
TAXATION

CHAPTER 327

Senate Bill No. 89
(Brant)

BOND OF STATE TAX COMMISSIONER**AN ACT**

To amend and reenact section 57-0101 of the North Dakota Revised Code of 1943, relating to bond of tax commissioner.

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

SECTION 1. AMENDMENT.) Section 57-0101 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-0101. BOND OF TAX COMMISSIONER.) The state tax commissioner shall be bonded in the sum of seventy-five thousand dollars as other state officers are bonded.

Approved March 7, 1949.

CHAPTER 328

House Bill No. 214
(Seibel)

PERSONAL PROPERTY TAX EXEMPTION CERTAIN PERSONS**AN ACT**

To amend and reenact section 57-0221 of the North Dakota Revised Code of 1943 relating to personal property tax exemption for certain persons.

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

SECTION 1. AMENDMENT.) Section 57-0221 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-0221. TAX EXEMPTION PERSONAL PROPERTY OF CERTAIN PERSONS.) The assessor shall show upon his listing blank the name of every head of a family. For the purpose of this section,

any person who has one or more others dependent upon him for support, shall be regarded as the head of a family. If the total value of the personal property of such person at the time of assessment does not exceed one hundred dollars, and his total income during the preceding twelve months has been less than six hundred dollars, his personal property shall be exempt from taxation. After the assessor's valuation of such property shall have been equalized, the county auditor shall cause the names of such heads of families to be removed from the tax roll as exempt from personal property taxation. The personal property of any person who receives a major part of his income from any state or federal public assistance program shall be exempt from taxation and the name of such person, if certified to the county auditor by the county welfare board, shall be removed from the personal property tax roll.

Approved March 9, 1949.

CHAPTER 329

House Bill No. 245
(Link and Rolfsrud)

COUNTY TAX LEVY FARM TO MARKET ROAD

AN ACT

To amend and reenact sections 57-15061 and 57-15062 of the 1947 Supplement to the North Dakota Revised Code of 1943, relating to county tax levy for farm to market road, election therefor and the fund raised and use thereof.

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

SECTION 1. AMENDMENT.) Section 57-15061 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-15061. COUNTY TAX LEVY FOR FARM TO MARKET ROAD: ELECTION.) The board of county commissioners may call an election of the voters of the county to vote upon the question of levying a tax of not to exceed five mills upon the valuation of all taxable property within the county, for the purpose of matching federal funds available for federal-aid, secondary-aid and farm to market roads program under Public Law 521, 78th Congress of the United States. Such levy shall be approved by a majority of the electors voting at such election. Such levy shall be over and

above the maximum levy authorized by law. The additional levy that may be authorized under the provisions of this section shall be for the fiscal years 1949, 1950 and 1951 only.

SECTION 2. AMENDMENT.) Section 57-15062 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-15062. FARM TO MARKET ROADS' FUND; USE.) All moneys received from the levy provided for in section 57-15061 shall be placed in a separate fund to be known as "farm to market road's fund." Moneys from this fund shall be used only to match federal-aid, secondary-aid and farm to market road program.

Approved March 10, 1949.

CHAPTER 330

House Bill No. 146
(Committee on Education)

SPECIAL SCHOOL DISTRICT LEVIES FOR COUNTY AGRICULTURAL AND TRAINING SCHOOLS

AN ACT

Authorizing certain school districts to make special levies for the support of county agricultural and training schools.

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

SECTION 1. LEVIES FOR SUPPORT OF COUNTY AGRICULTURAL AND TRAINING SCHOOLS.) Any school district in which a county agricultural and training school is located which does not maintain a four year high school shall make a special levy not to exceed the difference between the maximum base levy limit otherwise allowed by law for such district and the maximum base levy limit for a school district giving four years of standard high school work. Such levy shall not be limited by the levy limitations otherwise provided by law for such district. Within the maximum prescribed by this act, the levy shall be sufficient to produce a sum equal to the per pupil cost at such school, after deducting state and federal aid, times the number of pupils attending such school from the district. The revenue produced by such special levy shall be paid into the treasury of the county agricultural and training school and may be used for either general or building purposes.

Approved February 28, 1949.

CHAPTER 331

Senate Bill No. 145
(Troxel and Schrock)

DISPOSITION OF SCHOOL BUILDING FUND

AN ACT

To amend and reenact subsection 3 of section 57-1517 of the North Dakota Revised Code of 1943, relating to disposition of school building fund.

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

SECTION 1. AMENDMENT.) Subsection 3 of section 57-1517 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-1517. DISPOSITION OF BUILDING FUND TAX.) Revenues raised for building purposes shall be disposed of as follows:

3. The governing body of any school district may pay into the general fund of the school district any moneys which have remained in the school building fund for a period of ten years or more, and such district may include the same as a part of its cash on hand in making up its budget for the ensuing year. In determining what amounts have remained in said fund for ten years or more, all payments which have been paid from the school building fund for building purposes shall be considered as having been paid from the funds first acquired.

Approved March 8, 1949.

