee of one dollar shall be paid by the applicant;

5. Each application shall be accompanied by a bond running to the State of North Dakota, in which the applicant shall be the

principal obligor, conditioned on the payment of any and all tax which may become due from said applicant, and which bond shall be in the same form and subject to all the other provisions relating to bonds specified in the laws relating to the gasoline tax and which such bond shall be in the amount to be fixed by the State Auditor and not less than \$200.

6. Upon fulfilling the above requirements, the State Auditor shall issue to the applicant a license certificate which shall remain in full force and effect until cancelled or revoked. It shall not be assignable, and shall be displayed in the motor vehicle for which it was issued and the use of any fuel, as defined in this act, in such vehicle without such license being displayed shall be prima facie evidence of a violation of this act.

§ 4. REPORT AND PAYMENT OF TAX.] 1. For the purpose of determining the amount of tax herein imposed, each user, not later than the twenty-fifth day of each calendar month, shall file with the State Auditor, on forms prescribed by the State Auditor, monthly reports sworn to by the user which shall include the total gallonage of fuels used within this State, as defined in this Act, during the preceding month;

2. At the time of filing of each monthly report with the State Auditor, and concurrently therewith, each user shall pay to the State Auditor the full amount of the fuel tax for the preceding calendar month at the rate provided in Section 2, who shall receipt therefor and pay all such money to the State Treasurer. The State Treasurer shall credit three-fourths of all money so received to the State Highway Fund, and such money is hereby appropriated to be used for the construction, reconstruction, maintenance or repair of highways or roads under the jurisdiction of the State Highway Department. One-fourth of such money so received shall be credited by the State Treasurer to the County Highway Aid Fund, and be distributed to the counties in the manner, at the times and for the purposes provided for in Chapter 168 of the Session Laws of North Dakota for 1937.

§ 5. ADMINISTRATION OF TAX.] All the provisions of the laws relating to gasoline tax which are not inconsistent with the provisions of this act, shall apply to the administration and collection of the tax imposed by this Act, and the State Auditor shall have the same powers and follow the same procedure as provided in the gasoline tax laws in all matters relating to the collection and enforcement of the tax levied in this act.

Approved March 17, 1943.

CHAPTER 263

S. B. No. 49—(Committee on Tax and Tax Laws)

ONE CENT GASOLINE TAX

An Act Assessing and Levying from July 1, 1943 to July 1, 1945 on all licensed dealers of motor vehicle fuels, a special additional license tax of one cent per gallon on motor vehicle fuels used or sold by them in addition to all other taxes now imposed upon them; appropriating the proceeds of such special tax on the State Highway Fund for specific purposes; making all provisions of Initiated Measure approved June 30, 1926, and amendments thereto and known as the "Motor Vehicle Fuel Tax Law," other than division of proceeds between the State and Counties and other than for costs of administration and collection and other than penalties for violation applicable to said special license tax; providing for exemption of motor vehicle fuels sold and used for agricultural and industrial purposes; and fixing fines and penalties for the violation of the provisions of this Act.

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

§ 1. There is hereby imposed, beginning the first day of July, 1943, and ending the 30th day of June, 1945, on dealers in motor vehicle fuels, a special motor vehicle fuel license tax of one cent per gallon on all motor vehicle fuels used and sold in the State of North Dakota; which tax shall be separate and apart from and in addition to any license tax or other tax imposed upon or applicable to motor vehicle fuels or dealers therein under the laws of this State, and said additional one cent per gallon tax shall be in addition to and over and above the three cent tax now imposed and assessed by the Initiated Measure approved June 30, 1926, and amendments thereof and Acts supplementary thereto, known as "Motor Vehicle Fuel Tax Law," provided however, that said additional one cent per gallon tax shall not be imposed upon or applicable to motor vehicle fuels sold in this State to be used solely for agricultural and industrial purposes and said motor vehicle fuels so sold to be used solely for agricultural and industrial purposes shall be tax exempt as is provided by Chapter 147 of the 1939 Session Laws of the State of North Dakota.

§ 2. Said additional one cent per gallon tax shall be paid by every dealer in motor vehicle fuels as defined and provided in the said Initiated Measure approved June 30, 1926, and the amendments thereto and said additional one cent per gallon tax shall be paid in the manner, at the times, and to the officer specified in said Initiated Measure and amendments thereto and all definitions of terms and methods of procedure for assessment and collection and other general provisions by context applicable hereto now contained and provided in said Initiated Measure and amendments thereto

shall apply and hereby are made applicable to the special license tax imposed under the terms and provisions of this Act.

§ 3. The proceeds of said special license tax of one cent per gallon is hereby appropriated and shall be allocated and transferred to the State Highway Fund as created by statute and shall be expended for such purposes only as are provided in the statute creating said State Highway Fund as may come within the purview and restrictions of the Acts of Congress and Amendments thereto granting regular and secondary Federal Aid road funds for the construction and repair of federal, State and feeder highways within this State and the total proceeds of the tax herein imposed shall be covered in said State Highway Fund without any deductions for administrative and collection costs or other deductions whatsoever.

§ 4. Every dealer paying the additional one cent per gallon special motor vehicle fuel license tax herein imposed or being liable for the payment thereof shall be entitled to charge and collect the sum of one cent per gallon on such motor vehicle fuels sold by him as a part of the selling price thereof.

