

TAXATION

CHAPTER 669

HOUSE BILL NO. 1369
(Representatives Tollefson, Haugen)
(Senators Reiten, Nalewaja)

RESIDENTIAL PROPERTY TAX EXEMPTIONS

AN ACT to create and enact two new subsections to section 57-02-08 of the North Dakota Century Code, providing exemptions from property taxes for new single family residential property and condominiums and townhouses which meet certain qualifications; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 57-02-08 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Up to seventy-five thousand dollars of the true and full value of all new single family residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
- b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.
- c. The first owner after the builder resides on the property, or the builder still owns the property. For

purposes of this subsection, "builder" includes a person who builds that person's own residence.

For purposes of this subsection "single family residential property" does not include condominium or townhouse property.

Up to seventy-five thousand dollars of the true and full value of each unit of all new condominium and townhouse residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
- b. Special assessments and taxes on the property upon which the condominium or townhouse is situated are not delinquent.
- c. The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for property upon which construction is begun after January 1, 1986, for exemptions approved by city or county governing bodies after December 31, 1986, and before January 1, 1990, and is thereafter ineffective.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 670

HOUSE BILL NO. 1644
(Strinden, Kloubec)

ACADEMIC OR RESEARCH TAX EXEMPTIONS

AN ACT to create and enact a new subsection to section 57-02-08, a new subsection to section 57-39.2-04, and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to a property tax exemption for certain property used for academic or research purposes by students or faculty of a state institution of higher education and sales or use tax exemption of sales of flight simulators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-02-08 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Any building located on land owned by the state if the building is used at least in part for academic or research purposes by students and faculty of a state institution of higher education.

SECTION 2. A new subsection to section 57-39.2-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from sales of tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.

SECTION 3. A new subsection to section 57-40.2-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 671

HOUSE BILL NO. 1572
(Representative Mertens)
(Senator Lips)

CONDITIONAL WETLANDS EXEMPTION

AN ACT to amend and reenact sections 57-02-08.4 and 57-02-08.5 of the North Dakota Century Code, relating to suspension of conditional property tax exemptions for owners of wetlands if adequate funds are not available for payments by the state to political subdivisions to offset lost property tax revenue from exempt wetlands; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.4. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section shall be exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would have been due on the exempt acreage, and that the landowner has filed the required agreement. The amount of the wetlands exemption shall be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section "wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner of agriculture and the game and fish commissioner, in accordance with United States

fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is terminated shall be computed, and the property owner shall pay the difference between such amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, shall not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

No property shall be exempt under this section unless the tax commissioner has certified to the county auditor of each county before August first of the taxable year that funds are available in the state treasury which may be used for payment of any state obligations under section 57-02-08.5.

SECTION 2. AMENDMENT. Section 57-02-08.5 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.5. Wetlands tax exemption payment - Certification. Prior to March first of each year beginning in 1988, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the commissioner the total amount of property tax which would have been due on property exempt under section 57-02-08.4 within the county and other information as may be prescribed by the commissioner. The county auditor shall forward to the commissioner copies of all agreements described in section 57-02-08.4 in effect in the county.

The commissioner shall audit the claims for exemption, make corrections as required, and certify to the state treasurer for payment to each county on or before June 30, 1988, and each year thereafter, the sum of property taxes due on property exempt under section 57-02-08.4 for the county in the preceding year.

The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute it to the county and local taxing districts on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and the state tax commissioner and supplemental payments by the state treasurer may be made after the date prescribed in this section to make corrections as may be necessary.

No certifications must be made and no apportionment or distribution of payments to political subdivisions may be made under this section unless property was exempt under section 57-02-08.4 in the preceding year.

SECTION 3. EFFECTIVE DATE. This Act is effective for all tax years beginning after December 31, 1986.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 672

SENATE BILL NO. 2213
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TELECOMMUNICATION PROPERTY TAXATION

AN ACT to create and enact a new section to chapter 57-06 of the North Dakota Century Code, relating to telecommunication services; and to amend and reenact section 57-06-02 of the North Dakota Century Code, relating to the definition of property that is taxed as telephone service property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-06-02. Definitions. As used in this chapter, unless the context and subject matter otherwise clearly require:

1. "Company" means and includes any individual, copartnership, business trust, corporation, joint stock company, or association.
2. "Gas company" means a company owning, holding, or operating under lease or otherwise, any property in this state for the purpose of furnishing gas, or distributing the same, for public use, by means of pipelines.
3. "Pipeline company" means a company owning, holding, or operating under a lease or otherwise, any property in this state for the purpose of transporting crude oil, natural gas, processed gas, manufactured gas, refined petroleum products, or coal and related products for public use.
4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state, and operating the same, for the purpose of furnishing electric light, electric power, or steam heat, or distributing the same, for public use.

5. Repealed by S-L- 1985, ch- 604, § 22 "Telecommunications company" means a company engaged in the furnishing of telecommunications service within this state.
6. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.
7. "Telegraph company" means a company owning or operating any telegraph or cable line in this state with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation as owner, lessee, or otherwise.
7. "Telephone company" means a company owning or operating, under lease or otherwise, any property in this state used in the business of conveying messages by use of the telephone or any similar instrument or device.

SECTION 2. A new section to chapter 57-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Telecommunications service - Exceptions. Telecommunications service does not include and the provisions of this chapter do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. The purchase and resale of telecommunications service.
3. Home and business telephone terminal equipment.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 673

SENATE BILL NO. 2076
(Legislative Council)
(Interim Tax Administration Committee)

POLITICAL SUBDIVISIONS LEVY LIMITATIONS

AN ACT providing limitations on property tax levy increase authority of political subdivisions; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district, with the exception of school districts, may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed under subsection 3 or 4, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts provided in this section.
2. For purposes of this section "base year" means the taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the current taxable year.
3. A taxing district may elect to levy at most five percent more in the current taxable year than the amount levied in dollars in the taxing district's base year. The governing body of the taxing district shall specifically approve by resolution any levy of the additional percentage. Before adding the increase, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by the application of the current year's mill rate for that taxing district to the final taxable valuation of any property that is not included in the assessment for the current year but was included in the assessment for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the current year's mill rate for

that taxing district to the final taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the current year.

- c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in the base year reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any mill levies authorized by law but not levied by the governing body of the taxing district for the base year and any mill levies specifically authorized by the electors of that taxing district but not levied for the base year to the taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied pursuant to this subsection.
5. A taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. The limitation on the amount that may be levied by a taxing district pursuant to this section does not apply to school districts.
8. This section does not apply to any city or county that has adopted a home rule charter unless the provisions of the charter specifically provide that state laws related to property tax levy limitations will apply.

SECTION 2. School district levy limits. Any school district may increase its levy for the purposes listed in section 57-15-14.3 by at most five percent in the current taxable year from the amount levied in dollars in its base year. In the alternative, but not in addition, any school district whose electorate has approved a specified levy for prior years and which district did not levy up to the authorized level of that specified levy, may levy the difference between the levy authorized and the amount levied the preceding year for that purpose in addition to the maximum levy allowable under section 57-15-14. For purposes of this section "base year" means the taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the current taxable year.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1986, and is thereafter ineffective.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 674

SENATE BILL NO. 2081
(Legislative Council)
(Interim Transportation Committee)

COUNTY ROAD PROGRAM LEVY

AN ACT to amend and reenact section 57-15-06.3 of the North Dakota Century Code, relating to the county road program of farm-to-market and federal-aid roads; and to provide for partial retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-06.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.3. County road program of farm-to-market and federal-aid roads
- Tax levy - Use of excess funds.

1. The board of county commissioners of any county may prepare a proposed county construction program of farm-to-market and federal-aid roads on the county road system, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction. After approval of the program by the state highway department and the federal highway administration, the board may submit the program to the electors of the county with the question of levying a tax not exceeding the limitation in subsection 17 of section 57-15-06.7 for the completion of the program by matching, from the proceeds of the tax, federal funds available for federal-aid, secondary and feeder roads, farm-to-market roads, and all roads as provided for under federal-aid highway acts. If the majority of the electors voting on the question approved the program and levy, the board shall levy a tax not in excess of fifteen mills. ~~The proceeds of the tax shall be used, except as provided in this section, only for matching federal aid available for the program which shall be the official county road program.~~

2. If the board of county commissioners determines that a substantial change is necessary in the details of the program of farm-to-market and federal-aid roads previously approved by the electors of the county, the board shall set a date for a public hearing on the proposed amendment to the program. Notice shall be published in the official newspaper of the county once a week for three consecutive weeks before the date of public hearing. The board, after approval of the amendment by the state highway department and the federal highway administration, may officially amend the program. The program, as amended by the board, shall become the official county road program.
3. The board of county commissioners may change the program if the program has not been completed within ten years of the election establishing the program and the board complies with the requirements specified for changes in the original designation of a county road system under section 24-05-16.
4. Any proceeds of a tax levy in excess of the amount needed to match federal funds in any year may be used by the county, at any time the proceeds may become available, for providing paved or any other type of road surfacing on, or for maintenance of, roads included within the county road program for which the tax levy was originally made.

SECTION 2. PARTIAL RETROACTIVE APPLICATION OF ACT.

Subsection 3 of section 57-15-06.3, originally enacted as subsection 2 of section 57-15-06.3 by chapter 569 of the 1981 Session Laws of North Dakota, is retroactive to road programs that were the subject of elections held before July 1, 1981.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 675

SENATE BILL NO. 2153
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

COUNTY LOAN REPAYMENT LEVIES

AN ACT to amend and reenact subsection 27 of section 57-15-06.7 of the North Dakota Century Code, relating to exceptions to county tax levy limitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 27 of section 57-15-06.7 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27. A county levying a tax to repay a loan ~~from the Bank of North Dakota~~ according to section 57-47-04 may levy a tax not to exceed three mills.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 676

HOUSE BILL NO. 1415
(Representatives A. Olson, Myrdal, Smette)
(Senator Vosper)

COUNTY FAIR LEVIES

AN ACT to create and enact three new subsections to 57-15-06.7 of the North Dakota Century Code, relating to county tax levies for county fair associations which are in addition to the general fund levy; to amend and reenact sections 4-02-26, 4-02-27, 4-02-27.1, 4-02-37, 11-11-24, 18-07-01, and 57-15-06.8 of the North Dakota Century Code, relating to county fair association tax levies and county tax levies and limitations not in addition to the general fund levy; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02-26 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-26. County fairs - Organized when - Aiding. A county fair association may be organized in any county having taxable property of a taxable valuation of not less than seven hundred fifty thousand dollars. The executive officers and directors shall be residents of the county. The association may apply to the board of county commissioners of the county for a grant to aid in the erection of suitable buildings and other improvements to accommodate its patrons and exhibits, and to pay premiums and expenses that may be awarded on such exhibits at any fair. An application for the grant shall be in writing and shall state the incorporation of the association, the names and places of residence of all its executive officers, and the ownership of real property in the county sufficient in area for the purpose of its fair and of the value of at least twenty-five hundred dollars. If the board of county commissioners is satisfied that the statements in the application are true and that the association intends in good faith to hold a fair within the county annually for the exhibition of agricultural, horticultural, mechanical, and manufactured products of the county, and of such articles as are usually exhibited at fairs, it may levy for the first year's grant of aid a tax not exceeding the limitation in ~~subsection 1 of section 57-15-06.8~~ section 57-15-06.7 which shall be collected as other

taxes are collected. If the tax is levied, the board of county commissioners shall pay to the secretary of the association, not later than July thirty-first thereafter, the amount of the tax levied and shall take the receipt of the association therefor.