CHAPTER 332

House Bill No. 282

(Hofstrand, Leier, Langseth, Skaar, Leet, Haugen of McLean and Ekren)

COUNTY MILL LEVY FOR SCHOOLS

AN ACT

To amend and reenact sections 57-1524 and 57-1525 of the North Dakota Revised Code of 1943, relating to county school funds.

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

SECTION 1. AMENDMENT.) Section 57-1524 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-1524. COUNTY MILL LEVY FOR SCHOOLS.) The county auditor, at the time the annual levy of taxes is made, shall levy a tax of ten mills on the dollar on all taxable property in the county for apportionment to and use by the school districts of the county as provided in section 57-1525.

SECTION 2. AMENDMENT.) Section 57-1525 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-1525. COUNTY TUITION FUND; HOW CONSTITUTED.) The county tuition fund shall consist of the taxes collected by virtue of the ten mill levy made as provided by section 57-1524 and the balance remaining from collections of the per capita school tax under the provisions of section 57-1523 after the deductions made as provided in section 15-3923. Grants from the state equalization fund shall be converted into and become a part of the county tuition fund of each county.

SECTION 3. ELEMENTARY PER PUPIL PAYMENTS; AMOUNT.) There shall be paid out of the county tuition fund to the school districts of the county as elementary per pupil payments based on enrollment in such districts:

1. To districts maintaining one room rural schools, if the district is composed of eighteen sections of land or less, the sum of eight hundred dollars for ten pupils or less in a school;
2. To districts maintaining one room rural schools, if the district is composed of more than eighteen sections of land, the sum of twelve hundred dollars for ten pupils or less in a school;

3. To districts receiving payments under subsections 1 and 2 of this section, seventy dollars for each pupil in excess of ten in a school; and
4. To all other districts of the county, seventy dollars for each pupil.

When an elementary school term in a district is one of less than nine months, elementary per pupil payments shall be only such percentage of the full payment as the term for which the school in such district actually was open bears to a nine month term. Any balance remaining in the county tuition fund after making payments as provided in this section shall be divided among the school districts of the county according to the number of elementary pupils enrolled.

SECTION 4. CREDIT FOR TUITION PAID BY DISTRICT OR RESIDENCE.) A credit of seventy dollars shall be allowed against tuition charged by the district in which an elementary pupil is enrolled in all cases where the tuition for such pupil is paid by the district in which the pupil resides. An elementary student who lives in a county in this state bordering on another state and who, because of more convenient roads, distances or other circumstances, has the recommendation of the county superintendent of schools to attend a public school in an adjoining state, may attend such public school. The home county shall pay the school district in such neighboring state the amount of \$70.00 toward the elementary tuition for such pupil. Such elementary students attending public schools in a foreign state shall be counted in the county from which they come in calculating the obligations of said county. The payment of such foreign elementary tuition shall be paid by the home county.

SECTION 5. CERTIFICATES MADE TO COUNTY SUPERINTENDENT OF SCHOOLS.) On or before July first of each year the clerk of each school district, shall certify to the county superintendent of schools the number of bona fide elementary students who actually were enrolled in the district during the preceding school year and who attended school in such district for ninety days or more during such year.

SECTION 6. COUNTY SUPERINTENDENT OF SCHOOLS DETERMINE PAYMENTS: APPEALS.) The county superintendent of schools shall determine from the certificates submitted to him by each school district or school, the elementary per pupil payments due each school district or school. In determining the payments due, he shall make such investigation as he deems necessary. If a payment is disallowed, in whole or in part, notice thereof and the reason for disallowance shall be given to the district or school on

or before August first. Any district or school may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before August fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district or school warrants a modification. The decision of the superintendent of public instruction shall be final.

SECTION 7. PAYMENT TO SCHOOLS AND SCHOOL DISTRICTS.) Not later than December first the county superintendent of schools shall certify to the county auditor a list of the school districts or schools entitled to elementary per pupil payments together with the amounts to which the several districts or schools are entitled. The county auditor shall pay one-half of the amount due to each district or school upon receiving such certificate, and shall pay the balance due on or before May fifteenth of each year. Payments shall be made by auditor's warrants drawn upon the county tuition fund to the respective school districts or schools. The payments shall be deposited in the general fund of the district or school.

SECTION 8. DISTRICTS IN MORE THAN ONE COUNTY.) If a school district embraces land in more than one county, the county superintendent of schools of the county in which the largest portion of the area of the school district is located shall determine the elementary per pupil payments for such district and shall certify to the auditor of each county the amount to be paid by such county which shall be in the same ratio as the number of pupils of the school district residing in such county bears to the total number of pupils of the district.

SECTION 9. SUPERINTENDENT OF PUBLIC INSTRUCTION; RULE MAKING POWER; PREPARATION OF BLANK FORMS.) The superintendent of public instruction may make such rules and regulations covering certification to the county superintendents of schools of the information and evidence required by the provisions of this Act and governing appeals from decisions of the county superintendents of schools as may be necessary. He shall prepare and distribute to the county superintendent of schools blank forms for the certificates from schools or school districts to the county superintendent.