§ 5. Any dealer, person or association of persons firm or corporation violating any provisions of this Act, or any person, firm or corporation who makes any false statement in any statement or report required by this Act, or who shall fail or neglect to pay the one cent per gallon additional special motor vehicle fuel license tax herein imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred and no/100 (\$500.00) Dollars or be imprisoned in the County jail for not more than ninety (90) days, or by both such fine and imprisonment.

§ 6. The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional, the decisions of the Court shall not affect or impair any of the remaining provisions of this Act. It is hereby declared, as of Legislative intent, that this Act would have been adopted had such unconstitutional provisions not been included therein. It is hereby further declared, as of Legislative intent, to levy a special motor vehicle fuel license tax in the sum of one cent per gallon which shall be separate and apart from and in addition to any license tax or other tax imposed upon or applicable to motor vehicle fuels or dealers therein and to allocate the proceeds of such tax.

Approved February 16, 1943.

CHAPTER 264

H. B. No. 83—

(Hofstrand, Langley, Heckman, Dahlen, Starck and Bagge)

SALES TAX

An Act to equalize taxation and replace in part the tax on property; to provide the public revenue to be used for such replacement by imposing a tax on the gross receipts from retail sales as defined herein; to provide for the collection of such tax, the distribution and use of the revenue derived therefrom, and the administration of said law; to provide for certain deductions and exemptions; establishing a lien for the payment of such tax; to fix fines and penalties for the violation of the provisions of this Act; to repeal all laws or parts of laws in conflict herewith.

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

§ 1. DEFINITIONS.] The following words, terms and phrases, when used in this Act, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

(b) "Sale" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

(c) "Retail Sale" or "Sale at Retail" means the sale to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property and the sale of steam, gas, electricity, water, and communication service to retail consumers or users, and shall include the ordering, selecting or aiding a customer to select any goods, wares, or merchandise from any price list, or catalogue, which such customer might order, or be ordered for such customer to be shipped directly to such customer. By the term "processing" as used in this Act is meant tangible personal property that is used in manufacturing, producing or processing and which becomes an ingredient or component part of other tangible personal property and which latter tangible personal property becomes subject to the retail sales tax. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to other real or personal property otherwise exempt from the sales tax shall for the purposes of this Act be considered as a sale of tangible personal property for a purpose other than for processing.

(d) "Business" includes any activity engaged in by any per-

son or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

(e) "Retailer" includes every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, electricity, water and communication services, and tickets or admissions to places of amusement and athletic events as provided in this Act, and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration, a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided, and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the State in the manner provided in this Act.

(f) "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purposes allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. Provided, further, that on all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty (60) days from the date of sale thereof that only such portion of the sale amount thereof shall be accounted, for the purpose of imposition of tax imposed by this bill, as has actually been received in cash by the retailer during each quarterly period as defined herein.

(g) "Relief agency" means the State, any County, City and County, City or District thereof, or any agency engaged in actual relief work.

(h) "Commissioner" means the Tax Commissioner of the State of North Dakota.

(i) "Local Governmental Unit" means Incorporated Cities, Towns and Villages, Counties, School Districts and Townships.

§ 2. TAX IMPOSED.] There is hereby imposed, beginning the first day of July, 1943, and ending June 30, 1945, a tax of two per cent (2%) upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this Act, sold at retail in the State of North Dakota to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of steam, gas, elec-

tricity, water and communication service, including the gross receipts from such sales by any municipal corporation furnishing steam, gas, electricity, water and communication service to the public in its proprietary capacity, except as otherwise provided in this Act, when sold at retail in the State of North Dakota to consumers or users; and a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic events, except as otherwise provided in this Act.

The Tax herein levied shall be computed and collected as hereinafter provided.

§ 3. EXEMPTIONS.] There are hereby specifically exempted from the provisions of this Act and from computation of the amount of tax imposed by it, the following:

(a) The gross receipts from sales of tangible personal property which this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

(b) The gross receipts from the sales, furnishing or service of transportation service.

(c) The gross receipts from sales of tangible personal property processed from agricultural products, when such property is sold in exchange for like agricultural products produced by the purchaser and is for the use of the purchaser and his family.

(d) The gross receipts from sales of tickets or admissions to State, County, district and local fairs, and the gross receipts from educational, religious, or charitable activities, where the entire amount of such receipts is expended for educational, religious or charitable purposes.

(e) The gross receipts from the sale by any school board of this State of books and school supplies to regularly enrolled students at costs.

(f) Gross receipts from sales of tangible personal property or from furnishing or service of steam, gas, electricity, water, and communication service to the United States, State of North Dakota or any of its subdivisions, departments or institutions, any County, City, Village, Township, School District, Park District, or municipal corporations.

§ 4. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off, for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax shall be paid upon the amount so collected. The provisions of this Act shall not apply to sales of gasoline, cigarettes, snuff, insurance premiums, or any other product

or article upon which the State of North Dakota may now or hereafter impose a special tax.

§ 5. CREDIT TO RELIEF AGENCY AND LOCAL GOVERNMENTAL UNITS.]

(1) A relief agency may apply to the Commissioner for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, or merchandise used for free distribution to the poor and needy;

(2) Such refunds may be obtained only in the following amounts and the manner and only under the following conditions.

(a) On forms furnished by the Commissioner, and during the time herein provided for the filing of quarterly tax returns by retailers, the relief agency shall report to the Commissioner the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, or merchandise used for free distribution to the poor and needy.

(b) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(c) The relief agency must prove to the satisfaction of the Commissioner that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this division, based upon such computation of gross receipts.