SECTION 2. AMENDMENT. Section 4-02-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-27. Reports required of county fair associations - Tax levies for support thereof. Any county fair association receiving the aid provided for in this chapter, at the regular meeting of the board of county commissioners held in the month of January following the holding of such county fair, shall make a full report to the board of all moneys received by it from all sources and of all disbursements. The report shall show the amount of the debts and the amount of moneys in the treasury of the association, and the amount of any deficit after the payment of its expenses, and shall contain an estimate of the amount, if any, which it will be necessary to raise above the estimated ordinary receipts of the association for the purposes of its fair for the ensuing year. The report and estimate shall be verified by the oath of the president, or vice president, the secretary, treasurer, and a majority of the board of directors of the association. After the filing and approval of the report, the board of county commissioners shall levy a tax for the current year equal to the estimate contained in the association's report, if the report filed shows that the funds have been expended legally and if the levy is approved by the voters. The tax levied for the current year shall not exceed the limitation in ~~subsection 2 of section 57-15-06-8~~ section 57-15-06.7, and the amount levied shall be paid to the association as provided in section 4-02-26.

SECTION 3. AMENDMENT. Section 4-02-27.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-27.1. Additional levy authorized. The board of county commissioners may, by appropriate resolution, submit to the electors of the county at the next special or general election, the question of whether an annual tax levy, in addition to the levy provided in section 4-02-27, shall be authorized for the purposes of aiding a county fair association. If an additional levy is approved by the electors, the board of county commissioners may make the additional annual levy, not to exceed the limitation in ~~subsection 3 of section 57-15-06-8~~ section 57-15-06.7, and disburse the proceeds in the manner provided in section 4-02-27 for the levy and disbursement of other county fair association aid funds. The failure of the electors to approve any additional mill levy under this section shall not be construed as invalidating a levy approved prior to the election.

SECTION 4. AMENDMENT. Section 4-02-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-37. Multicounty fairs - Organized when - Tax levy. A county fair association may be organized in two or more counties having taxable property of a taxable valuation of not less than seven hundred fifty thousand dollars. The executive officers and directors shall be residents of the counties. The association may apply to the boards of county commissioners of the counties for a grant to aid in the erection of suitable buildings and other improvements to accommodate its patrons and exhibits, and to pay premiums and expenses that may be awarded on such exhibits at any fair. An application for the grant shall be in writing and shall state the incorporation of the association, the names and places of residence of all its executive officers, and the ownership of real property in one of the counties sufficient in area for the purpose of its fair and the value of at least twenty-five hundred dollars. If the boards of county commissioners are satisfied that the statements in the application are true and that the association intends in good faith to hold a fair within one of the counties annually for the exhibition of agricultural, horticultural, mechanical, and manufactured products of the county, and of such articles as are usually exhibited at fairs, it may levy for the first year's grant of aid a tax not exceeding the limitation in ~~subsection 4 of~~ section 57-15-06.8, and it shall be collected as other taxes are collected. If the tax is levied, the boards of county commissioners shall pay to the secretary of the association, not later than July thirty-first thereafter, the amount of tax levied and shall take the receipt of the association therefor. A multicounty fair association authorized by this section and the boards of county commissioners of such counties, may do all the things allowed by law that a county fair association organized under section 4-02-26 may do.

SECTION 5. AMENDMENT. Section 11-11-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-24. Limitation on tax levy for extraordinary expenditure. The rate of tax levied by the board of county commissioners for an extraordinary outlay of money may not exceed the limitation in ~~subsection 5 of~~ section 57-15-06.8. When the object is to establish a building fund to aid in the erection of public buildings, the rate shall be such as to raise the fund within six years, and the total sum to be so raised, including the then existing indebtedness of the county, shall not exceed five percent of its assessed valuation. A special tax levied under this chapter, after becoming delinquent, shall draw the same rate of interest as ordinary taxes.

SECTION 6. AMENDMENT. Section 18-07-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-07-01. Petition to board of county commissioners to establish firebreaks - Tax levied. Whenever a petition asking that firebreaks be established in a county is signed by at least ten percent of the qualified electors of the county, as determined by the number of votes cast for the office of governor at the last preceding general election, and is presented to the board of county commissioners, the board, at the time of levying other taxes in each year, may levy an amount not exceeding the limitation in ~~subsection 6~~ of section 57-15-06.8 for the purpose of making firebreaks in the county. The money collected as a result of the levy shall be known as the "firebreak fund".

SECTION 7. Three new subsections to section 57-15-06.7 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one-half of one mill.

Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one mill.

Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.

SECTION 8. AMENDMENT. Section 57-15-06.8 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.8. County tax levies and limitations not in addition to the general fund levy. The following mill levies, expressed as mills on the dollar of taxable valuation of property within the county, may be levied by counties but are not excepted from the general mill levy limitations of section 57-15-06:

1. ~~Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one-half of one mill.~~
2. ~~Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one mill.~~
3. ~~Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.~~

- 4- Counties levying a tax for multicounty fairs according to section 4-02-37 may levy a tax not exceeding one-half of one mill.
- 5- 2. Counties levying a tax for extraordinary expenditures according to section 11-11-24 may levy a tax not exceeding five mills.
- 6- 3. Counties levying a tax to establish firebreaks according to section 18-07-01 may levy a tax not exceeding five mills.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 677

HOUSE BILL NO. 1449
(Representatives Wald, Goetz)
(Senator Waldera)

CITY JOB DEVELOPMENT AUTHORITIES

AN ACT to provide authority for the creation and operation of city job development authorities; to create and enact a new subsection to section 57-15-10 of the North Dakota Century Code, relating to a city tax levy for operation of a city job development authority; and to amend and reenact subsection 29 of section 57-15-06.7 of the North Dakota Century Code, relating to county tax levies for support of job development authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. City job development authority - Board of directors member qualifications. The governing body of a city, by resolution, may create a job development authority for the city, or may discontinue a job development authority which has been created for the city. Before a resolution is adopted to create a city job development authority, the governing body of the city shall hold a public hearing to provide interested persons an opportunity to be heard. Notice of the time, place, and purpose of the hearing must be published not less than thirty days prior to the hearing in the official newspaper of the city. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by petition signed by electors of the city equal in number to ten percent of the votes cast in the city for the office of governor in the last general election. The petition must be presented to the governing body of the city not later than thirty days after the adoption of the resolution creating the city job development authority. The question of discontinuing the authority requires a majority of the electors voting on the question for passage. If the authority is created, the governing body of the city shall appoint a board of directors. The members shall be appointed without regard to political affiliation and upon their fitness to serve as members by reason of character, experience, and training.

SECTION 2. Members of the city job development authority board of directors - Term of office - Oath - Expenses. The members

of the city job development authority board of directors shall serve for a term of three years or until their successors are duly qualified. Terms of office shall begin on January first and shall be arranged so that the terms of office of approximately one-third of the members expire on December thirty-first each year. Each member of the board shall qualify by taking the oath provided for civil officers. The oath shall be filed with the city auditor.

The board of directors shall annually elect members to serve as chairman, vice chairman, secretary, and treasurer. They shall also select an executive committee with such powers and duties as may be delegated by the board of directors. Members may be reimbursed from funds available to the authority for mileage and expenses at the rates provided for state employees in sections 44-08-04 and 54-06-09 but members may receive no compensation for service.

SECTION 3. Powers and duties of city job development authorities. The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. In fulfilling this objective, the job development authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the city.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.
6. To certify a tax levy as provided in section 4 of this Act and to expend moneys raised by the tax for the purposes provided in this Act.
7. To insure or provide for insurance of any real or personal property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section.
10. To exercise any other powers necessary to carry out the purposes and provisions of this Act.

SECTION 4. Tax levy for city job development authorities. The governing body of a city which has a city job development authority shall establish a city job development authority fund and levy a tax not exceeding the limitation in section 6 of this Act. The city auditor shall keep the fund separate from other money of the city and transmit all funds received under this section within thirty days to the board of directors of the city job development authority. The funds when paid to the city job development authority shall be deposited in a special account in which other revenues of the city job development authority are deposited and may be expended by the city job development authority as provided in sections 2 and 3 of this Act.

In lieu of establishing a job development authority, the governing body of a city where an active industrial development organization exists may levy a tax not exceeding the limitation in section 6 of this Act. The funds from the alternative levy may be used to enter into a contract with the industrial development organization for performance of the functions of a city job development authority.

SECTION 5. AMENDMENT. Subsection 29 of section 57-15-06.7 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29. A county levying a tax for a job development authority as provided in section 11-11.1-04 or for the support of an industrial development organization as provided in section 11-11.1-06 may levy a tax not exceeding four mills on the taxable valuation of property within the county, unless any city within the county is levying a tax for support of a job development authority or for support of an industrial development organization, in which case the county tax levy under this subsection may be applied only against the taxable valuation of property outside the limits of any city levying a tax under section 6 of this Act.

SECTION 6. A new subsection to section 57-15-10 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Taxes levied for a city job development authority as provided in section 4 of this Act may be levied in an amount not exceeding four mills.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 678**SENATE BILL NO. 2085
(Lips)****PARK AND RECREATION LEVY**

AN ACT to provide mill levy authority for support of parks and recreational facilities; and to create and enact a new subsection to section 57-15-12.2 of the North Dakota Century Code, relating to park district tax levy limitations.

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

SECTION 1. Tax levy for parks and recreational facilities. A board of park commissioners established pursuant to chapter 40-49, may levy taxes annually not exceeding the limitation in section 2 of this Act for a fund for the purpose of acquiring real estate as a site for public parks, construction of recreational facilities, renovation and repair of recreational facilities, and the furnishing of recreational facilities. The tax is to be levied, spread, and collected in the same manner as are other taxes in the park district. The question of whether the levy is to be discontinued shall be submitted to the qualified electors at the next regular election upon petition of twenty-five percent of the qualified electors voting in the last regular park district election, if the petition is filed not less than sixty days before the election. If the majority of the qualified electors vote to discontinue the levy, it may not again be levied without a majority vote of the qualified electors at a later regular election on the question of relevying the tax, which question may be submitted upon petition as above provided or by decision of the governing board.

SECTION 2. A new subsection to section 57-15-12.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

A park district levying a tax for parks and recreational facilities in accordance with section 1 of this Act may levy a tax not exceeding five mills.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 679

HOUSE BILL NO. 1529
(Representatives O'Connell, Gates, Brokaw)
(Senators Lips, Wogsland, Thane)

SCHOOL FUND TRANSFERS

AN ACT to create and enact a new subsection to section 57-15-17 of the North Dakota Century Code, relating to transfers by school districts of unobligated funds from the building fund to the general fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-15-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Whenever collections from the taxes levied for the current budget and other income are insufficient to meet the requirements for general operating expenses, a majority of the governing body of a school district may transfer unobligated funds from the school building fund into the general fund of the school district if the school district has issued certificates of indebtedness equal to fifty percent of the outstanding uncollected general fund property tax. No school district may transfer funds from the school building fund into the general fund for more than two years.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 680

HOUSE BILL NO. 1675
(Representatives Strinden, A. Olson, Myrdal)
(Senator Heigaard)
(Approved by the Committee on Delayed Bills)

ASBESTOS ABATEMENT LEVY

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to a school district mill levy for asbestos abatement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Multiyear asbestos abatement levy by school district.