SECTION 10. FRACTIONAL PAYMENTS.) The allocations made in this Act shall be the sole charge and claim upon and against all moneys coming into the county tuition fund. Should the money in the fund be insufficient to make all payments, the payments to the various school districts or schools shall be prorated on a fractional basis. When fractional payments are made, additional

payments may be made from time to time as sufficient moneys come into such fund, so as to make full payments under this Act.

SECTION 11. PENALTY FOR FALSE REPORT.) Any school official who shall falsify any report in connection with the administration of the county tuition fund shall be guilty of a misdemeanor.

Approved March 11, 1949.

CHAPTER 333

House Bill No. 16
(Legislative Research Committee)
(at the request of The North Dakota League of Municipalities)

TAX LEVY FOR CITY AIRPORTS

AN ACT

To provide for tax levy for airport purposes in cities.

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

SECTION 1. TAX LEVY FOR AIRPORT PURPOSES.) IN cities supporting airports for which no levy has been made by a park board or other taxing district within the corporate limits of such city, a levy in addition to all other levies permitted by law, not to exceed four mills on the net taxable valuation of property in such city, may be made for such purposes.

Approved February 15, 1949.

CHAPTER 334

Senate Bill No. 239
(Delayed Bills Committee)

DISCOUNT FOR EARLY PAYMENT OF TAXES

AN ACT

To amend and reenact section 57-2009 of the North Dakota Revised Code of 1943 relating to discount for early payment of taxes, and declaring an emergency.

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

SECTION 1. AMENDMENT.) Section 57-2009 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-2009. DISCOUNT FOR EARLY PAYMENT OF TAX.) The county treasurer shall allow a five percent discount to all taxpayers who shall pay all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. Such discount shall apply to all general 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 hail indemnity taxes. Whenever the county commissioners, by resolution, determine that an emergency exists in any county by virtue of weather or other catastrophe they may extend the discount period to March 15, 1949.

SECTION 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 February 15, 1949.

CHAPTER 335

House Bill No. 21

(Legislative Research Committee)

(at the request of The League of North Dakota Municipalities)

ALLOCATION OF TAXES IMPOSED ON CAR LINE, EXPRESS
AND AIR TRANSPORTATION COMPANIES

AN ACT

To amend and reenact section 57-3204 of the North Dakota Revised Code of 1943, relating to allocation of taxes imposed upon car line, express and air transportation companies.

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

SECTION 1. AMENDMENT.) Section 57-3204 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3204. ALLOCATION OF TAX.) The taxes imposed by this chapter upon car line companies and express companies shall be levied for the purpose of providing revenue for the payment of interest due or to accrue upon outstanding North Dakota real estate series bonds, and the state treasurer shall collect such taxes and shall deposit the same monthly to the credit of "real estate bond interest payment fund" established by section 54-3014, and the state board of equalization shall consider the revenue derived from the administration of this chapter in determining the necessity and amount of any tax to be levied for the benefit of such fund. The taxes imposed by this chapter upon air transportation companies are hereby appropriated and shall within ninety days after receipt thereof be remitted by the state treasurer to the cities or villages where such air transportation companies make regularly scheduled landings upon the basis of the number of regularly scheduled landings made in such municipalities to be used exclusively by such municipalities for airport purposes. It shall be the duty of the tax commissioner to certify to the state treasurer the names of such air transportation companies, the municipalities where such scheduled landings are made, and the number of such scheduled landings in such municipalities.

Approved March 10, 1949.

CHAPTER 336

House Bill No. 47
(Legislative Research Committee)
(at the request of State Tax Commissioner)

CIGARETTE AND SNUFF TAX

AN ACT

To amend and reenact sections 57-3602, 57-3606, subsections 2 and 3 of section 57-3607, 57-3608, 57-3611, 57-3613 and subsection 2 of section 57-3620 of the North Dakota Revised Code of 1943, relating to tax on cigarettes and snuff and removing the tax on cigarette papers and declaring an emergency.

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

SECTION 1. AMENDMENT.) Section 57-3602 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3602. 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. 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 license shall be issued by the state tax commissioner on applications stating, on a form prescribed by the state tax commissioner, 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 chapter. Each application for a wholesale or distributor's outlet license shall be accompanied by a fee of ten dollars and a surety bond to be approved by the tax commissioner in the sum of not less than one thousand dollars or more than five thousand dollars. Each application for a dealer's outlet license shall be accompanied by a fee of five dollars. Stamps or insignia provided for in this chapter shall be sold to and affixed by licensed distributors only. Licensed dealers may sell or buy or have in their possession only

cigarettes, 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. Each license issued shall be prominently displayed on the premises covered by the license.

SECTION 2. AMENDMENT.) Section 57-3606 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3606. AMOUNT OF TAX.) There are levied and assessed, and there shall be collected and paid to the state tax commissioner, upon all cigarettes, or snuff sold in this state, the following taxes, payment thereof to be made prior to the time of the sale and delivery thereof:

1. Class A. On cigarettes weighing not more than three pounds per thousand, one and one-half mills on each such cigarette;
2. Class B. On cigarettes weighing more than three pounds per thousand, two mills on each such cigarette; and
3. Class C. On snuff, two cents on each box containing not more than one and one-fourth ounces, and, on each box containing more than one and one-fourth ounces, two cents for each additional one and one-fourth ounce or major fractional part thereof.