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

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

Agreements between competing retailers, or the adoption of appropriate rules and regulations by organizations or associations of retailers to provide uniform methods for adding such tax or the average equivalent thereof, and which do not involve price fixing agreements otherwise unlawful, and which shall first have the approval of the Commissioner, are expressly authorized and shall be held not to be in violation of any anti-trust laws of this State.

§ 7. UNLAWFUL ACTS.] It shall be unlawful for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this Act shall be assumed or absorbed by the retailer or that it will

not be considered as an element in the price to the consumer, or if added, that it or any part thereof will be refunded.

§ 8. RECORDS REQUIRED.] It shall be the duty of every retailer required to make a report and pay any tax under this division, to preserve such records of the gross proceeds of sales as the Commissioner may require and it shall be the duty of every retailer to preserve for a period of two years all invoices and other records of goods, wares, or merchandise purchased for resale; and all such books, invoices and other records shall be open to examination at any time by the Commissioner or any one of his duly authorized agents.

§ 9. RETURN OF GROSS RECEIPTS.]

(1) The retailer shall, on or before the 20th day of the month following the close of the first quarterly period as defined in the following Section, and on or before the 20th day of the month following each subsequent quarterly period of three months, make out a return for the preceding quarterly period in such form and manner as may be prescribed by the Commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by such return, and such further information as the Commissioner may require to enable him correctly to compute and collect the tax herein levied; provided, however, that the Commissioner may, upon request by any retailer and a proper showing of the necessity therefor, grant unto such retailer an extension of time not to exceed thirty (30) days for making such return. If such extension is granted to any such retailer, the time in which he is required to make payment as provided for in Section Ten (10) of this Act shall be extended for the same period.

(2) The Commissioner, if he deems it necessary or advisable in order to insure the payment of the tax imposed by this Act, may require returns and payments of the tax to be made for other than quarterly periods, the provisions of Section Ten (10) or elsewhere to the contrary notwithstanding.

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

§ 10. PAYMENT OF TAX, BOND, CREATION OF LIEN.]

(1) The tax levied hereunder shall be due and payable in quarterly installments on or before the 20th day of the month next succeeding each quarterly period, the first of such period being the period commencing with July 1, 1943, and ending on the 30th day of September, 1943.

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

(3) The Commissioner may, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this Act, require any person subject to such tax to file with him a bond, issued by a surety company authorized to transact business in this State and approved by the Insurance Commissioner as to solvency and responsibility, in such amount as the Commissioner may fix, to secure the payment of any tax and/or penalties due or which may become due from such person. In lieu of such bond, securities approved by the Commissioner in such amount as he may prescribe, may be deposited with him, which securities shall be kept in the custody of the Commissioner and may be sold by him at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax and/or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this division shall be returned to the person who deposited the securities.

Sub-section 4. LIEN OF TAX. COLLECTION. ACTION AUTHORIZED.] Whenever any taxpayer liable to pay a tax and/or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the State of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied.

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

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

1. The name of the Taxpayer.
2. The name 'State of North Dakota' as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. When satisfied.

The Register of Deeds shall indorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real

estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The Tax Commissioner shall pay a recording fee as provided by law for the recording of such lien, or for the satisfaction thereof.

Upon the payment of a tax as to which the Tax Commissioner has filed notice with the Register of Deeds, the Tax Commissioner shall forthwith file with said Register of Deeds a satisfaction of said tax and the Register of Deeds shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

The Attorney General shall, upon the request of the Tax Commissioner, bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and/or penalties, and in such action he shall have the assistance of the State's Attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the State shall be cumulative and that no action taken by the Tax Commissioner or Attorney General shall be construed to be an election on the part of the State or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

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

(5) Remittances on account of tax due under this Act shall not be deemed or considered payment thereof unless or until the Commissioner shall have collected or received the amount due for such tax in cash or equivalent credit.

§ 11. PERMITS; APPLICATIONS FOR.]

(1) It shall be unlawful for any person to engage in or transact business as a retailer within this State unless a permit or permits shall have been issued to him as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this State shall file with the Commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the Commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

(2) At the time of making such application, the applicant shall pay to the Commissioner a permit fee of 50 cents (50¢) for each permit, and the applicant must have a permit for each place of business.

(3) Upon the payment of the permit fee or fees herein required, the Commissioner shall grant and issue to each applicant a permit for each place of business within the State. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(4) Permits issued under the provisions of this division shall be valid and effective without further payment of fees until revoked by the Commissioner.

(5) Whenever the holder of a permit fails to comply with any of the provisions of this division or any rules or regulations of the Commissioner prescribed and adopted under this division, the Commissioner upon hearing after giving ten days' notice of the time and place of the hearing to show cause why his permit should not be revoked, may revoke the permit. The Commissioner shall also have the power to restore licenses after such revocation.

(6) The Commissioner shall charge a fee of One Dollar (\$1.00) for the issuance of a permit to a retailer whose permit has been previously revoked.

(7) It is hereby provided that all permits issued under the provisions of Chapters 276, 1935 Session Laws, and all subsequent re-enactments thereof and in effect upon the taking effect of this Act are hereby continued and shall remain in full force and effect unless revoked as herein provided.