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of providing funds for the removal of asbestos substances from school buildings and for any repair, replacement, or remodeling that results from removal of asbestos substances.
2. All revenue accruing from the levy under this section must be placed in a separate fund known as the asbestos abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos abatement.
3. Any moneys remaining in the asbestos abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos abatement project must be transferred to the general fund of the school district upon the order of the school board.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 681

SENATE BILL NO. 2246
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

SENIOR CITIZEN PROGRAM GRANTS

AN ACT to amend and reenact subsection 5 of section 57-15-56 of the North Dakota Century Code, relating to the state matching program for senior citizen programs and activities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-15-56 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The department of human services shall match funds levied by counties and cities for senior citizen programs and activities operated pursuant to this section. The grants shall be made on or before March first of each year and shall be equal to the amount levied for the previous taxable year by each county or city within the limitations of legislative appropriations, provided that no such grant may be made to any county or city which has not filed with the department of human services a required written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the department of human services on or before February first of each year following a year in which the reporting county or city received grant funds under this subsection.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 682

SENATE BILL NO. 2440
(Senator Lodoen)
(Representative Lindgren)

LAW ENFORCEMENT FACILITIES

AN ACT to create and enact section 57-15-59 of the North Dakota Century Code, relating to counties and cities entering into long-term leases and dedicating taxes for regional, county, or municipal correction centers and law enforcement facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 57-15-59 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-15-59. Counties and cities authority to enter leases for correction and law enforcement facilities and dedicate mill levies. Notwithstanding any other provision of law, counties and cities, including home rule counties and cities, may upon a two-thirds vote of the governing body enter into leases for correction centers, jails, and other law enforcement facilities for a term of one year or more but not exceeding twenty years. At the time of entering into such a lease, the governing body shall dedicate the necessary annual mill levies to fund the lease payments, and such dedicated mill levies shall be irrevocable for the length of the lease. The governing body may levy and dedicate a levy of up to ten mills for such purposes, and this levy is in addition to any mill levy limitations established by law or by a home rule charter. If a governing body enters into a lease with annual payments from revenue from a levy under this section, payments due under the lease are a general obligation of the county or city and backed by the full faith and credit of the county or city. A certified copy of the lease and resolution dedicating a levy under this section must be filed with the county auditor, who shall annually levy the mills set forth in the resolution for the entire term of the lease, unless the governing body provides the county auditor with a certified copy of a resolution providing that the county or city has funds available for all or part of the next year's lease payment and that no part or only a portion of the mills originally dedicated to the lease payment need to be levied for that year.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 683

SENATE BILL NO. 2370
(Dotzenrod)

PROPERTY TAX DUE DATE

AN ACT to provide that payment of property taxes that fall due on a day on which the county treasurer's office is not open may be made on the first following day on which the office is open.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Extension of due date for property taxes when county treasurer's office is closed. When the due date for full or installment payment of any property taxes or special assessments falls on a day on which the county treasurer's office is not open for business, the payment may be made on the first day following on which the office is open without penalty or loss of discount.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 684

HOUSE BILL NO. 1679
(Strinden)

(Approved by the Committee on Delayed Bills)

AIR CARRIER COMPANY TAXES

AN ACT to amend and reenact sections 57-32-01.2 and 57-32-04 of the North Dakota Century Code, relating to the assessment and allocation of the tax on air carrier transportation companies; and to repeal section 57-32-01.3 of the North Dakota Century Code, relating to allocation of value of air carrier transportation companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-32-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-01.2. Method of valuation. All of the operative property within North Dakota of each air carrier transportation company which is defined as real property under section 57-02-04 shall be valued for assessment purposes by the tax commissioner and the state board of equalization and a portion of the total valuation shall be allocated to the state of North Dakota. For the purpose of determining the value of the operative property within North Dakota of each air transportation company, the tax commissioner and the state board of equalization shall take into consideration the original cost and replacement cost of the property, depreciation, obsolescence, the earning power of the property as shown by the company's gross earnings and net operating income, the market or actual value of the company's stock and bonds and other liabilities, and such other legally established evidences of value as shall that enable the tax commissioner and the state board of equalization to make a just and equitable assessment.

SECTION 2. AMENDMENT. Section 57-32-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-04. Allocation of tax. The taxes imposed by this chapter upon express companies shall be collected by the state treasurer and deposited in the state general fund.

The taxes imposed by this chapter upon air transportation companies shall be deposited with the state treasurer, who shall credit the same to the air transportation fund, but within ninety days after receipt thereof, these funds shall be allocated and remitted as herein provided by the state treasurer to the cities or municipal airport authorities where such transportation companies make regularly scheduled landings. The taxes collected from each such company shall be allocated to each city or municipal airport authority where such that company makes regularly scheduled landings according to the ratio that the annual gross landing weight of the company for such city or municipal airport authority bears to the total annual gross landing weight of the company for all cities or municipal airport authorities where it makes regularly scheduled landings. The annual gross landing weight of a company for a city or municipal airport authority shall be computed by (1) multiplying the certified landing weight for each plane of the company by the number of landings made by it during the preceding calendar year at the city or municipal airport authority, and (2) adding together the amount so computed for each such plane. The annual gross landing weight of a company for all cities and municipal airport authorities shall be the total of the annual gross landing weight of the company for each city or municipal airport authority in which it made regularly scheduled landings. The certified landing weight of a plane shall be the landing weight as certified by the federal aviation agency by multiplying the total tax collected by a fraction, the numerator of which is the value of the company's property at a given city or municipal airport and the denominator of which is the total value of the property located in North Dakota that is subject to the assessment. It shall be the duty of the tax commissioner to certify to the state treasurer the names of such air transportation companies and the amount of tax of each company that shall be allocated by the state treasurer to each city or municipal airport authority.

SECTION 3. REPEAL. Section 57-32-01.3 of the North Dakota Century Code is hereby repealed.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 685

SENATE BILL NO. 2103 (Mathern)

TOBACCO PRODUCTS EXCISE TAX

AN ACT to amend and reenact subsection 1 of section 57-36-25, subsections 1 and 2 of section 57-36-26, and subsection 1 of section 57-36-28 of the North Dakota Century Code, relating to the excise tax and consumer's use tax on cigars, snuff, and other tobacco products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-36-25 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, sold in this state an excise tax at the rate of ~~eleven~~ twenty percent of the wholesale purchase price at which such cigars, snuff, and other tobacco products are purchased by distributors. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 57-36-26 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of ~~eleven~~ twenty percent of the wholesale purchase price at the time such products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction; provided, that the dealer may elect to report and remit the tax on his cost price of such products rather than on the wholesale purchase price. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit such a remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars or snuff or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section shall apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in such other state is ~~eleven~~ twenty percent of the wholesale purchase price or more, then no tax shall be due on such article. The provisions of this subsection shall apply only if such other state allows a tax credit with respect to the excise tax on cigars, snuff, and other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

SECTION 3. AMENDMENT. Subsection 1 of section 57-36-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A tax is hereby imposed upon the use or storage by consumers of cigars, snuff, and other tobacco products in this state, and upon such consumers, at the rate of ~~eleven~~ twenty percent of the cost to the consumer of such products.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 686

SENATE BILL NO. 2216
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

CIGARETTE TAX RATE

AN ACT to amend and reenact section 57-36-32 of the North Dakota Century Code, relating to an additional tax on cigarettes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited. There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of ~~four~~ seven mills 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. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying such tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 687

SENATE BILL NO. 2557
(Senator Heigaard)
(Representative Strinden)
(Approved by the Committee on Delayed Bills)

ADDITIONAL SALES TAX

AN ACT to create and enact a new section to chapter 57-39.2, a new section to chapter 57-40.2, a new section to chapter 57-40.3, and a new section to chapter 57-40.5 of the North Dakota Century Code, relating to a separate and additional sales, use, motor vehicle excise, and aircraft excise tax; to amend and reenact section 57-36-32 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2216, as approved by the fiftieth legislative assembly, and subsections 7, 8, and 9 of section 57-39.2-01, subdivision b of subsection 1 of section 57-39.2-02.1, subsection 8 of section 57-40.2-01, subsection 1 of section 57-43.1-02, subsection 1 of section 57-43.2-02, and section 57-43.2-03 of the North Dakota Century Code, relating to the tax imposed on cigarettes, motor vehicle fuels, and special fuels and a special fuel tax exemption for state and political subdivisions and to imposition of sales and use taxes on cable television and other video programming services; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-32 of the North Dakota Century Code, as contained in Section 1 of Senate Bill No. 2216, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited. There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of seven eight and one-half mills 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. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than

for delivery to wholesalers in this state, without first paying such tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

* SECTION 2. AMENDMENT. Subsections 7, 8, and 9 of section 57-39.2-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, cable television or other video programming services, and communication service to retail consumers or users; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient, or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property shall be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state shall not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection the word "consumer" shall include any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed shall be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the

* NOTE: Subsection 8 of section 57-39.2-01 was also amended by section 1 of House Bill No. 1195, chapter 704.

last day on which payments may be made without penalty as provided in section 57-39.2-12.

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, cable television or other video programming services, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; 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 chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
9. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, cable television or other video programming services, or communication, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

* SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2406, chapter 707.

- b. The furnishing or service of gas, cable television or other video programming services, communication services, or steam other than steam used for processing agricultural products.

SECTION 4. A new section to chapter 57-39.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional tax on retail sales. There is imposed a tax of one-half of one percent, in addition to any other tax provided by law, upon the gross receipts of retailers from all sales at retail which are taxable under this chapter. In the case of any contract for the construction of highways, roads, streets, bridges, and buildings awarded prior to July 1, 1987, the contractor receiving the award is liable only for the sales tax at the rate of tax in effect on the date of the contract.

SECTION 5. AMENDMENT. Subsection 8 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Tangible personal property" means:
 - a. Tangible goods, wares, and merchandise, and gas, cable television or other video programming services, when furnished or delivered to consumers or users within this state.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.

SECTION 6. A new section to chapter 57-40.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

Separate and additional use tax. An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of one-half of one percent of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not

originally purchased for storage, use, or consumption in this state at the rate of one-half of one percent of the fair market value of the property at the time it was brought into this state. The tax imposed under this section applies to any activity that is taxable under this chapter and the tax imposed under this section is in addition to any other tax imposed by law. In the case of any contract for the construction of highways, roads, streets, bridges, and buildings awarded prior to July 1, 1987, the contractor receiving the award is liable only for the use tax at the rate of tax in effect on the date of the contract.

SECTION 7. A new section to chapter 57-40.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional motor vehicle excise tax. There is imposed an excise tax at the rate of one-half of one percent on the purchase price of any motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state. The tax imposed under this section is in addition to any other tax provided by law.

SECTION 8. A new section to chapter 57-40.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional aircraft excise tax. There is imposed an excise tax at the rate of one-half of one percent on the purchase or lease of any aircraft which is otherwise taxable under this chapter. The tax imposed by this section is in addition to any other tax provided by law.

SECTION 9. AMENDMENT. Subsection 1 of section 57-43.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in this section, a tax of ~~thirteen~~ seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.

SECTION 10. AMENDMENT. Subsection 1 of section 57-43.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An excise tax of ~~thirteen~~ seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not

exempt. From July 1, 1983, through June 30, 1985, the tax imposed by this subsection on fuel consisting of a blend of diesel fuel and not less than ten percent recovered oil shall be four cents per gallon [3.79 liters] less than the nonagriculturally derived special fuel excise tax provided in this subsection. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.

SECTION 11. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-03. Tax levied. A special excise tax of two percent is imposed on all sales of special fuel which are exempted from the tax imposed under section 57-43.2-02 to a special fuel user and on all sales of special fuels which are taxed under this chapter if that tax is later refunded to a special fuel user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section 57-43.1-08.

SECTION 12. EXPIRATION DATE. Sections 4, 6, 7, and 8 of this Act are effective for taxable events occurring after June 30, 1987, and before July 1, 1989, and are thereafter ineffective.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 688

SENATE BILL NO. 2217
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

ESTATE TAX FEDERALIZATION DATE

AN ACT to amend and reenact subsection 8 of section 57-37.1-01 and section 57-37.1-04 of the North Dakota Century Code, relating to the definition of the "United States Internal Revenue Code of 1954, as amended" for estate tax purposes and the computation of the estate tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 57-37.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "United States Internal Revenue Code of 1954, as amended" means the United States Internal Revenue Code of 1954 as amended through December 31, ~~1984~~ 1986, and also includes references to the Internal Revenue Code of 1986.

SECTION 2. AMENDMENT. Section 57-37.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37.1-04. Computation of tax.

1. The amount of tax imposed upon the transfer of the North Dakota taxable estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. For the purposes of this section, "federal estate tax" means the tax imposed on transfers of estates of decedents pursuant to

the United States Internal Revenue Code of 1954, as amended, and "North Dakota taxable estate" means all property in a decedent's federal gross estate that has a situs in North Dakota.