SECTION 3. AMENDMENT.) Subsections 2 and 3 of section 57-3607 of the North Dakota Revised Code of 1943 are hereby amended and reenacted to read as follows:

57-3607. PACKAGING; PRESUMPTION FROM POSSESSION; STAMPS TO BE AFFIXED.) Cigarettes and snuff shall be packaged and stamped as follows:

2. Immediately upon receipt by the licensee, each package of cigarettes or snuff, except as otherwise provided in this chapter, shall have affixed thereto securely a suitable stamp denoting the tax thereon, and such stamp shall be properly canceled prior to sale or removal for consumption, under such regulations as the tax commissioner shall prescribe.
3. Each package of snuff or cigarettes displayed, exhibited, stored, or possessed in original cartons or containers or otherwise, within or upon the premises from which sale thereof may be made to consumers shall be presumed conclusively to be intended for sale to consumers and to be displayed, exhibited, stored, or possessed for such purpose, and each package of snuff or cigarettes, at the

time the same is displayed, exhibited, stored, or possessed upon such premises, except as hereinafter provided, shall have affixed thereto securely a suitable stamp, or stamps, denoting the tax thereon. Such stamp or stamps shall be canceled as provided in this chapter, and the possession of any unstamped package of snuff or cigarettes, within or upon any premises, shall be prima facie evidence of a violation of this chapter.

SECTION 4. AMENDMENT.) Section 57-3608 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3608. STAMPS PREPARED BY COMMISSIONER.) The tax commissioner shall prepare and have suitable stamps for use on each kind of package prescribed in this chapter, and shall keep an accurate record of all stamps delivered, and a further accurate record of all stamps coming into and leaving his hands. The tax commissioner shall sell the stamps herein provided for only to dealers holding a "distributor's license," issued as provided in this chapter, and the moneys received from the sale of said stamps shall be turned into the general fund of the state, but wholesale distributors of cigarettes, cigarette papers, or snuff, located outside of this state, may apply for and receive a "distributor's license," as provided in section 57-3602, and may purchase stamps from the tax commissioner and affix the same on cigarettes, and snuff to be sold in this state, and shall cancel the same in the manner prescribed by the regulations of the tax commissioner. In such case, the purchaser within this state receiving such stamped cigarettes, or snuff will not be required to purchase and affix stamps thereon.

SECTION 5. AMENDMENT.) Section 57-3611 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3611. TAX METER MACHINES.) The tax commissioner, in lieu of selling stamps, may authorize any manufacturer or distributor located within or without the state to stamp cigarettes, or snuff with a tax meter machine, and, under such regulations as he shall prescribe, may provide for the leasing of a tax meter machine to any such manufacturer or distributor, and for supervising and checking the operation thereof. In such case, the tax commissioner shall collect and receive the tax prescribed by this chapter on all cigarettes, or snuff sold in or delivered to dealers in the state for sale, barter, gift, or any other purpose, and any cigarette, or snuff so stamped with a tax meter machine need not have affixed thereon stamps prescribed in this chapter, and the same may be possessed lawfully and sold by any wholesale or retail dealer in this state. Any manufacturer or distributor

who stamps cigarettes, or snuff with a tax meter machine, pursuant to the provisions of this section, shall be entitled to the discount provided for in section 57-3610.

SECTION 6. AMENDMENT.) Section 57-3613 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3613. UNLAWFUL TO TRANSPORT UNSTAMPED CIGARETTES, OR SNUFF.) It shall be unlawful for any person to transport into, receive, carry, or move from place to place in, this state, by automobile, truck, airplane, conveyance, vehicle, or other means of transportation, except in the course of interstate commerce, any unstamped cigarettes, or snuff, and any such automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation in which any cigarettes, or snuff are transported or carried in violation of this chapter, and any cigarettes, or snuff, and other equipment or personal property used as an incident to such transportation and found in such means of transportation, shall be subject to seizure by the tax commisioner, or by any sheriff or other police officer, with or without process, and shall be subject to forfeiture in the manner provided in section 57-3614.

SECTION 7. AMENDMENT.) Subsection 2 of section 57-3620 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3620. PENALTIES FOR VIOLATION OF CHAPTER.) Except as otherwise provided in this chapter:

2. Any consumer who purchases any package of cigarettes, or snuff, which does not bear the stamp or insignia placed thereon pursuant to the provisions of this chapter, and any person who shall use or consume within this state any cigarette, or snuff, unless the same shall be taken from a package or container having attached thereto the stamp or insignia required by this chapter, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars and not more than three hundred dollars, and the costs of prosecution, and shall be committed to the county jail until such fine and costs are paid, but for a period not exceeding six months;

SECTION 8. 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 February 3, 1949.

CHAPTER 337

Senate Bill No. 220
(Committee on Finance and Taxation)

ADDITIONAL CIGARETTE TAX
AN ACT

Imposing a separate additional tax on cigarettes, providing for collection thereof into the general fund, providing a penalty for violation.