§ 12. FAILURE TO FILE RETURN; INCORRECT RETURN.] If a return required by this division is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the Commissioner, such Commissioner shall determine the amount of tax due from such information as he may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and/or other factors. The Commissioner shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall within thirty days after the giving of notice of such determination, apply to the Commissioner for a hearing or unless the Commissioner of his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the Com-

missioner shall give notice of his decision to the person liable for the tax.

§ 13. APPEALS.]

(1) An appeal may be taken by the taxpayer to the District Court of the county in which he resides, or in which his principal place of business is located, within sixty days after he shall have received notice from the Commissioner of his determination as provided for in the preceding Section.

(2) The appeal shall be taken by a written notice to the Commissioner and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the Clerk of said District Court, and docketed as other cases, with the taxpayer as plaintiff and the Commissioner as defendant. The plaintiff shall file with such Clerk a bond for the use of the defendant, with surties approved by such Clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than Fifty Dollars (\$50.00), conditioned that the plaintiff shall perform the orders of the Court.

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

§ 14. SERVICE OF NOTICES.]

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

(2) The provisions of the North Dakota Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this Act.

§ 15. PENALTIES, OFFENSES.]

(1) Any person failing to file a return or corrected return or to pay any tax within the time required by this division, shall be subject to a penalty of five per cent (5%) of the amount of tax due, plus one per cent (1%) of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due; but the Commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the Commissioner and disposed of in the same manner as other receipts under this Act. Unpaid penalties may be enforced in the same manner as the tax imposed by this Act.

(2) Any person who shall sell tangible personal property, tickets or admissions to places of amusement and athletic events, or steam, gas, water, electricity and communication service at retail in this State after his license shall have been revoked, or without procuring a license within sixty (60) days after the effective date of this Act, as provided in Section 11 of this Act, or who shall violate the provisions of Section 7 of this Act, and the officers of any corporation who shall so act, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment for not more than one year, or both such fine and imprisonment, in the discretion of the Court.

(3) Any person required to make, render, sign or verify any return or supplementary return, who makes any false or fraudulent return, with intent to defeat or evade the assessment required by law to be made, shall be guilty of a misdemeanor and shall, for each such offense, be fined not to exceed Five Hundred Dollars (\$500.00) or be imprisoned in the County Jail not exceeding one year, or be subject to both a fine and imprisonment, in the discretion of the Court.

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

(5) Any person failing to comply with any of the provisions of this Act, or failing to remit within the time herein provided to the State the tax due on any sale or purchase of tangible personal property subject to said sales tax, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the County Jail not exceeding six (6) months or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment at the discretion of the Court. This criminal liability shall be cumulative and in addition to the civil liability for penalties hereinbefore provided.

§ 16. The Tax Commissioner of the State of North Dakota is hereby charged with the administration of this Act and the taxes imposed thereby. Such Commissioner shall have power and authority to prescribe all rules and regulations not inconsistent with the provisions of this Act, necessary and advisable for its detailed administration and to effectuate the purposes, including the right to provide for the issuance and sale by the State of coupons covering the amount of tax or taxes to be paid under this Act, if such method is deemed advisable by said Commissioner.

§ 17. All fees, taxes, interest and penalties imposed and/or collected under this Act must be paid to the Commissioner in the form of remittance payable to the Treasurer of the State of North Dakota, and said Commissioner shall transmit each payment monthly to the State Treasurer to be deposited in the State Treasury to the credit of a fund to be known as the Retail Sales Tax Fund, which fund is hereby created and established.

§ 18. GENERAL POWERS.]

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

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

(3) The fees and mileage to be paid witnesses and taxed as costs shall be the same as prescribed by law in proceedings in the District Court of this State in civil cases. All costs shall be taxed in the manner provided by law in proceedings in civil cases. Where the costs are taxed to the taxpayer, they shall be added to the taxes assessed against said taxpayer and shall be collected in the same manner. Costs taxed to the State shall be certified by the Commissioner to the State Treasurer, who shall issue warrants for the amount of said costs, to be paid out of the proceeds of the taxes collected under this Act.

(4) In case of disobedience to a subpoena the Commissioner may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue

an order requiring the person to appear before the Commissioner and give evidence or produce records, books, papers and documents, as the case may be, and any failure to obey such order of Court may be punished by the Court as a contempt thereof.

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

§ 19. (1) The Commissioner may appoint such agents, auditors, clerks and employees as he may deem necessary and fix their salaries and compensation and prescribe their duties and powers, and said Commissioner shall have the right to remove such agents, auditors, clerks and employees so appointed by him; provided that the number of inspectors appointed shall not exceed ten, each of whom shall have had at least three years experience in the auditing and checking of books of account.

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

(3) The Commissioner may require such of the officers, agents and employees as it may designate to give bond for the faithful performance of the duties in such sum and with such sureties as it may determine and the State shall pay, out of the proceeds of the taxes collected under the provisions of this Act, the premiums on such bonds.

(4) The Commissioner may utilize the office of the Treasurer of the various Counties in order to administer this Act and effectuate its purposes, and may appoint the Treasurers of the various counties its agents to collect any or all of the taxes imposed by this Act, provided, however, that no additional compensation shall be paid to said Treasurer by reason thereof.

§ 20. INFORMATION DEEMED CONFIDENTIAL.]

(1) It shall be unlawful for the Commissioner, or any person having an administrative duty under this Act, to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law; provided, however, that the Commissioner may authorize examination of such returns by other State officers, or, if a reciprocal arrange-

ment exists, by tax officers of another State, or the Federal Government.