2. When property subject to the tax imposed by this chapter qualifies for valuation based on its use under section 2032A of the Internal Revenue Code, it has the same value for North Dakota estate tax purposes as it has for federal estate tax purposes. If, after the final determination of the tax imposed by this chapter, the property valued under section 2032A of the Internal Revenue Code is transferred or otherwise fails to qualify and an additional tax is imposed under section 2032A(c) of the Internal Revenue Code, any increase in the credit for state death taxes must be reported by the personal representative to the tax commissioner within ninety days after final determination of the increased credit. Upon notification the tax commissioner shall reassess the estate tax.

Approved February 3, 1987
Filed February 3, 1987

CHAPTER 689

HOUSE BILL NO. 1325
(Representatives Goetz, Wald)
(Senator Dotzenrod)

ESTATE TAX REFUND INTEREST

AN ACT to amend and reenact section 57-37.1-07 and subsection 3 of section 57-37.1-08 of the North Dakota Century Code, relating to interest on estate tax payments or refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-37.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37.1-07. Taxes payable as of date of death - interest rate. 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 one percent per month or fraction thereof to be computed from the expiration of fifteen months after death until the amount is paid. The tax commissioner may for good cause waive all or any part of any interest that attaches under the provisions of this section.

SECTION 2. AMENDMENT. Subsection 3 of section 57-37.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. In case an overpayment of such tax has been made for the estate of a decedent, such overpayment shall be repaid out of any undistributed estate taxes in the hands of the state treasurer upon an order of the tax commissioner. Any overpayment to be repaid shall bear interest at the rate of two-thirds of one percent per month or fraction thereof to be computed from the time the tax was paid until the overpayment is repaid. Any interest owed by the state must be paid by the state treasurer from the appropriation for miscellaneous refunds approved by the legislative assembly. The state treasurer shall thereupon present and file with the appropriate county treasurers and city auditors a verified claim of such overpayment accompanied by a copy of the order of the tax commissioner for such refund and the county treasurers and city auditors shall pay such claim to the state treasurer.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 690

HOUSE BILL NO. 1381
(Representatives Oban, Dorso)
(Senators Mathern, Holmberg)

TAX CREDIT FOR EMPLOYING HANDICAPPED

AN ACT to create and enact three new subsections to section 57-38-01 of the North Dakota Century Code and a new section to chapter 57-38 of the North Dakota Century Code, relating to a tax credit for employers who hire developmentally disabled or chronically mentally ill employees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 57-38-01 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.

"Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:

- a. Conditions which are primarily those of drug abuse, alcoholism, or mental retardation, unless in addition to one or more of these conditions, the person has a mental disorder.
- b. The declining mental abilities that accompany impending death.

- c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

"Developmental disability" has the same meaning as defined in section 25-01.2-01.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Income tax credit for employment of developmentally disabled or chronically mentally ill persons. Any taxpayer filing an income tax return under this chapter, except a return on which liability is determined under section 57-38-30.3, may claim a credit for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 691

HOUSE BILL NO. 1258
(Moore)INCOME TAX FEDERALIZATION AND MINIMUM
TAX

AN ACT to create and enact a new subsection to section 57-38-01 of the North Dakota Century Code, relating to alternative minimum taxable income; to amend and reenact subsections 3 and 8 of section 57-38-01, subsection 1 of section 57-38-01.4, and section 57-38-30 of the North Dakota Century Code, relating to the federalization date for income tax purposes, treatment of federal alternative minimum tax for corporate income tax purposes, and income tax treatment of subchapter S corporation income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"North Dakota alternative minimum taxable income" in the case of corporations means alternative minimum taxable income as computed under the Internal Revenue Code provisions in effect at the close of the corporation's taxable year, reduced by any interest received from obligations of the United States included in alternative minimum taxable income or in the computation of alternative minimum taxable income on the federal return, as reduced by the federal income tax deduction computed under subdivision c of subsection 1 of section 57-38-01.3, and either increased or decreased by the adjustments provided in subdivisions a and b of subsection 3 of section 57-38-01, with the remaining amount apportioned to North Dakota by the same fraction computed under the provisions of chapter 57-38, 57-38.1, or 57-59.

SECTION 2. AMENDMENT. Subsections 3 and 8 of section 57-38-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1954 1986, as amended to and including December 31, 1984 1986. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
- a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances where the minimum investment by the lessor is less than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.
- b. Except that the deductions provided by the cost recovery provisions enacted as section 168 of the Internal Revenue Code, other than subsection (f)(8), cannot exceed seventy-five percent for the first taxable year beginning after December 31, 1982, and cannot exceed eighty-five percent for each of the next two taxable years beginning after December 31, 1983, for the purpose of computing North Dakota taxable income by individuals, estates, trusts, and corporations. Therefore, for the taxable year beginning after December 31, 1982, federal taxable income must be increased by twenty-five percent of any ACRS depreciation deducted in that taxable year for federal income tax purposes, and for each of the next two taxable years beginning after December 31, 1983, federal taxable income must be increased by fifteen percent of any ACRS depreciation deducted in each of the respective taxable years for federal income tax purposes. Provided, that one-half of the amount not allowed as a an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as a an accelerated cost recovery system depreciation deduction for the taxable year

beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as a an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.

- c. Provided, that the depreciation adjustments allowed in subdivision e b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.
 - d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.
8. "Taxable income" in the case of individuals, estates, trusts, and corporations shall mean the taxable income as computed for an individual, estate, trust, or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this act and chapter or other provisions of law. Except as otherwise expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.

SECTION 3. AMENDMENT. Subsection 1 of section 57-38-01.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For the purposes of this chapter, any person as defined in section 57-38-01 and required to file a North Dakota income tax return who makes an election under subchapter S of the Internal Revenue Code of 1954, as amended, for federal income tax purposes shall have such status recognized and such person's taxable income shall be

computed as provided in subchapter S of the Internal Revenue Code of 1954, as amended, with the adjustments allowed by this chapter or other provisions of law. Income of a subchapter S corporation subject to tax for federal income tax purposes is also subject to state income tax at the corporate income tax rates imposed by section 57-38-30.

SECTION 4. AMENDMENT. Section 57-38-30 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income or the North Dakota alternative minimum taxable income of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which shall be levied, collected, and paid annually as in this chapter provided, and which shall be computed at the greater of the following rates two calculations:

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.
- ~~2.~~ b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.
- ~~3.~~ c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
- ~~4.~~ d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.
- ~~5.~~ e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
- ~~6.~~ f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. Five percent of the North Dakota alternative minimum taxable income. The calculation for North Dakota alternative minimum taxable income applies only if the corporation's federal alternative minimum tax liability exceeds the corporation's regular federal tax liability.

SECTION 5. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for taxable years beginning after December 31, 1986. Sections 1 and 4 of this Act are effective for taxable years beginning after December 31, 1988.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 692

HOUSE BILL NO. 1261
(Moore)

FEDERAL INCOME TAX DEDUCTION

AN ACT to amend and reenact subdivision c of subsection 1 of section 57-38-01.2 and subdivision c of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to income tax deductions for federal income taxes paid; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Reduced by the amount of federal income tax liability, but not social security and self-employment taxes, as computed under chapter 1 of the Internal Revenue Code of 1954, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that such taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. However, such federal income tax liability shall be reduced by all credits thereon except credits for federal income tax withholding payments, estimates of federal income tax, and income taxes of foreign countries. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax shall be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.

SECTION 2. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Reduced by the amount of federal income taxes, paid or accrued as the case may be during the applicable tax year to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax shall be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 693

SENATE BILL NO. 2343
(Satrom, Wright)

INCOME TAX DEDUCTION FOR DIVIDENDS FROM DOMESTIC FINANCIAL INSTITUTIONS

AN ACT to amend and reenact subdivision i of subsection 1 of section 57-38-01.2 and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to the domestic dividend exclusion for income tax purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision i of subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- i. Reduced by any dividends or income, up to a maximum of fifteen thousand dollars, received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes where the income of such corporation has been assessed and tax paid by the corporation under this chapter or chapter 57-35, 57-35.1, or 57-35.2 and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year; provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter or chapter 57-35, 57-35.1, or 57-35.2, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted. The commissioner is hereby authorized to prescribe rules and regulations to implement this subdivision to avoid injustice to taxpayers, to prevent duplication of deductions, and to eliminate taxation of income not fairly and properly taxable under this chapter.

SECTION 2. AMENDMENT. Subdivision g of subsection 1 of section 57-38-01.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- g. Reduced by 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 chapter or chapter 57-35, 57-35.1, or 57-35.2, received by the taxpayer and included in the gross income within the income year if 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, but when only part of the income of any corporation shall have been assessed and income tax paid under this chapter or chapter 57-35, 57-35.1, or 57-35.2, only a corresponding part of the dividends or income received therefrom shall be deducted.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 694

HOUSE BILL NO. 1240
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

INCOME TAX REVISION

AN ACT to amend and reenact subdivisions m and n of subsection 1 of section 57-38-01.2, section 57-38-35.1, subsection 2 of section 57-38-38, subsection 2 of section 57-38-40, subsection 3 of section 57-38-42, sections 57-38-64, 57-38-70, 57-38-71, 57-38-72, and 57-38-74 of the North Dakota Century Code, relating to income tax procedures; and to repeal chapter 57-38.2 of the North Dakota Century Code, relating to income averaging.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivisions m and n of subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- m. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer ~~certifying~~ stating that the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or

family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings may not be included. This statement must be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who is:

- (1) A resident of this state; and
 - (2) Receiving more than half one-half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision; and
 - (3) Intending to use any farmland to be purchased or rented for agricultural purposes; and
 - (4) Except for contracts for deed entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin through satisfactory participation in the adult farm management education program of the state board of vocational education or an equivalent program approved by the commissioner of agriculture; and
 - (5) Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars.
- n. Reduced by the amount of interest received during that taxable year on a contract on the sale of any land, buildings, improvements, and equipment associated with the land, buildings, or improvements, used or useful in connection with a revenue-producing enterprise to a beginning businessman, excluding beginning farmers as defined in subdivision m. The contract must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service to meet gift tax requirements before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a ~~notarized~~ statement from the buyer containing a list of the buyer's assets and debts and giving the buyer's net worth, together with any other information required by the state tax commissioner. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the current market value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including that person's

dependents and spouse, if any, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings is not to be included. This statement is to be filed along with the income tax return. For the purposes of this subdivision, "beginning businessman", excluding beginning farmers as defined in subdivision m, means any person who is:

- (1) Is a A resident of this state.
- (2) Receives Receiving more than one-half his of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which an adjustment will be claimed under this subdivision.
- (3) Intends Intending to use any revenue-producing enterprise that he wishes to purchase purchased or rented for business purposes.
- (4) Has had adequate training Adequately trained, by experience or education, in the type of revenue-producing enterprise which he that person wishes to begin.
- (5) Has The owner of property with a net worth, including the net worth of property of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars.

SECTION 2. AMENDMENT. Section 57-38-35.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-35.1. Minimum refunds and collections - Application of refunds.

1. No refunds shall be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars.
2. No remittance of tax need be made nor any assessment or collection of tax should be made unless the amount, is at least five dollars, including penalties and interest.
3. All refunds and credits for overpayment to any taxpayer, including excess income tax withheld or overpayment of estimated tax, may be applied to payment of taxpayer's unpaid tax, interest, or penalty or delayed until taxpayer's delinquent returns have been filed.

- 4- Interest of nine percent per annum shall be allowed and paid upon any overpayment of tax from sixty days after the due date of the return or after the date such return was filed or after the date the tax due was fully paid, whichever comes later, to the date of the refund.
- 5- if the amount of tax imposed by this chapter is reduced by reason of a carryback of a net operating loss or net capital loss, the interest in this section shall not start accruing until after the close of the taxable year in which the net operating loss or net capital loss occurred.

SECTION 3. AMENDMENT. Subsection 2 of section 57-38-38 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If there is a change in taxable income or adjusted federal income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or adjusted federal income tax liability stated in the return as filed, any additional tax determined due may be assessed any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.