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

SECTION 1. SEPARATE ADDITIONAL TAX ON CIGARETTES; COLLECTION THEREOF.) There hereby is levied and assessed and there shall be collected by the proper officer and paid to the state treasurer for the general fund upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of one mill on each such cigarette, to be collected as existing taxes on cigarettes sold are or hereafter may be collected, by use of appropriate stamps and under similar accounting procedures.

SECTION 2. PENALTY.) Any person violating any of the provisions of this Act shall be guilty of a misdemeanor.

Approved March 12, 1949.

CHAPTER 338

House Bill No. 175
(Brady and Brickner)

ESTATE TAXES; PAYMENT, APPRAISALS, TRANSFER
SECURITIES, NOTICE, ETC.

AN ACT

To amend and reenact sections 57-3715 and 57-3729 of the North Dakota Revised Code of 1943, relating to estate taxes.

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

SECTION 1. AMENDMENT.) Section 57-3716 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3716. APPRAISALS MADE AND TAXES PAYABLE AS OF DATE OF DEATH.) The tax imposed by this chapter shall be due and payable at the death of the decedent, and, if not paid within

fifteen months after the date of death, shall bear interest at the rate of six percent per annum to be computed from the expiration of fifteen months after death until the amount is paid. The transfer shall be deemed to take place at the time of death, and all appraisals shall be as of that date. Wherever there has been a taxable transfer prior to death on which the tax has not been paid, the property transferred shall be considered a part of the estate and shall be appraised as of the date of death of the decedent and taxed according to the laws then in force.

SECTION 2. AMENDMENT.) Section 57-3729 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3729. DEPOSITARIES; ATTENTION OF SECURITIES; EXEMPTION, HOW SECURED.) No safe deposit company, trust company, corporation, bank, or other institution or person having possession, control, custody, or partial control or custody, of any securities, deposits, or other assets, including shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank, or other institution, standing in the name of a resident or non-resident decedent, or belonging to or standing in the joint name of such decedent and one or more other persons, shall deliver or transfer the same to the executor, administrator, or other legal representative, agent, deputy, attorney, trustee, legatee, heir, surviving joint owner, or any other successor in interest of such decedent, without retaining a sufficient amount of such assets to pay any tax which thereafter may be assessed thereon under this chapter, unless notice of the time and place of a proposed delivery or transfer of the assets is filed in the county court at least thirty days prior to delivery. The county court, however, by order, may direct a delivery of such assets, and such order shall relieve such safe deposit company, trust company, corporation, bank, or other institution or person from the obligation of retaining any portion of such assets and of giving notice of the delivery thereof. The county court may appoint appraisers as provided in section 57-3717 to examine and appraise such assets at the time of the delivery thereof. Provided, however, in the case of bank or savings accounts, or building and loan shares standing in the name of one or more persons, no fine, penalty or tax liability shall be assessed on account of the payment thereof to the survivor or survivors unless it is shown that such payment was knowingly and wilfully made in violation of the terms and provisions hereof.

Approved March 9, 1949.

CHAPTER 339

Senate Bill No. 234
(Day by request)

ESTATE TAX WHEN NO PROBATE PROCEEDING WITHIN STATE
AN ACT

Amending and reenacting section 57-3727 of the North Dakota Revised Code of 1943, relating to determination of taxes on estates when there is no probate proceeding within the state, and declaring an emergency.

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

SECTION 1. AMENDMENT.) Section 57-3727 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3727. DETERMINATION OF TAX ON ESTATE WHEN THERE IS NO PROBATE PROCEEDING WITHIN THE STATE.) In the absence of administration in this state upon the estate of a nonresident, the tax commissioner, at the request of an executor or administrator duly appointed and qualified in the state of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished by such executor, administrator, or grantee, or otherwise, may determine whether or not any property of said decedent within this state is subject to taxation under the provisions of this chapter, and if so, may determine the amount of the tax payable and may adjust the same with such executor, administrator, or grantee. For that purpose the tax commissioner may appoint an appraiser to appraise said property and the expenses of such appraisal shall be charged against such property in addition to the taxes. The tax commissioner's certificate as to the amount of such tax and the state treasurer's receipt for the amount therein certified may be filed in the probate office in the county where the property is located, and when so filed shall be conclusive evidence of the payment of the tax upon the said property. Whenever in such case the tax is not adjusted within four months after the death of the decedent, the proper county court, upon application of the tax commissioner, shall appoint an administrator in this state. If the property of any deceased resident is subject to taxation under the provisions of this chapter, and when, for any reason, no administration of said decedent's estate is being had, or likely to be had, within this state, the county court which would have jurisdiction of said property if an administration was being had shall, upon its own motion or upon the application of any interested party, proceed to

make determination of any tax liability in the same manner and with the same effect as if the determination were made in connection with an administration or determination of heirship. Provided, further, that if the circumstances render it impractical or impossible to determine values by the usual practice of three appointed appraisers, the court may hear such proof as is available and make its findings of value in lieu of an appraisal.

SECTION 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 8, 1949.