(2) Any person violating the provisions of Sub-section 1 of this Section shall be guilty of a misdemeanor and punishable by fine not to exceed One Thousand Dollars (\$1,000.00).

§ 21. CORRECTION OF ERRORS.] If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this Act, then such amount shall be credited against any tax due, or to become due, under this Act from the person who made the erroneous payment, or such amount shall be refunded to such person by the Commissioner.

§ 22. Wherever by any provision of this Act a refund is authorized, the Commissioner shall certify the amount of the refund, the reason therefor and the name of the payee to the State Auditor, who shall thereupon draw his warrant on the Retail Sales Tax Fund in the amount specified payable to the named payee.

§ 23. ALLOCATION OF REVENUE.] All moneys collected and received under this Act shall be paid into the State Treasury and shall be credited by the State Treasurer into a special fund to be known as "The Retail Sales Tax Fund". Out of this fund the State Treasurer shall first provide for the payment of refunds allowed under this Act. That the net amount of moneys remaining in said "Retail Sales Tax Fund" shall be and shall constitute a special trust fund to be used and disbursed solely for the following purposes:

(1) That seven-twelfths ($7/12$) of said trust fund shall be used and disbursed only for the payment of appropriations made pursuant to and for the purposes set forth in the State Equalization Fund Law. That the remaining five-twelfths ($5/12$) of said trust fund shall be used and disbursed only for the payment of appropriations to be expended by the Public Welfare Board for the purposes authorized by law; provided, however, that appropriations made from the General Fund to be expended by said Public Welfare Board shall constitute and include appropriations from said five-twelfths ($5/12$) share of said trust fund.

(2) That the State Treasurer and State Auditor are hereby authorized and directed to make monthly transfers of all the amounts available in said trust fund, in the proportions provided herein to the State Equalization Fund and to be expended by said Public Welfare Board as provided by law.

§ 24. All moneys now in the Retail Sales Tax Fund created by Chapter 249 of the Session Laws of North Dakota for 1937, as amended and re-enacted by Chapter 234 of the Session Laws of North Dakota for 1939, as amended and re-enacted by Chapter 283

of the Session Laws of North Dakota for 1941, or collected pursuant to the provisions of said Acts, are hereby appropriated and transferred into the Retail Sales Tax Fund created by this Act, and shall be allocated and used as herein provided.

§ 25. If any section, sub-section, clause, sentence, or phrase of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, sub-section, clause, sentence or phrase hereof, irrespective of whether any one or more of the sections, sub-sections, clauses, sentences, or phrases, be declared unconstitutional.

§ 26. REPEAL.] All laws or parts of laws in conflict with this Act are hereby repealed.

Approved March 2, 1943.

CHAPTER 265

H. B. No. 199—(Committee on Taxes and Tax Laws)

TAXATION OF REAL PROPERTY

An Act requiring all property of the State be assessed at full and true value in money subject to correction, abatement and refund; providing for notice by county auditor when local Equalization Boards meet; annual meetings of State Board of Equalization, and providing for hearing before such Board; prescribing the time for levy of State taxes and fixing rate; when taxes become due and delinquent; penalties; discount for payment of taxes before delinquency; repealing Chapter 269, Laws of 1941, and all Acts or parts of Acts in conflict herewith.

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

§ 1. TAXABLE PROPERTY, HOW ASSESSED.] That all property in the State subject to taxation upon an ad valorem basis shall be assessed at its full and true value in money; and that all assessments of any taxable property in excess of the full and true value in money shall be subject to correction and abatement and refund under the provisions of Chapter 276, 1931 Session Laws and/or as hereinafter provided.

That each year the county auditor shall cause to be published in the official county newspaper for two successive weeks, the first publication to be not earlier than May 1, and the last publication

not later than May 20, a notice to the effect that proceedings for the equalization of assessments will be taken by the several local equalization boards as follows: Organized townships, incorporated villages on the second Monday in June, and by city councils or boards of city commissioners on the second Tuesday in June at the office of the clerk or auditor of the township, village or city as the case may be; and that each taxpayer has the right to appear before such boards of review or equalization and petition for correction in his assessment.

§ 2. COUNTY BOARD OF REVIEW AND EQUALIZATION.] After the local boards of review and equalization have performed their duties as prescribed by Section 2133 of the Compiled Laws of North Dakota for the year 1913, it shall be the duty of the board of county commissioners of each county at its regular meeting in July to act as a Board of Review and Equalization as prescribed in Section 2138 of the Compiled Laws of North Dakota for the year 1913.

§ 3. ANNUAL MEETINGS OF THE STATE BOARD OF EQUALIZATION.] (a) The State Board of Equalization shall meet annually on the first Tuesday of August at the office of the State Tax Commissioner to assess all of the taxable property which such Board is required to assess pursuant to and in accordance with the provisions of Section 179 of the State Constitution, as amended, and the statutes of this State.

(b) The State Board of Equalization shall meet annually on the fourth Tuesday in August in the office of the State Tax Commissioner, and shall then examine and compare the returns of the assessment of taxable property as returned by the several counties in the State, and proceed to equalize the same so that all assessments of similar taxable property shall be uniform and equal throughout the State at its full and true value thereof in money or at such percentage of the full and true value as may be required by law.