SECTION 4. AMENDMENT. Subsection 2 of section 57-38-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the A claim for refund relates to an overpayment attributable to arising from a net operating loss carryback, in lieu of the three-year period within which a taxpayer may apply to the tax commissioner for revision of the tax assessed as prescribed in this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carryback or capital loss carryback, can be filed up to three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection are effective for all carrybacks filed for taxable years beginning on or after December 31, 1986.

SECTION 5. AMENDMENT. Subsection 3 of section 57-38-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. All information returns required under subsection 1 shall be made on the basis of a calendar year for payments made during the calendar year and shall be filed with the tax commissioner on or before April fifteenth of the year following the calendar year for which made the due date for filing similar returns with the internal revenue

service. All partnership returns required under subsection 2 shall be made on or before the fifteenth day of the fourth month following the close of the fiscal year of the partnership required to make the return, or if the return is made on the basis of a calendar year, then the return shall be made on or before the fifteenth day of April in the year following the calendar year for which such return is made.

SECTION 6. AMENDMENT. Section 57-38-64 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-64. Amendment of declaration. Any person may amend a declaration of estimated income tax and make the adjusted payments of tax due thereon under the regulations of the tax commissioner. A corporation may, after the close of the taxable year and before the fifteenth day of the fourth month thereafter, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. Such a claim for credit or refund must be verified and paid as are other claims against the state. No application under this section may be allowed unless the amount of the adjustment exceeds five hundred dollars and no interest may accrue or be paid thereon. Refunds will be payable for taxable years beginning after July 1, 1987.

SECTION 7. AMENDMENT. Section 57-38-70 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-70. Claim for income tax deduction for land sale or rental to a beginning farmer. In order for a taxpayer to qualify for the deductions provided in sections 57-38-67 through 57-38-70, the taxpayer shall file with his the taxpayer's state income tax return a ~~notarized~~ statement from the beginning farmer who purchased or rented land ~~from him certifying~~ stating that ~~he meets~~ all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require have been met. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In order for a taxpayer to qualify for the deduction for rental income provided in section 57-38-69, the taxpayer shall ~~certify~~ state on his the taxpayer's tax return that any rental arrangement with any other person was not canceled for the purpose of qualifying for this deduction.

SECTION 8. AMENDMENT. Section 57-38-71 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-71. Definitions applicable to sections 57-38-71 through 57-38-74. As used in sections 57-38-71 through 57-38-74, unless the context otherwise requires:

1. "Beginning businessman", excluding beginning farmers as defined in subdivision m of subsection 1 of section 57-38-01.2, means any person who:
 - a. Is a resident of this state.
 - b. Receives more than one-half ~~his~~ of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which a deduction will be claimed under sections 57-38-71 through 57-38-74.
 - c. Intends to use any revenue-producing enterprise ~~that he wishes to purchase or rent~~ purchased or rented for business purposes.
 - d. Has had adequate training, by experience or education, in the type of revenue-producing enterprise which ~~he~~ that person wishes to begin.
 - e. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.
2. "Businessman" means any person owning a revenue-producing enterprise in North Dakota, except that any person who acquires such an enterprise for the purpose of obtaining the income tax deduction provided for in sections 57-38-71 through 57-38-74 is not deemed to be a businessman.
3. "Revenue-producing enterprise" means any real property, buildings, and improvements on the property or to the buildings, and any equipment located on the property or in the buildings, or any personal property used or useful in connection with a revenue-producing enterprise engaged in any industry or business not prohibited by the Constitution of North Dakota or the laws of this state.

SECTION 9. AMENDMENT. Section 57-38-72 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-72. Income tax deduction for revenue-producing enterprise sale to beginning businessman. Any businessman who sells a revenue-producing enterprise to a beginning businessman is entitled to a reduction in the businessman's taxable income ~~for the year in which the sale occurred~~ in an amount equal to all income realized and otherwise subject to state income taxes after consideration of any capital gains treatment. ~~In the case of a contract the year in which the sale occurred,~~ for purposes of this section, means the year the

contract is entered into by the businessman and the beginning businessman, regardless of the amount of payment, if any, that is made in that year.

SECTION 10. AMENDMENT. Section 57-38-74 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-74. Claim for income tax deduction for revenue-producing enterprise sale or rental to a beginning businessman. To qualify for the deduction provided in sections 57-38-71 through 57-38-74, the taxpayer shall file with the taxpayer's state income tax return a ~~notarized~~ statement from the beginning businessman who purchased or rented the revenue-producing enterprise containing a list of the assets, debts, and net worth of the beginning businessman, together with any other information required by the state tax commissioner. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the current market value on the most recent real estate tax statement for that particular piece of property. To qualify for the deduction for rental income provided in section 57-38-73, the taxpayer shall ~~certify state~~ on the taxpayer's tax return that any rental arrangement with any other person was not canceled for the purpose of qualifying for this deduction.

SECTION 11. REPEAL. Chapter 57-38.2 of the North Dakota Century Code is hereby repealed.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 695

HOUSE BILL NO. 1901
Select Committee on Finance and Taxation
(At the request of the Office of Management and Budget)
(Approved by the Committee on Delayed Bills)

INCOME TAX WITHHOLDING AND RATE INCREASE

AN ACT to amend and reenact section 57-38-29, subsection 2 of section 57-38-30.3, sections 57-38-59, 57-38-60, 57-38-60.1, 57-38-61, and 57-38-62 of the North Dakota Century Code, relating to the rate of income tax on individuals and general income tax withholding and payment of estimated tax for income tax purposes; to repeal section 57-38-58 of the North Dakota Century Code, relating to definitions for withholding purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-29 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-29. Rate of tax on individuals. A tax is hereby imposed upon every individual, to be levied, collected, and paid annually with respect to the taxable income of such individual as defined in this chapter, computed at the following rates:

1. On taxable income not in excess of three thousand dollars, a tax of two and sixty-seven hundredths percent.
2. On taxable income in excess of three thousand dollars and not in excess of five thousand dollars, a tax of three four percent.
3. On taxable income in excess of five thousand dollars and not in excess of eight thousand dollars, a tax of four five and thirty-three hundredths percent.
4. On taxable income in excess of eight thousand dollars and not in excess of fifteen thousand dollars, a tax of five six and sixty-seven hundredths percent.

5. On taxable income in excess of fifteen thousand dollars and not in excess of twenty-five thousand dollars, a tax of ~~six~~ eight percent.
6. On taxable income in excess of twenty-five thousand dollars and not in excess of thirty-five thousand dollars, a tax of ~~seven~~ nine and thirty-three hundredths percent.
7. On taxable income in excess of thirty-five thousand dollars and not in excess of fifty thousand dollars, a tax of ~~eight~~ ten and sixty-seven hundredths percent.
8. On taxable income in excess of fifty thousand dollars, a tax of ~~nine~~ twelve percent.

* SECTION 2. AMENDMENT. Subsection 2 of section 57-38-30.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. This tax shall be ~~ten and one-half~~ fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year.

SECTION 3. AMENDMENT. Section 57-38-59 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-59. Withholding from wages of ~~nonresident~~ employees - Penalty.

1. Every employer making payment of wages to ~~nonresident~~ employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of ~~1954~~, as amended 1986, and as hereafter amended, as will approximate the income taxes due the state; ~~provided, that no employer shall be required to deduct and withhold any amount on the first six hundred dollars of annual wages paid to a nonresident employee unless such employee is employed for a period of sixty days or more within any one year.~~ The amount of tax withheld shall be computed without regard to any other amount required to be withheld thereunder, but the tax withheld shall as closely as possible pay any tax liability imposed by this chapter.
2. In the event that the tax deducted and withheld under ~~the provisions of~~ subsection 1 should prove to be disproportionate to the tax liability, the tax commissioner may adjust the percentage ~~which that~~, when withheld, will, as closely as may be possible, pay the income tax liability imposed by this chapter.

* NOTE: Section 57-38-30.3 was also amended by section 39 of House Bill No. 1050, chapter 73.

3. The tax commissioner may, in lieu of the requirement above for deducting and withholding tax based upon a percentage of federal income tax withheld, adopt by regulation rule tax tables ~~which~~ that, when the tax provided for in the tables is withheld, will, as closely as possible, pay the income tax liability imposed by this chapter. When adopted by the tax commissioner said tables shall be followed by every employer required to deduct and withhold any tax imposed by this chapter.

- 4- Every employer shall deduct and withhold from every nonresident employee's wages the amounts required to be deducted and withheld from a nonresident employee's wages until such time as the employee has filed with his employer a signed certificate, in such form as the tax commissioner shall provide, that such employee entitled to wages is a resident of the state of North Dakota as defined for withholding purposes. Such certificate shall contain a written declaration that it is made under the penalties provided in section 12-1-11-02. Once filed, a certificate shall remain in effect with the employer with whom it is filed, until the employee's status shall have changed to that of a nonresident as defined in subsection 4 of section 57-38-58. The employee shall give written notice to his employer within fifteen days after such change in status. The employer upon receiving such written notice shall deduct and withhold from the employee's wages as provided in this section until the employee files with the employer the signed certificate referred to herein. Any employee willfully failing to give written notice to his employer of his change in status as required herein within the time prescribed shall be subject to the penalty provided for in subsection 3 of section 57-38-45. Employers shall be required to make the certificate of residence available to the tax commissioner upon request.

SECTION 4. AMENDMENT. Section 57-38-60 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-60. Employer's returns and remittances.

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all nonresident employees during the preceding calendar quarter under the provisions of section 57-38-59; provided, that the tax commissioner may alter the time or period for making reports and payment when in his the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under ~~the provisions of~~ this section which shall show the total amount of wages paid to ~~his nonresident~~ employees, the amount of federal income tax deducted and withheld during the period covered by the return, the amount of tax imposed under ~~the provisions of~~ this chapter ~~that which~~ was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.
3. Every employer shall make an annual return to the tax commissioner on forms provided and approved by ~~him~~ the tax commissioner, summarizing the total compensation paid, the federal income tax deducted and withheld, and the state tax deducted and withheld, for each ~~nonresident~~ employee during the calendar year and shall file the same with the tax commissioner on or before the thirty-first day of January of the year following that for which the report is made. Every employer shall also, in accordance with such ~~regulations~~ rules as may be prescribed by the tax commissioner, provide each ~~nonresident~~ employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance with ~~the provisions of~~ section 57-38-59, and said statement shall be made available to the employee on or before the thirty-first day of January of the year following that for which the report is made.
4. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts ~~he shall be~~ the employer is considered the taxpayer.
5. Every employer who deducts and withholds any amounts under ~~the provisions of~~ section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in

section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.

6. As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this state for a period of one full year from January first to December thirty-first, shall be required, and any other employer, at the discretion of the tax commissioner may be required, to either make a cash deposit or post with ~~him~~ the tax commissioner a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota in such amount as is reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages, but not to exceed five thousand dollars.

SECTION 5. AMENDMENT. Section 57-38-60.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-60.1. Corporate officer liability. If a corporation is an employer, ~~as defined in subsection 3 of section 57-38-58,~~ and fails for any reason to file the required returns or to pay the tax due, the chairman, president, or chief operating officer, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 6. AMENDMENT. Section 57-38-61 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-61. Provisions of chapter applicable. The provisions of sections 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections ~~57-38-58,~~ 57-38-59, 57-38-60, and 57-38-60.1. The term "employer" as used in sections ~~57-38-58,~~ 57-38-59, 57-38-60, and 57-38-60.1 also means "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to adopt rules includes the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in this state.

*** SECTION 7. AMENDMENT.** Section 57-38-62 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 57-38-62 was also amended by section 1 of House Bill No. 1259, chapter 701.

57-38-62. Declaration of estimated income.