CHAPTER 340

Senate Bill No. 244

(Stucke)

INCOME TAX RECOGNITION OF GAIN ON INVOLUNTARY CONVERSION

AN ACT

Providing that gain shall not be recognized for income tax purposes on property involuntarily converted, and declaring an emergency.

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

SECTION 1.) If property, as a result of its destruction in whole or in part, theft, or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof, is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the commissioner, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain shall be recognized, but loss shall be recognized for income tax purposes. If any part of the money is not so expended, the gain, if any, shall be recognized to the extent of the money which is not so expended, regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain.

SECTION 2.) The provisions of this act shall be retroactive to January 1, 1947.

SECTION 3. 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 12, 1949.

CHAPTER 341

House Bill No. 163

(Einarson, Dalzell, Halcrow, Westby, Power, Fugelstad, Holand, Luick, Anderson of Richland, Wollitz, Collette, McInnes, Walster and Langley)

RETAIL 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.

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

SECTION 1. DEFINITIONS.) The following words, terms and phrases, when used in this act, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, partnership, 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;
2. "Sale" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
3. "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 communicating 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 lists or catalogue, which 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 per-

sonal 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 purpose of this act be considered as a sale of tangible personal property for a purpose other than for processing;

4. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect;
5. "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 admission 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;
6. "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, however, 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 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 act, as has actually been received in cash by the retailer during each quarterly period as defined herein;
7. "Relief agency" means the state, any county, city and county, city or district thereof, of any agency engaged in actual relief work;

8. "Commissioner" means the tax commissioner of the state of North Dakota; and
9. "Local governmental unit" means incorporated cities, towns and villages, counties, school districts and townships.

SECTION 2. TAX IMPOSED.) There is hereby imposed, beginning the first day of July, 1949 and ending the 30th day of June, 1951 a tax of two percent 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, electricity, 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 and the playing of a record on a vending machine, in response to a coin placed in a slot, except as otherwise provided in this act. The tax herein levied shall be computed and collected as hereinafter provided.

SECTION 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:

1. 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;
2. The gross receipts from the sales, furnishing or service of transportation service;
3. 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 purchaser and his family;
4. 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;
5. The gross receipts from the sale by any school board of this state of books and school supplies to regularly enrolled students at costs; and

6. 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.

SECTION 4. TAXES PAID ON WORTHLESS ACCOUNTS.) 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.

SECTION 5. CREDIT TO RELIEF AGENCY AND LOCAL GOVERNMENTAL UNITS.) 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. Such refunds may be obtained only in the following amount and in the manner and only under the following conditions:

1. 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;
2. 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; and
3. 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 act, based upon such computation of gross receipts.

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.

SECTION 6. TAX TO BE ADDED TO PURCHASE PRICE AND BE A DEBT.) 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 the consumer or user to retailer until paid, and shall be recoverable at law in the same manner as other debts.

In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:

\$ 0.01 to \$00.24.....	no tax
.25 to .74.....	1 c tax
.75 to 1.24.....	2 c tax
1.25 to 1.74.....	3 c tax
1.75 to 2.24.....	4 c tax
2.25 to 2.74.....	5 c tax
2.75 to 3.24.....	6 c tax
3.25 to 3.74.....	7 c tax
3.75 to 4.24.....	8 c tax
4.25 to 4.74.....	9 c tax
4.75 to 5.24.....	10 c tax
5.25 to 5.74.....	11 c tax
5.75 to 6.24.....	12 c tax
6.25 to 6.74.....	13 c tax
6.75 to 7.24.....	14 c tax
7.25 to 7.74.....	15 c tax
7.75 to 8.24.....	16 c tax
8.25 to 8.74.....	17 c tax
8.75 to 9.24.....	18 c tax
9.25 to 9.74.....	19 c tax
9.75 to 10.24.....	20 c tax

Each additional 50c....1c additional tax

SECTION 7. UNLAWFUL ACT:.) No retailer shall 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.

SECTION 8. RECORDS REQUIRED.) Every retailer required to make a report and pay any tax under this act, shall preserve such records of the gross proceeds of sale as the commissioner may require and every retailer shall preserve for a period of two years all invoices and other records of goods, wares, or merchandise purchased for resale. All such books, invoices, and other records shall be open to examination at any time by the commissioner or any of his duly authorized agents.

SECTION 9. RETURN OF GROSS RECEIPTS.)

1. On or before the twentieth day of the month following the close of the first quarterly period as defined in the following section, and on or before the twentieth day of the month following each subsequent quarterly period of three months, the retailer shall make out a return for the preceding quarterly period in such 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. The commissioner upon request by any retailer and a proper showing of the necessity therefor, may grant unto such retailer an extension of time not to exceed thirty 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 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 payment of the tax to be made for other than quarterly periods, the provisions of section 10 or elsewhere to the contrary notwithstanding; and
3. Returns shall be signed by the retailer or his duly authorized agent.

SECTION 10. PAYMENT OF TAX, BOND, (CREATION OF LIEN.)