§ 4. HEARING BEFORE STATE BOARD OF EQUALIZATION.] The board of county commissioners of any of the several counties or any representative in their place or stead, or city council, or city commissioners or representatives, village boards or representative groups of taxpayers or taxpayers' associations, or individual representing same, may appear before the State Board of Equalization to be heard for the purpose of opposing any unreasonable or unjust increase or decrease in the valuation of the taxable property of their county, city, or village as equalized by the county board of equalization, or of opposing any increase or decrease in such valuation as proposed by the State Board of Equalization to the end that all valuations of like taxable property be uniform and equal throughout the State.

§ 5. STATE TAXES, WHEN LEVIED AND RATE FIXED.] As soon

as the data from the several counties has been assembled and equalization by the State Board completed, the State Board of Equalization shall determine the rate of State tax to be levied for the purposes authorized by law, and certify same at the earliest possible time to the county auditors of the several counties.

§ 6. REAL AND PERSONAL PROPERTY TAXES, WHEN DUE AND DELINQUENT, WITH PENALTIES.] Any real and personal property tax, hail insurance taxes and yearly installments of special assessment taxes, shall become due on the first day of January following the year for which such taxes were levied and the first installment of real estate taxes, all personal property taxes, hail insurance taxes and yearly installments of special taxes shall become delinquent on the first day of March following, and, if not paid on or before said date, shall be subject to a penalty of one percent (1%), and on May 1st following an additional penalty of one percent, and July 1st following, an additional penalty of one percent, and an additional penalty of two percent on October 15th following. The second installment of real estate taxes shall become delinquent on October 15, and, if not paid on or before that date shall become subject to a penalty of two percent.

§ 7. DISCOUNT FOR PAYMENT OF TAXES BEFORE DELINQUENCY.] The county treasurer shall allow a five percent discount to all taxpayers of taxes on real property who shall pay all the real estate tax levied and spread upon any tract or parcel of real property in any one year in full on or before the fifteenth day of February prior to the date of delinquency of such real estate taxes. Such discount shall apply to all real estate taxes levied for state, county, city, township, village, school district and park district purposes, but shall not apply to personal property taxes, special assessment installments or to hail indemnity taxes.

§ 8. ABATEMENT OF INVALID, INEQUITABLE, OR EXCESSIVE TAXES.] When the board of county commissioners is satisfied beyond a doubt that the assessment of real or personal property described in an application for abatement is invalid, inequitable, or unjust, the board may, if application is filed on or before the first day of November in the year in which such taxes become delinquent, abate any part thereof in excess of a just, fair and equitable assessment provided such application for correction complies with requirements of Chapter 276 of the 1931 Session Laws. Any person aggrieved by any decision of said Board of County Commissioners may appeal to the District Court in the manner now provided by law.

§ 9. REPEAL.] Chapter 269 of the Session Laws for the year 1941 is hereby expressly repealed, and all Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 10, 1943.

CHAPTER 266

S. B. No. 62—(Committee on Tax and Tax Laws)

TAXATION OF RURAL ELECTRIC COOPERATIVES

An Act to encourage rural electrification; classifying the personal property of rural electric companies, and imposing a gross receipts tax on such cooperatives in lieu of all other taxes on such personal property; providing for reports of gross receipts; prescribing the duties of Tax Commissioner with reference to levying of the tax and the duties of the County Auditor and the County Treasurer with reference to allocation, collection and distribution of such tax; and repealing Chapter 282, Laws of 1941 and all Acts and parts of Acts in conflict herewith.

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

§ 1. CLASSIFICATION.] The property of nonprofit cooperative corporations engaged in the distribution, transmission and/or generation of electrical energy for consumption in rural areas is hereby expressly classified as personal property for the purpose of taxation. Such corporations are hereinafter referred to as cooperatives.

§ 2. DEFINITION.] For the purpose of this Act, the personal property of the cooperatives shall include the following property used by a cooperative in connection with the distribution, transmission and/or generation of electric energy: All poles, wires, lines, transformers, generating equipment, meters, machinery, buildings and substations used for housing such equipment and office fixtures of every character used in connection with the cooperative business.

§ 3. REPORT OF GROSS RECEIPTS.] Each cooperative shall annually on or before May 1st each year file a report with the Tax Commissioner in such form and containing such information as the Tax Commissioner may prescribe and demand. Such report shall state the amount of gross receipts derived from the furnishing of electric energy during the preceding calendar year. Each such cooperative shall at the same time file with the County Auditor of each county within which any of its lines are located a report giving the length of the line or lines within each taxing district in said county and the total length of its lines within the county as of January 1st of that year. The County Auditor may require a map to be filed, showing the length of the lines within each taxing district of said county. To facilitate the making of such maps, the County Auditor shall furnish each cooperative an accurate map of the county, showing the boundaries of each taxing district.

§ 4. TAXES IMPOSED IN LIEU OF PERSONAL PROPERTY TAX.]

The Tax Commissioner is hereby authorized and required to levy on each cooperative a tax upon its gross receipts for the preceding calendar year. Each year for the first five years during which such cooperative engaged in business the tax shall be one percentum and thereafter the tax shall be two percentum of its gross receipts. The tax hereby imposed shall be in lieu of any other taxes levied on the personal property of such cooperatives. All of the provisions of law with respect to due date, the date of delinquency, interest rate, penalty and enforcement of collection of personal property taxes generally shall be equally applicable to the tax herein provided for.

§ 5. APPORTIONMENT OF TAX.] The Tax Commissioner shall apportion the taxes due from each cooperative to each county in which its lines are located in the same ratio as the number of miles of its lines in each county bears to the total number of miles of lines of such cooperative, and shall certify to the County Auditor of each county the amount of tax so apportioned.