1. All nonresident individual taxpayers shall, and resident individual taxpayers may individuals, estates, and trusts that are required to file a federal declaration of estimated tax shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by rules and regulations, if their estimated tax due the state from all sources, including wages, salaries, bonuses, or other emoluments, not subject to withholding, can reasonably be expected to exceed one exceeds two hundred dollars and, except for nonresidents who have not filed a return in this state for the previous year, their previous year's state income tax liability exceeded two hundred dollars.
2. All corporate taxpayers shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year containing such information as the tax commissioner may prescribe by rules and regulations, if the taxpayer's estimated tax due the state from sources or business done in this state can reasonably be expected to exceed five thousand dollars and if their previous year's state income tax liability exceeded five thousand dollars.
3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration of estimated tax as required by this chapter, or if a declaration of estimated tax for any quarter is understated or underpaid by more than ten percent. No penalty is due if the total amount of all payments for estimated tax made on or before the due date for that installment equals or exceeds the total amount that would have been required to be paid on or before that date if the estimated tax equaled the tax shown on the taxpayer's return for the preceding taxable year.
4. For purposes of this section, "estimated tax" means the amount that a person estimates to be income tax under this chapter for the taxable year less the amount of any credits allowable, including tax withheld.

SECTION 8. REPEAL. Section 57-38-58 of the North Dakota Century Code is hereby repealed.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved December 9, 1986
Filed December 9, 1986

CHAPTER 696

HOUSE BILL NO. 1686
(A. Hausauer, Strinden, Mertens, Hoffner)
(Approved by the Committee on Delayed Bills)

INCOME SURTAX

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a surtax based on income tax liability of individuals, estates, or trusts; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Surtax on income tax liability of individuals, estates, and trusts -
Exception to withholding. A surtax is hereby imposed on the income of every individual, estate, and trust that is required to file an income tax return under this chapter. The tax imposed by this section is equal to ten percent of the taxpayer's income tax liability as determined under section 57-38-29 or 57-38-30.3. Notwithstanding any other provision of this chapter, calculation of withholding amounts and payments of estimated taxes need not be made on the basis of the tax imposed under this section and are to be based only on tax liability as determined under section 57-38-29 or 57-38-30.3.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first taxable year beginning after December 31, 1986, and is thereafter ineffective.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 697

HOUSE BILL NO. 1645
(Representative Strinden)
(Senator Olson)

INCOME TAX RESEARCH CREDIT

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a corporate income tax credit for research and experimental expenditures; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Corporate income tax credit for research and experimental expenditures. Any corporation is allowed a credit against the tax imposed under this chapter for the taxable year equal to eight percent of the first one and one-half million dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to four percent of all qualified research expenses for the taxable year more than one and one-half million dollars in excess of the base period research expenses.

1. For purposes of this section:
 - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)].
 - b. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
 - c. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.

2. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
3. In the case of a corporation which is a partner in a partnership, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the corporation's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the corporation's taxable income which is allocable or apportionable to the corporation's interest in the trade, business, or entity.
4. If the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 2, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year shall be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried. The amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
5. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period shall be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1987.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 698

HOUSE BILL NO. 1260
(Moore)

DELINQUENT INCOME TAX INTEREST

AN ACT to amend and reenact subsection 1 of section 57-38-45 of the North Dakota Century Code, relating to the rate of interest imposed on income taxes paid after the due date; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38-45 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer shall be subject to interest as follows:
 - a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the current adjusted rate of twelve percent established under 26 U.S.C. 6621(a)(2) per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
 - b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for such payment, there shall be added to the tax interest at the rate of one percent one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), of such tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
 - c. If upon audit an additional tax is found to be due, there shall be added to the additional tax due

interest at the rate of one percent one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), of such additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.

- d. If the mathematical verification of a taxpayer's return results in additional tax due, there shall be added to the additional tax interest at the rate of one percent one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), of such additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
- e. Notwithstanding the interest rates provided for in the preceding subdivisions, or other sections of this chapter, if the prime rate charged by the Bank of North Dakota on September fifteenth of any year is fifteen percent or more per annum, the interest rate to be charged per annum or for each month or fraction thereof, as the case may be, for the entire succeeding calendar year shall be eighteen percent per annum or one and one-half percent per month. The rate of interest in effect under this section on the due date of a return applies continuously to any interest accumulating on liability under the return until the liability is paid in full.

SECTION 2. EFFECTIVE DATE. This Act is effective for interest accruing on liability under returns with a due date after June 30, 1987.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 699

HOUSE BILL NO. 1288
(Representatives Dorso, Gunsch)
(Senator W. Meyer)

INCOME TAX OVERPAYMENT INTEREST

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to interest on overpayment of income taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interest payments. Interest at the adjusted rate established under 26 U.S.C. 6621(a)(2) per annum must be allowed and paid upon overpayments of tax as follows:

1. Interest on refunds arising from excess income tax withholding or overpayment of declarations of estimated tax accrues for payment from sixty days after the due date of the return or after the date the return was filed, whichever comes later.
2. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from sixty days after the due date of the return or after the date the return was filed or after the date the tax due was fully paid, whichever comes later.
3. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from sixty days after the date an amended return claiming a credit or refund because of an operating loss carryback or capital loss carryback is filed with the tax commissioner.
4. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.

5. The rate of interest in effect under this section on the date when interest begins to accrue under this section applies continuously to any interest accumulating on overpayments under the return until the refund is paid in full.

SECTION 2. EFFECTIVE DATE. This Act is effective for interest accruing on refunds under returns with a due date after June 30, 1987.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 700

HOUSE BILL NO. 1062
(Legislative Council)
(Interim Tax Administration Committee)

INCOME TAX SECRECY

AN ACT to amend and reenact subsection 1 of section 57-38-57 of the North Dakota Century Code, relating to secrecy as to income tax returns and prohibiting disclosure as to whether or not a taxpayer has filed an income tax return or report; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38-57 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except when otherwise directed by judicial order, or as is otherwise provided by law, the tax commissioner, his the tax commissioner's deputies, agents, clerks, and other officers and employees, shall not divulge nor make known, in any manner, whether or not any report or return required under this chapter has been filed, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter, including the copy or any portion thereof or information reflected in the taxpayer's federal income tax return that the tax commissioner may require to be attached to, furnished with, or included in the taxpayer's state income tax return. This provision shall not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter. This section does not prohibit disclosure of the fact that a report or return required under this chapter has not been filed if the disclosure is made to further a tax investigation being conducted by the tax commissioner. Reports and returns shall be preserved for three years and thereafter until the tax commissioner orders them to be destroyed.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved April 15, 1987
Filed April 15, 1987

CHAPTER 701

HOUSE BILL NO. 1259
(Moore)

ESTIMATED CORPORATE INCOME TAX

AN ACT to amend and reenact subsection 3 of section 57-38-62 of the North Dakota Century Code, relating to payment of estimated corporate income tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 3 of section 57-38-62 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration of estimated tax as required by this chapter, or if a declaration of estimated tax for any quarter is understated or underpaid by more than ten percent. No penalty is due if the total amount of all payments for estimated tax made on or before the due date for that installment equals or exceeds the total amount that would have been required to be paid on or before that date if the estimated tax equaled the tax shown on the taxpayer's return for the preceding taxable year. Notwithstanding the other provisions of this section, no penalty is due if the underpayment of any installment comes within the exception provided in the Internal Revenue Code of 1954 for recurring seasonal income.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 20, 1987
Filed March 23, 1987

* NOTE: Section 57-38-62 was also amended by section 7 of House Bill No. 1901, chapter 695.

CHAPTER 702

HOUSE BILL NO. 1064
(Legislative Council)
(Interim Taxation Committee)

UNITARY CORPORATE INCOME TAXATION

AN ACT to provide that corporate income taxpayers may elect to use a water's edge unitary combination approach to apportion income for corporate income tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act unless the context or subject matter otherwise requires:

1. "Affiliated corporation" means a corporation more than fifty percent of the voting stock of which is owned directly or indirectly by another corporate member of the water's edge combined group.
2. "Domestic disclosure spreadsheet" means a spreadsheet that fully discloses the income reported to each state, the state tax liability, the method used for apportioning or allocating income to the various states, and other information provided for by rules as may be necessary to determine the proper amount of tax due to each state and to identify the water's edge corporate group.
3. "Existing corporation" means a corporation that filed a North Dakota income tax return for any year after taxable year 1979 or was a successor to or unitary with a corporation that filed a North Dakota income tax return for any year after taxable year 1979.
4. "Foreign dividends" means any dividend received by a member of the water's edge group from any affiliated corporation incorporated outside the fifty states and District of Columbia, including amounts included in income computed under sections 951 through 954 of the Internal Revenue Code.

5. "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has less than twenty percent of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations outside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
6. "New corporation" means a corporation that has not filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a corporation which is a successor to or which is affiliated with a corporation that filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a business reorganization or acquisition, except a corporation with no previous activity in North Dakota which acquires an existing corporation and increases and maintains the threshold activity of the existing corporation by twenty-five percent or more shall be treated as a new corporation.
7. "Threshold activity" means the yearly average combined property and payroll in North Dakota of a corporation and its affiliates for the previous three years.
8. "Water's edge group" includes the following entities:
 - a. Any affiliated corporation incorporated in the United States or a possession of the United States, as described in sections 931 through 936 of the Internal Revenue Code. Corporations incorporated in the United States must be eligible to be included in a federal consolidated return and must have more than twenty percent of its property and payroll, as determined by factoring under chapter 57-38.1, assigned to locations inside the fifty states, the District of Columbia, and possessions of the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
 - b. Domestic international sales corporations, as described in sections 991 through 994 of the Internal

Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code.

- c. Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code.
 - d. Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code.
 - e. Any corporation incorporated outside the United States if over fifty percent of its voting stock is owned directly or indirectly by the taxpayer and if more than twenty percent of the average of its payroll and property is assignable to a location within the United States.
9. "Worldwide combined report" means a combined report with respect to a unitary affiliated group irrespective of the country or countries in which any member of the affiliated group is incorporated or conducts business activity.

SECTION 2. Water's edge election. A corporation required to file a worldwide unitary combined report must continue to do so unless it elects to apportion its income using the water's edge method.

1. A corporation electing to file using the water's edge method must comply with the following:
 - a. The election must be made on the return as originally filed.
 - b. The corporation may not reduce taxable income for federal taxes paid or accrued as allowed by subdivision c of subsection 1 of section 57-38-01.3.
 - c. The water's edge election is binding for ten consecutive taxable years after making the election.
 - d. The corporation must file with the tax commissioner a domestic disclosure spreadsheet.
2. All corporations electing the water's edge method must include the income and apportionment factors of the water's edge group. Foreign dividends and income from 80/20 corporations must be included as follows:
 - a. An existing corporation must include fifty percent of foreign dividends and sixty percent of income from 80/20 corporations. However, an existing corporation that increases and maintains a threshold activity by twenty-five percent or more, but not by business

reorganization or acquisition, is only required to include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.

- b. A new corporation must include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.
- c. For taxable years beginning after December 31, 1994, all corporations making the water's edge election may reduce the inclusion to include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.

SECTION 3. Conditions imposed by tax commissioner. The tax commissioner may impose necessary conditions other than the imposition of worldwide combination to prevent tax avoidance or to clearly reflect income in accordance with chapter 57-38.1.

SECTION 4. Presumptions and burden of proof. A taxpayer and its affiliates are presumed to be a part of a unitary business and all income of that business is presumed to be apportionable business income except as otherwise provided in this Act. A taxpayer has the burden of proof regarding the issue of whether or not a corporation is a member of a water's edge combined group.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 703

HOUSE BILL NO. 1546
(Representative Haugen)
(Senator Dotzenrod)

REPLACEMENT FARM MACHINERY SALES TAX

AN ACT to amend and reenact subsection 3 of section 57-39.2-01 and subsection 4 of section 57-40.2-01 of the North Dakota Century Code, relating to the definitions of gross receipts and purchase price.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-39.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise. Provided, discounts for any purposes allowed and taken on sales are not included, nor is the sale price of property returned by customers when the full sale price is refunded either in cash or by credit. Provided, further, when tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to the sales tax imposed by this chapter when sold or will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, the credit or trade-in value allowed by the retailer are not gross receipts. Provided, further, on all sales of retailers, valued in money, when the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is to be extended over a period longer than sixty days from the date of sale that only the portion of the sale amount shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received

for the loss from an insurance company. The purchaser must provide the seller with a notarized statement from the insurance company verifying that the original farm machine is a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed. "Gross receipts" also means, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. For the purpose of this chapter, gross receipts shall also include the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.