1. The tax levied under the provisions of this act shall be due and payable in quarterly installments on or before the twentieth day of the month next succeeding each quarterly period, the first of such periods being the period commencing with July 1, 1949;
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, 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, may 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 com-

missioner may fix, to secure the payment of any tax and penalties due or which may become due from such person. In lieu of such bond, securities approved by the commissioner in such amounts 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 penalties due. Upon any such sale, the surplus, if any, above the amounts due under this provision shall be returned to the person who deposited the securities.

SECTION 11. LIEN OF TAX; COLLECTION; ACTION AUTHORIZED.) Whenever any tax payer liable to pay a tax 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 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; and
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 forthwith shall index said notice in said index book and forthwith shall 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 forthwith shall 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, upon the request of the tax commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any 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.

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.

SECTION 12. PERMITS; APPLICATION AND FEE FOR.)

1. No person shall 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 fifty cents for each permit, and the applicant shall 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 herein. It shall at all times be conspicuously displayed at the place for which issued;
4. Permits issued under the provisions of this section 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 section or any rules or regulations prescribed by the commissioner and adopted under this section, 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 also shall have the power to restore licenses after such revocation;
6. The commissioner shall charge a fee of one dollar for the issuance of a permit to a retailer whose permit has been previously revoked; and
7. All permits in effect at the time this act takes effect are hereby continued and shall remain in full force and effect unless revoked as herein provided.

SECTION 13. FAILURE TO FILE RETURN; INCORRECT RETURN.)

If a return required by this act 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 other factors. The commissioner shall give notice of such determination to the person liable for the tax. Such

determination shall fix the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of such determination, shall 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 commissioner shall give notice of his decision to the person liable for the tax.

SECTION 14. 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 be filed with the return thereon 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 sureties 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, conditioned that the plaintiff shall perform the orders of the court; and
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.

SECTION 15. SERVICE OF NOTICE.)

1. Any notice, except notice of appeals, 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 act, 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 act by giving of notice shall commence to run from the date of registration and posting of such notice:

2. The provisions of the laws of this state 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.

SECTION 16. PENALTIES, OFFENSES.)

1. Any person failing to file a return or corrected return or to pay any tax within the time required by this act, shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due. 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 days after the effective date of this Act, as provided in section 12 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 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, for each such offense, shall be fined not to exceed five hundred dollars or shall be imprisoned in the county jail not exceeding one year, or shall 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 shall be punished by imprisonment in the county jail not exceeding six months or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment, in the discretion of the court. This criminal liability shall be cumulative and in addition to the civil liability for penalties hereinbefore provided

SECTION 17. TAX COMMISSIONER TO ADMINISTER ACT.) The tax commissioner is hereby charged with the administration of this act and the taxes imposed thereby. Such commissioner may 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.

SECTION 18. TAX AND PENALTIES PAID TO COMMISSIONER: RETAIL SALES TAX FUND.) All fees, taxes, interest, and penalties imposed and collected under this act shall 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

SECTION 19. 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 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 the taxpayer. In all other cases the cost shall be paid by the state;
3. The fees and mileage to be paid witnesses and taxes 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 cases 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 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.

SECTION 20. COMMISSIONER MAY APPOINT AGENTS AND EMPLOYEES; COMPENSATION; BOND; DUTY OF COUNTY TREASURER.)

1. The commissioner may appoint such agents, auditors, clerks, and employees as he may deem necessary to fix their salaries and compensation and prescribe their duties and powers, and said commissioner may remove such agents, auditors, clerks and employees so appointed by him. 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. No additional compensation shall be paid to said treasurer by reason thereof.

SECTION 21. INFORMATION DEEMED CONFIDENTIAL.) 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. The commissioner may authorize examination of such returns by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state, or the federal government. Any person violating the provisions of this section shall be guilty of a misdemeanor and punishable by a fine of not to exceed one thousand dollars.

SECTION 22. CORRECTION OF ERROR.) If it shall appear that, as a result of a 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.

SECTION 23. PAYMENT OF REFUND.) Wherever by any provisions 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.

SECTION 24. 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. The net amount of moneys remaining in said "retail sales tax fund" shall be a special trust fund to be used and disbursed solely for the following purposes:

1. Seven-twelfths 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. The remaining five-twelfths 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 purpose authorized by law; provided, that appropriations made from the general fund to be expended by said public welfare board shall constitute and include appropriations from said five-twelfths share of said trust fund;
2. The state treasurer and state auditor shall 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.

SECTION 25. APPROPRIATION.) All moneys now in the retail sales tax fund created by chapter 344 of the Session Laws of 1947, or collected pursuant to the provisions of said chapter, are hereby appropriated and transferred into the retail sales tax fund created by this act, and shall be allocated and used as herein provided.

SECTION 26. SAVINGS CLAUSE.) If any section, subsection, 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, subsection, clause, sentence or phrase hereof, irrespective of whether any one or more of the sections, subsections, clauses, sentences, or phrases, be declared unconstitutional.

Approved March 12, 1949.