§ 6. DUTY OF COUNTY AUDITOR.] It shall be the duty of the County Auditor to allocate the amount of the taxes due from each cooperative as certified by the Tax Commissioner to each taxing district in which the lines are located in the same ratio as the total number of miles of all kinds of lines in each such district bears to the total number of miles in the county. The County Auditor shall certify such taxes to the county treasurer for collection at the same time and in the same manner as real and personal property taxes are required to be certified.

§ 7. ALLOCATION OF PROCEEDS OF TAX. DUTY OF COUNTY TREASURER.] Upon receipt by the County Treasurer of the amount of tax payable hereunder, the County Treasurer shall apportion and distribute to the state, the county and local taxing districts of the counties in which the lines of such cooperative are located, the amount of such tax payment so received by him on the same basis as the general property tax levy is apportioned and distributed.

§ 8. REPEAL.] Chapter 282, Laws of 1941, is hereby repealed, and all Acts and parts of Acts in conflict herewith are hereby repealed.

Approved March 6, 1943.

CHAPTER 267

S. B. No. 1—(Rue)

TAX EXEMPTIONS, MILITARY SERVICE

An Act extending the time for filing income tax returns, extending the time for the payment of income, personal property and real property taxes, eliminating interest and penalty on taxes, exempting military income from the income tax to members of the armed forces and of the merchant marine during the present War, and declaring an emergency.

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

§ 1. MILITARY INCOME EXEMPT FROM THE INCOME TAX.]
That all persons actively serving in the armed forces or in the United States Merchant Marine, shall be exempt from the payment of the income tax on all income received from such services, (1) for a period ending on the 15th day of the sixth month after the cessation of hostilities in the present war with Germany, Japan and Italy, or (2) for a period ending on the 15th of the sixth month after discharge from active service; or (3) in case of death of a person while in such active service, for a period ending on the 15th day of the sixth month after an executor or administrator has been appointed for his estate, whichever of the above three periods shall end first.

§ 2. EXTENSION OF TIME FOR PAYMENT OF INCOME TAX.]
A taxpayer actively serving in the armed forces or United States Merchant Marine may elect to postpone the payment of income tax on all non-military income until the 15th day of the sixth month after cessation of hostilities, or until the 15th day of the six month after discharge from such service or in the case of death of a taxpayer before cessation of hostilities, on the 15th day of the sixth month after the appointment of an administrator or executor for his estate, without payment of any penalty of interest.

§ 3. EXTENSION OF TIME FOR FILING INCOME TAX RETURNS.]
A taxpayer, who is actively serving in the armed forces or the United States Merchant Marine, outside of the boundaries of the United States, may defer the filing of an income tax return until:

(a) The fifteenth day of the third month after his return to the United States; or

(b) The fifteenth day of the third month after his discharge from the military service or the United States Merchant Marine, if he remains, after discharge, outside the boundaries of the United States; or

(c) The fifteenth day of the third month after the cessation

of hostilities if the taxpayer remains outside the boundaries of the United States; or

(d) The fifteenth day of the third month after an administrator or executor has been appointed for the estate of the taxpayer, whichever of said dates shall first occur.

§ 4. PAYMENT IN INSTALLMENTS.] Any income tax postponed under the provisions of this act may be paid in quarterly installments; the first installment shall be payable on the 15th day of the sixth month after cessation of hostilities and each successive installment at three month intervals thereafter.

§ 5. POSTPONEMENT OF REAL AND PERSONAL TAXES.] Any person actively serving in the armed forces or merchant marine of the United States, may elect to postpone the payment of all or part of any taxes levied and assessed against real and personal property owned by him, until six months after the cessation of hostilities without the payment of interest or penalty; provided, if the taxpayer is discharged from said service before hostilities cease, then said taxes shall become due and payable six months after such discharge and provided further, if the taxpayer dies during the present war, then said taxes shall become due and payable six months after an executor or administrator has been appointed for his estate.

§ 6. TAX DELINQUENCY.] No real or personal property taxes levied and assessed on property owned by a person actively serving in the armed forces or merchant marine of the United States, shall become delinquent until six months after the owners discharge from the armed forces or in the event the said owner shall die during the present war, until six months after the appointment of an administrator or executor for his estate.

§ 7. TAXES POSTPONED AND EXEMPTED.] The provisions of this act shall apply to all taxes which become due or shall become due on or after January 1st, 1942.

§ 8. DEFINITION.] The term Cessation of Hostilities as used in this act shall be construed to mean the date, (1) when the President of the United States, shall, by proclamation, declare that hostilities have ceased, or (2) the Congress of the United States shall declare that hostilities have ceased, or (3) the Legislative Assembly of the State of North Dakota shall by resolution or legislative enactment declare that hostilities have ceased, whichever of said dates shall first occur.

§ 9. EMERGENCY.] This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 10, 1943.

CHAPTER 268

H. B. No. 184—(McInnes, Bymers, Bagge, Callahan, Kolpin and Falconer)

TAX LEVY LIMITATIONS, COUNTIES

An Act to amend and re-enact Subdivisions (a), (b) and (c) of Section 4, and Section 10 of Chapter 235 of the Session Laws of North Dakota for the year 1929, as amended by Chapter 288 of the Session Laws of North Dakota for the year 1941, relating to limitations upon the rate of tax levies for general and specific purposes; providing for exceptions to such levies, authorizing the levy of taxes for emergency purposes and limiting the use thereof.