SECTION 2. AMENDMENT. Subsection 4 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts and trade-ins allowed and taken on sales shall not be included. "Purchase price" shall also mean, in those instances where sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it shall be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. Where records are not kept as to the tonnage of sand or gravel severed from the soil it shall be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel shall be equal to one and one-half tons [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser must provide the seller with a notarized statement from the insurance company verifying that the original farm machine was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 704

HOUSE BILL NO. 1195
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

OUT-OF-STATE RETAIL SALES TAXES

AN ACT to amend and reenact subsection 8 of section 57-39.2-01 and subsection 6 of section 57-40.2-01 of the North Dakota Century Code, relating to collection of sales and use taxes by out-of-state retailers; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 8 of section 57-39.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; 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 chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the

* NOTE: Subsection 8 of section 57-39.2-01 was also amended by section 2 of Senate Bill No. 2557, chapter 687.

purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

SECTION 2. AMENDMENT. Subsection 6 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom he operates or from whom he obtains the tangible personal property sold by him, whether he is making sales in his own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard him as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on April 1, 1987.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 705

SENATE BILL NO. 2901
(Select Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)
(Approved by the Committee on Delayed Bills)

SALES, USE, AND MOTOR VEHICLE EXCISE TAX RATES INCREASED

AN ACT to amend and reenact sections 57-39.2-02.1, 57-39.2-03.2, 57-39.2-08.2, 57-40.2-02.1, and 57-40.3-02 of the North Dakota Century Code, relating to the rate of sales tax, use tax, and motor vehicle excise tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes and for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of ~~four~~ five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the state of North Dakota of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of gas, communication services, or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts

charged for participation in an amusement, entertainment, or athletic activity, and including the playing of any machine for amusement or entertainment in response to the use of a coin.

- d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
 - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
2. There is hereby imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within the state of North Dakota to consumers or users.
 3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to ~~April 1, 1983~~ December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 2. AMENDMENT. Section 57-39.2-03.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-03.2. Sales tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of ~~five~~ six percent on the gross receipts of retailers from all sales at retail of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

SECTION 3. AMENDMENT. Section 57-39.2-08.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-08.2. Sales tax to be added to purchase price and be a debt.

- 1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the 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 \$0.15	no tax
\$0.16 to \$0.31	1¢ tax
\$0.32 to \$0.51	2¢ tax
\$0.52 to \$0.71	3¢ tax
\$0.72 to \$1.00	4¢ tax
Each additional \$1.00 - 4¢ additional tax, or	
each additional 25¢ or fraction thereof over	
\$1.00 - 1¢ additional tax	
<u>\$0.16 through \$0.20</u>	<u>1¢ tax</u>
<u>\$0.21 through \$0.40</u>	<u>2¢ tax</u>
<u>\$0.41 through \$0.60</u>	<u>3¢ tax</u>
<u>\$0.61 through \$0.80</u>	<u>4¢ tax</u>
<u>\$0.81 through \$1.00</u>	<u>5¢ tax</u>
<u>Each additional \$1.00 - 5¢ additional tax, or</u>	
<u>each additional 20¢ or fraction thereof over</u>	
<u>\$1.00 - 1¢ additional tax.</u>	

- 2. On retail sales of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the 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 add to it three percent of such price or charge.

SECTION 4. AMENDMENT. Section 57-40.2-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-02.1. Use tax imposed.

- 1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes used for residential or business purposes and for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, an excise tax is

imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of ~~four~~ five percent of the purchase price of such property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of ~~four~~ five percent of the fair market value of such property at the time it was brought into this state.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of such mobile homes used for residential or business purposes and of such farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.
3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to ~~April 1, 1983~~ December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 5. AMENDMENT. Section 57-40.3-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 1986.

Approved December 5, 1986
Filed December 8, 1986

CHAPTER 706

HOUSE BILL NO. 1668
(Representatives Strinden, Mertens)
(Senators Heigaard, Holmberg)

SALES TAX INCREASE EMERGENCY

AN ACT to create and enact section 7 to Senate Bill No. 2901, as approved by the fiftieth legislative assembly, which relates to the rate of the sales tax, use tax, and motor vehicle excise tax, and declaring that Act to be an emergency measure; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 7 to Senate Bill No. 2901, as approved by the fiftieth legislative assembly, is hereby created and enacted to read as follows:

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 4, 1987
Filed March 4, 1987

CHAPTER 707

SENATE BILL NO. 2406
(Satrom)

COIN-OPERATED AMUSEMENT TAXATION

AN ACT to amend and reenact subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, relating to imposition of sales taxes on gross receipts from the playing of any machine for amusement or entertainment in response to the use of a coin.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes and for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the state of North Dakota of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of gas, communication services, or steam other than steam used for processing agricultural products.

* NOTE: Section 57-39.2-02.1 was also amended by section 3 of Senate Bill No. 2557, chapter 687.

- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

Approved April 4, 1987

Filed April 6, 1987

CHAPTER 708

HOUSE BILL NO. 1337
(Moore, Dorso)

CONTRACTORS' SALES TAX RATE

AN ACT to amend and reenact subsection 3 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, relating to the rate of sales or use tax which applies to contractors; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 19, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date ~~of contract~~ the bid was submitted.

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective to January 1, 1987.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 709

SENATE BILL NO. 2077
(Legislative Council)
(Interim Taxation Committee)

**SALES OF EXEMPT GROUPS IN COMPETITION
WITH RETAILERS**

AN ACT to amend and reenact subsections 4 and 24 of section 57-39.2-04 of the North Dakota Century Code, relating to limitations upon exemptions of certain sales from sales taxes when in competition with retailers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 24 of section 57-39.2-04 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. 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, unless the activities are held in a publicly owned facility, where the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15-29-13. This exemption does not apply to regular retail sales that are in direct competition with retailers.
24. Gross receipts from all sales ~~otherwise taxable under this chapter~~ when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, or intermediate care facility licensed by the state department of health, and boarding homes for the aged and infirm licensed by the department of human services.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 710

HOUSE BILL NO. 1399
(Representatives Belter, Kent)
(Senators Nelson, Dotzenrod)

ADJUVANT SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 8 of section 57-39.2-04 and subsection 9 of section 57-40.2-04 of the North Dakota Century Code, relating to the sales and use tax exemption for adjuvants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 57-39.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Gross receipts from sales of adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

SECTION 2. AMENDMENT. Subsection 9 of section 57-40.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. ~~Commercial~~ Adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 711

**HOUSE BILL NO. 1561
(O. Hanson)**

CHURCH SUPPER SALES TAXES

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for gross receipts from an annual church supper or bazaar held in a publicly owned facility.

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

SECTION 1. A new subsection to section 57-39.2-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from sales of tickets or admissions to, or sales made at, an annual church supper or bazaar held in a publicly owned facility. For purposes of this subsection, "annual" means occurring not more than once in any calendar year.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 712

SENATE BILL NO. 2263
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

FOOD STAMP EXEMPTION

AN ACT to amend and reenact section 57-39.2-04.1, subsection 2 of section 57-39.2-11, subsection 2 of section 57-39.2-12.1, section 57-40.2-04.1, and subsection 2 of section 57-40.2-07.1 of the North Dakota Century Code, relating to the tax commissioner's authority to change filing requirements, nonavailability of compensation for administrative expenses, deduction for administrative expenses for filing sales and use tax returns, and sales and use tax exemption for food and food products purchased with food coupons issued by the United States department of agriculture.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-04.1. Sales tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human consumption of food and food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products when purchased by consumers for consumption off the premises where purchased, shall be exempt from the sales tax imposed by this chapter. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts. Beginning on October 1, 1987, food or food products purchased for human consumption with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as

amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.

SECTION 2. AMENDMENT. Subsection 2 of section 57-39.2-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner, if he deems it necessary or advisable in order to ensure the payment of the tax imposed by this chapter, or if he deems it practical, may require returns and payment of the tax to be made for annual periods or other than quarterly or monthly periods; the provisions of this chapter to the contrary notwithstanding. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is not allowed under this section unless the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07.

SECTION 3. AMENDMENT. Subsection 2 of section 57-39.2-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed two hundred fifty dollars per quarterly period eighty-five dollars per month for permitholders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner.

SECTION 4. AMENDMENT. Section 57-40.2-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-04.1. Use tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human consumption of food and food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products when purchased by consumers for consumption off the premises where purchased, shall be exempt from the use tax imposed by chapter 57-40.2. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

Beginning on October 1, 1987, food or food products purchased for human consumption with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.

SECTION 5. AMENDMENT. Subsection 2 of section 57-40.2-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed two hundred fifty dollars per quarterly period eighty-five dollars per month for permitholders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 713

SENATE BILL NO. 2441
(Senator Richard)
(Representatives P. DeMers, Wilkie)

ALCOHOLIC BEVERAGE SALES TAX

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to inclusion of the sales taxes on sales of alcoholic beverages in the purchase price of the alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sales tax on alcoholic beverages may be included in purchase price. Notwithstanding any other provision of law, the taxes imposed by this chapter upon the gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or for consumption off the premises, may be included in the purchase price of the alcoholic beverages.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 714

SENATE BILL NO. 2385
(Senator Richard)
(Representative Brokaw)

BIENNIUM-ENDING SALES TAX RETURNS

AN ACT to amend and reenact subsection 1 of section 57-39.2-12 of the North Dakota Century Code, relating to the due date of the last sales and use tax return for the 1987-1989 biennium.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The tax levied under this chapter shall be due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter shall be payable monthly on or before the last day of the next succeeding month, except tax collected during May ~~1987~~ 1989 is payable on or before the twenty-second day of June ~~1987~~ 1989. The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due shall be those prescribed in section 57-39.2-18. If the total of sales subject to such taxes decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer shall return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax shall become due immediately prior to the sale or discontinuance of such business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided in section 57-39.2-18.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 715

SENATE BILL NO. 2555

(Ingstad)

(Approved by the Committee on Delayed Bills)

OUT-OF-STATE BUSINESS TAXATION

AN ACT to amend and reenact subsection 7 of section 57-40.2-01 of the North Dakota Century Code, relating to imposition of use taxes on the gross receipts from sales in this state by a person who engages in regular or systematic solicitation of sales of tangible personal property in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Retailer maintaining a place of business in this state", or any like term, shall mean any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system for the purpose of effecting retail sales of tangible personal property.

Approved April 21, 1987

Filed April 22, 1987

CHAPTER 716

SENATE BILL NO. 2556
(Heigaard)
(Approved by the Committee on Delayed Bills)

ALCOHOL USE TAX RATE

AN ACT to amend and reenact section 57-40.2-03.2 of the North Dakota Century Code, relating to the rate of use tax on alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-03.2. Use tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of five six percent on the storage, use, or consumption in this state of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 717

SENATE BILL NO. 2215
(Committee on Finance and Taxation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE EXCISE TAX DEFINITIONS

AN ACT to create and enact three new subsections to section 57-40.3-01 of the North Dakota Century Code, relating to definitions of vehicles for purposes of the motor vehicle excise tax; and to amend and reenact subsection 1 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of motor vehicle for purposes of motor vehicle excise tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 57-40.3-01 of the North Dakota Century Code are hereby created and enacted to read as follows:

"All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of six hundred pounds [272.15 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

"Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by skis or runners.

"Travel trailer" means a mobile home or house trailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people.