CHAPTER 342

House Bill No. 306

(Anderson of Ransom, Freadhoff, Nygaard and Baeverstad)

ADDITIONAL TWO CENT MOTOR FUEL TAX

AN ACT

Assessing and levying on all licensed dealers of motor vehicle fuels, a special license tax of two cents per gallon on motor vehicle fuels used or sold by them in addition to all other taxes now imposed, appropriating the proceeds of such special tax to the "Special County and State Highway Construction Fund," providing for the division of said fund between the State Highway Department and the counties of the state for construction and reconstruction of secondary state highways, and the construction and reconstruction of county and township roads, making certain provisions of chapter 57-41 of the North Dakota Revised Code of 1943 as amended and chapters 57-50 of the 1947 Supplement to the North Dakota Revised Code of 1943 applicable to said special license tax, and providing a penalty.

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

SECTION 1. SPECIAL LICENSE TAX IMPOSED.) There is hereby imposed on dealers in motor vehicle fuel, a special motor vehicle fuel license tax of two cents per gallon on all motor vehicle fuels used and sold in the state of North Dakota. Such 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 two cents per gallon tax shall be in addition to and over and above the three cent tax imposed by Chapter 57-41 of the North Dakota Revised Code of 1943, as amended, and in addition to the one cent tax imposed by chapter 57-48 of the 1947 Supplement to the North Dakota Revised Code of 1943.

SECTION 2. PAYMENT, ASSESSMENT, AND COLLECTION OF TAX.) Said additional two cent per gallon tax shall be paid by each dealer in motor vehicle fuels as defined and provided in chapter 57-41 of the North Dakota Revised Code of 1943, as amended, and said additional two cent per gallon tax shall be paid in the manner, at the time, and to the officer specified in said chapter 57-41 of the North Dakota Revised Code of 1943, as amended, and all definitions of terms and methods of procedure for assessment and collection and other general provisions by context applicable hereto, contained and provided in said chapter 57-41 of the North Dakota Revised Code of 1943, as amended, shall apply to the special motor vehicle fuel license tax imposed under the terms and provisions of this act.

SECTION 3. REFUND OF TAX WHERE FUEL USED FOR AGRICULTURAL OR INDUSTRIAL PURPOSES.) The provisions of chapter 57-50 of the 1947 Supplement to the North Dakota Revised Code of 1943 providing for the refunding of license taxes paid upon motor vehicle fuels used for agricultural or industrial purposes shall apply to the special license tax imposed in section 1 hereof.

SECTION 4. TAX TRANSFERRED TO SPECIAL FUND.) The proceeds of said special license tax of two cents per gallon, after deducting refunds provided in section 3 hereof and administration and collection costs to be appropriated by the legislative assembly, are hereby appropriated and shall be allocated and transferred to a special fund in the office of the state treasurer to be known as the "Special County and State Highway Construction Fund."

SECTION 5. ALLOCATION OF TAX.) The proceeds of said special license tax of two cents per gallon are hereby appropriated, and shall be allocated and transferred as follows:

1. Fifty percent to the highway construction fund of the state highway department.
2. Fifty percent to the counties of this state.

The funds allocated to the state highway department are hereby appropriated to be used by such highway department for the construction and reconstruction of secondary highways or roads under the jurisdiction of the state highway department. The monies allocated to the counties shall be set aside in a separate fund to be known as the "Special County Construction Fund" and shall be used for the construction and reconstruction of county and township highways. The funds allocated to the state highway department shall be promptly credited by the state treasurer to the highway construction funds. During the months of January, April, July and October of each year the state treasurer, upon the warrant of the state auditor, shall apportion and disburse the remaining fifty percent of the proceeds of said special license tax, including interest received thereon, to the various counties of the state in proportion which the number of motor vehicles registered in each county shall bear to the total number of motor vehicles registered in all of the counties of the state during the entire preceding calendar year as shown by the certificate of the registrar of motor vehicles. Fifty percent of the funds allocated to the "Special County Construction Fund" shall be expended by the county for the construction or reconstruction of township highways.

SECTION 6. TAX ADDED TO PRICE.) Every dealer paying the additional two cent per gallon special motor vehicle license tax herein imposed, or labeled for the payment thereof, shall be en-

titled to charge and collect the sum of two cents per gallon on such motor vehicle fuels sold by him as a part of the selling price thereof.

SECTION 7. SAVINGS CLAUSE.) If any provision of this act shall be held invalid, the remainder of this act shall not be affected thereby.

SECTION 8. PENALTY.) Any dealer, person or association of persons, firm or corporation violating any provisions of this chapter, or any person, firm or corporation making any false statement in any report required by this chapter, or failing or neglecting to pay the two cent per gallon additional special motor vehicle fuel license tax herein imposed, is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Approved March 12, 1949.

NOTE: H. B. 306 not effective until approved by referendum vote at primary election in June, 1950.

TOWNSHIPS

CHAPTER 343

Senate Bill No. 135
(Senator Rue by request)

HIGHWAY WORK PER DIEM RATE IN PAYMENT OF ROAD TAXES; REPEAL

AN ACT

To repeal subsection 11 of section 58-0307 of the North Dakota Revised Code of 1943, relating to powers of electors of townships to fix per diem rate for work on highways in payment of road taxes.

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

SECTION 1. REPEAL.) Subsection 11 of section 58-0307 of the North Dakota Revised Code of 1943 is hereby repealed.

Approved March 12, 1949.