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

§ 1. AMENDMENT.] That subdivisions (a), (b) and (c) of Section 4 of Chapter 235 of the Session Laws of 1929, as amended by Section 1 of Chapter 288 of the Session Laws of 1941, be amended and re-enacted to read as follows:

(a) That the county commissioners shall not levy any taxes for general or special county purposes which will exceed the amount produced by a levy of eleven [eleven] mills on the dollar of its net taxable valuation.

(b) That the county commissioners shall annually levy taxes sufficient to meet the obligations of the county for the maintenance of its patients in the charitable institutions of the State, but such taxes shall not exceed the amount produced by a levy rate of one and one-quarter mills on the dollar of net taxable valuation, such levy shall be within the amount produced by the eleven [eleven] mill rate, and shall be a paramount charge, to the exclusion of all other budget items, upon the necessary part of the total tax levies.

(c) That the eleven mill limitation shall apply to all tax levies which the county is authorized to levy for general and special county purposes, including taxes levied for road and bridge purposes. Provided that the mill limitation shall not apply.

(1) To tax levies made for the purpose of paying the principal and interest on any obligations of the county evidenced by the issuance of bonds.

(2) To tax levies made to pay the county tuition provided for by Section 1224 to the Supplement of the Compiled Laws for 1913.

(3) To taxes levied for the purpose of combating the grasshopper pest, pursuant to Section 2868a1 of the Supplement to the Compiled Laws for 1913.

(4) To taxes levied for the purpose of combating gophers pursuant to Section 2661 of the Compiled Laws for 1913.

(5) To taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein shall not be subject to the eleven mill limitation for general and special county purposes.

(6) To the tax levied pursuant to the provisions of Chapter 253 of the Session Laws of North Dakota for 1941 and amendments thereto, for support and maintenance of county agricultural and training schools, up to a maximum of one and a half mills on the assessed value in the county for such purpose. Nothing herein contained shall be construed to prevent the appropriation of money from the county general fund for the support and maintenance of county agricultural and training schools.

§ 2. AMENDMENT.] That Section 10 of Chapter 235 of the Session Laws of 1929, as amended by Section 2 of Chapter 288 of the Session Laws of 1941, be amended and re-enacted to read as follows:

§ 10. INTERIM FUND.] (a) The governing body of any county, city, village, school district, park district or other municipality authorized to levy taxes may include in its budget an item to be known as the "Interim Fund" which shall be carried over to the next ensuing fiscal year to meet the cash requirements of all funds or purposes to which the credit of the municipality may be legally extended for that portion of such fiscal year prior to the receipt of taxes therein. In no case shall such "Interim Fund" be in excess of the amount reasonably required to finance the municipality for the first nine months of the next ensuing fiscal year, provided further that such reserve fund shall not be in excess of three-fourths of the current annual appropriation for all purposes other than debt retirement purposes and appropriations financed from bond sources.

(b) EMERGENCY FUND, CITIES.] ' That the governing body of any city may levy a tax during each of the years 1943 and 1944 for war emergency purposes, which tax shall not exceed the amount produced by the levy of one mill on the dollar of its net taxable valuation. The monies in such fund shall not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes, but shall be shown in such budget as a "War Emergency Fund" and shall not be deducted from the budget as otherwise provided by law.

Each city levying such tax is hereby authorized to create a "War Emergency Fund", and all taxes levied for war emergency purposes by any city, when collected, shall be covered into such emergency fund and shall be used only for such war emergency purposes as the governing body of the city shall, by resolution, determine necessary and essential. Such emergency fund may be used for the replacement or repair of public buildings or property

destroyed through war activities or sabotage, for the contribution of the city's share toward the erection, construction, or purchase of any building necessary or essential to the war effort or post-war rehabilitation, including the purchase of or contribution toward the cost of any site or sites necessary for such structures or for any other expenditures necessary and essential to cooperation with the federal government or any of its agencies in any war program or post-war rehabilitation activities.

The levy of a tax for such emergency purposes of one mill, authorized herein, shall not be subject to the fourteen mill limitation prescribed by law.

§ 3. AMENDMENT.] That Section 2 of Chapter 288 of the Session Laws of 1941 be amended and re-enacted to read as follows:

§ 2. EMERGENCY FUND.] That the governing body of any county may levy a tax for emergency purposes which shall not exceed the amount produced by the levy of one mill on the dollar of its net taxable valuation.

Such Emergency Fund and the sums therein shall not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes, but shall be shown in such budget as an "Emergency Fund" and shall not be deducted from the budget as otherwise provided by law.

Each county is authorized to create an "Emergency Fund", and that all taxes levied for emergency purposes by any county, when collected, shall be covered into such "Emergency Fund" and shall be used for such emergency purposes as the governing body of the county shall, by resolution, determine, to meet the mandatory obligations of the county.

That any unexpended balance, remaining in such "Emergency Fund" at the end of any fiscal year, shall be kept in such fund; and when the amount of money in such "Emergency Fund" plus the amount of money due the Fund from outstanding taxes shall equal the amount produced by a levy of five mills on the net taxable valuation, then the levy of one mill for emergency purposes shall be discontinued, and no further levy shall be made for this purpose until another levy of one mill is required to replenish the "Emergency Fund."

That the levy of a tax for emergency purposes of one mill, authorized herein, shall not be subject to the eleven mill limitation prescribed by this Act.

Approved March 19, 1943.