SECTION 2. AMENDMENT. Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Motor vehicle" ~~shall include~~ includes every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and every trailer, and semitrailer, all-terrain vehicle, snowmobile, and travel trailer for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, but not including housetrailers, or mobile homes.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 718

SENATE BILL NO. 2299
(Senator Nalewaja)
(Representative Skjerven)

MOTOR VEHICLE PURCHASER'S CERTIFICATE

AN ACT to create and enact a new section to chapter 57-40.3 of the North Dakota Century Code, relating to a statement of purchase price and trade-in allowance for motor vehicles which must be furnished by a seller of a motor vehicle; and to amend and reenact section 57-40.3-05 of the North Dakota Century Code, relating to the motor vehicle purchaser's certificate which must be furnished to the motor vehicle registrar in transferring title to a motor vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.3-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-05. Purchaser to furnish motor vehicle purchaser's certificate to registrar. Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife, parent or child, or from a brother or sister shall complete a motor vehicle purchaser's certificate in such form and manner as may be prescribed by the registrar, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance and description of the trade-in, if any, whether the vehicle was the subject of a gift, and any other information that the registrar may require. If the motor vehicle was the subject of a sale, the purchaser must, upon request of the motor vehicle department, also attach to the motor vehicle purchaser's certificate a copy of the seller's certificate required under section 2 of this Act.

SECTION 2. A new section to chapter 57-40.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Seller to furnish motor vehicle seller's certificate to purchaser. Any person selling a motor vehicle must, upon request of the motor vehicle department, provide a motor vehicle seller's

certificate to the purchaser showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, and the trade-in allowance and description of the trade-in, if any. Every licensed vehicle dealer, at the time of sale of a motor vehicle, must complete that portion of a motor vehicle purchase certificate relating to the full purchase price of the vehicle and any allowance for a trade-in.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 719

HOUSE BILL NO. 1548
(Representatives Graba, Haugen, Haugland)
(Senators Yockim, Wright)

AIRCRAFT EXCISE TAX

AN ACT to amend and reenact sections 57-40.5-01, 57-40.5-02, and 57-40.5-03 of the North Dakota Century Code, relating to the definition of purchase price of aircraft, increasing the rate of tax, and removing the exemption for aircraft upon which aircraft excise tax has once been paid; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.5-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.5-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Aircraft" includes airplanes, helicopters, manned balloons, and ultralight vehicles.
2. "Director" means the director of aeronautics.
3. "Purchase price" means the total amount paid for the aircraft whether paid in money or otherwise, provided, however, that when an aircraft or a motor vehicle that will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, is taken in trade on an aircraft taxable under this chapter, the trade-in value allowed by the person selling the aircraft must be deducted from the selling price to establish the purchase price of the aircraft being sold and the trade-in allowance allowed by the seller on an aircraft accepted as a trade-in constitutes the purchase price of an aircraft. "Purchase price" also means the fair market value when no current purchase is involved and the aircraft is moved by the owner or user from any other state into this state and on

which no sales, use, or excise tax was paid by the owner or user to any other state, or on which a sales, use, or excise tax was paid by the owner or user to another state which does not have reciprocity with this state, and for which aircraft registration is required by section 2-05-11 or registration and licensing required is by section 2-05-18. If tangible personal property that is subject to a sales or a use tax imposed by chapter 57-39-2 or chapter 57-40-2 when sold or used is taken in trade as part payment on an aircraft taxable under this chapter, no credit or trade-in value shall be allowed by the person selling the aircraft in determining the tax imposed by this chapter. The excise tax imposed by this chapter is a one-time tax on the full purchase price with no allowance for personal property trade-in credit, whether the aircraft is purchased or acquired in or outside of the state of North Dakota. After the first taxable sale no additional excise tax shall be imposed upon the sale or transfer of ownership of the aircraft to any purchaser in the state regardless of the number of sales or purchases of the aircraft in the state. The aeronautics commission shall maintain records of all first-time excise taxes paid on all aircraft purchased or acquired for the first time on and after January 1, 1984. If an aircraft is purchased by a person who has paid the one-time excise tax and who has had an aircraft stolen or destroyed, a credit must be allowed in the amount the purchaser has paid in tax on the stolen or destroyed aircraft. The purchaser must provide the director with a notarized statement from the insurance company verifying the fact that the original aircraft was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of registration for the replacement aircraft. In instances in which a licensed aircraft dealer or established fixed base aviation operator located at an airport open for public use and approved by the aeronautics commission, places into service a new or used aircraft for the purpose of renting, leasing, or dealership or fixed base aviation operator utility service, the reasonable value of the new or used replacement aircraft shall be included as a trade-in value if the new or replacement aircraft is properly registered with the aeronautics commission. "Purchase price" in those instances where the aircraft is acquired by gift or other transfer for a nominal or no monetary consideration, also includes the average value of similar aircraft, established by standards as determined by the director. "Purchase price" in those instances where an aircraft is manufactured by a person who registered it under the laws of this state, means the manufactured cost of such aircraft and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual

expenditures for the manufacture of a part or all of the aircraft, manufactured cost means the reasonable value of the completed aircraft, as determined by the director.

4. "Purchaser" means any person owning or in possession of an aircraft who makes application to the director for registration of such aircraft.
5. "Sale", "sells", "selling", "purchase", or "acquired" includes any transfer of title or ownership of an aircraft by way of gift, exchange, barter, or by any other manner for or without consideration.
6. "Use" means the exercise by any person of any right incident to ownership of an aircraft, except that it does not include the sale or holding for sale of such an aircraft in the regular course of business.

SECTION 2. AMENDMENT. Section 57-40.5-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.5-02. Tax imposed. There is imposed an excise tax at the rate of ~~four~~ five percent on the purchase price of any aircraft purchased or acquired either in or outside of the state of North Dakota or on the lease or rental cost of any aircraft, less fuel, if rented dry and required to be registered under the laws of this state, except on aircraft or helicopters designed or modified for exclusive use as agricultural aircraft for aerial application of agricultural chemicals, insecticides, fungicides, growth regulators, pesticides, dusts, fertilizer, or other agricultural materials, the excise tax is imposed at the rate of three percent on the purchase price of any such aircraft purchased or acquired in or outside of this state, including the leasing or renting of such agricultural aircraft to users for agricultural purposes.

SECTION 3. AMENDMENT. Section 57-40.5-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Aircraft upon which the excise tax imposed by this chapter has been paid once on the purchase price with no trade-in of aircraft or other property allowed, whether such aircraft is purchased or acquired in or outside of this state, shall be exempt from any additional excise tax upon the sale or transfer of such aircraft to any purchaser in this state regardless of the number of sales or purchasers of such aircraft that may take place within the state. The aeronautics commission shall maintain records of all

~~first-time excise tax paid on all aircraft purchased or acquired for the first time on and after January 1, 1984.~~

- ~~2-~~ 2. Aircraft acquired by disabled veterans as defined by the provisions of Public Law No. 79-663 [38 U.S.C. 1901]. This exemption shall be allowed only with respect to one aircraft owned by any disabled veteran.
- ~~3-~~ 2. Any aircraft owned by or in possession of the federal or state government or any of the political subdivisions, departments, agencies, or institutions thereof.
- ~~4-~~ 3. Aircraft which were previously titled or registered in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; the transfer of aircraft by gift, inheritance, or devise between a husband and wife, parent and child, or brothers and sisters; and the transfer of aircraft to reflect a new name of the owner caused by a business reorganization, if the ownership of the business organization remains in the same person or persons as prior to the reorganization.
- ~~5-~~ 4. Aircraft transferred between a lessee and lessor, if the lessee has been in continuous possession of the aircraft for a period of one year or longer, and if the lessor has paid either the tax imposed under this chapter at the time of registering the aircraft in this state or the use tax imposed by chapter 57-40.2.
- ~~6-~~ 5. Aircraft acquired by any parochial or private nonprofit school. To qualify, a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance. The aircraft is not to be used for commercial activities.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on April 1, 1987.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 720

SENATE BILL NO. 2045
(Legislative Council)
(Interim Government Administration Committee)

EMERGENCY SERVICES COMMUNICATION

AN ACT to create an emergency services communication system advisory committee for 911 telephone systems; and to amend and reenact section 57-40.6-05 of the North Dakota Century Code, relating to the use of the emergency services telephone access lines excise tax; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Governor to appoint an emergency services communication system advisory committee - Standards and guidelines - Report.

1. The governor shall appoint a nine-member emergency services communication system advisory committee for 911 telephone systems. For purposes of this section, "emergency services communication system" has the same meaning as that term is defined in section 57-40.6-01. The governor shall include, on the advisory committee, one representative from the rural telephone companies, one representative from the commercial telephone companies, one representative from the North Dakota league of cities, one representative from the association of counties, one representative from the office of management and budget, one representative from the North Dakota peace officers association, one representative from the fire chiefs association, one representative from the department of human services, and one representative from the state radio communications' office. Members' terms shall be for three years and subject to reappointment. The committee shall name a chairman and a vice chairman from its membership, and the state radio communications office shall provide staff services to the advisory committee. Advisory committee members are entitled to travel expense reimbursement from the state radio communications office. Reimbursement shall be at the same rates and in the same manner as provided for state employees.

2. The advisory committee with the assistance of the state radio communications office shall establish standards and guidelines for the development and operation of emergency 911 telephone systems that utilize a county rural numbering system to identify the sections, townships, and quarters, and the farms, residences, businesses, or buildings in a counterclockwise rotation around each quarter. The standards and guidelines are to establish the level of emergency 911 telephone system services to be provided and the uniformity and compatibility of emergency 911 telephone systems in the state. The standards must require that systems installed after July 1, 1987, must identify the emergency caller's location.
3. The advisory committee shall prepare, each biennium, a report on its work for submission to the governor and the legislative assembly.

SECTION 2. AMENDMENT. Section 57-40.6-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.6-05. Restriction on use of tax proceeds. The county or city may not use the proceeds of the tax imposed under section 57-40.6-02 for any purpose other than establishing or operating the emergency services communication system in accordance with the standards and guidelines established by the emergency services communication advisory committee.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 721

HOUSE BILL NO. 1481
(Dorso)

IMPORTER FOR USE TAX ADMINISTRATION

AN ACT to amend and reenact subsection 3 of section 57-43.1-01, sections 57-43.1-35, 57-43.1-42, 57-43.1-43, subsection 5 of section 57-43.2-01, and sections 57-43.2-28, 57-43.2-35, and 57-43.2-36 of the North Dakota Century Code, relating to the definition of importer for use, importer for use tax credits, reports, and payments for motor vehicle fuels and special fuels taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-43.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and having two axles and a weight exceeding twenty-six thousand pounds [1179.3401 kilograms] or having three or more axles regardless of weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.

SECTION 2. AMENDMENT. Section 57-43.1-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-35. Exemptions. The tax levied under section 57-43.1-33 does not apply to fuel imported into and used in this state in:

1. Operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons for purposes other than for hire or compensation.
2. Operating a motor vehicle having a motor fuel supply tank or tanks with an aggregate capacity of not more than thirty-five gallons (132.48 liters) if such vehicle is not being used as a common or contract carrier of persons or property or as a private commercial carrier of property.
3. Operating vehicles of the government of the United States or any of its agencies, any state, or any political subdivision of any state, provided no exemption of the tax levied by section 57-43.1-33 may be construed as an exemption from any other tax levied by law.

SECTION 3. AMENDMENT. Section 57-43.1-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-42. Credit for North Dakota purchases - Refunds. If the ~~credit for~~ tax paid on fuel purchased or acquired by the importer for use from sources within this state for the propulsion of motor vehicles exceeds the tax which ~~would apply~~ applies to fuel used for the propulsion of motor vehicles on the public highways of this state, the excess ~~credit must tax paid on the fuel~~ may be refunded, or ~~credit applied for the amount against any subsequent tax return~~ the amount may be carried over as a credit against a subsequent tax liability. The importer for use may carry the credit on subsequent tax reports for a period not to exceed eight consecutive calendar quarters.

SECTION 4. AMENDMENT. Section 57-43.1-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-43. Importer for use tax ~~administration, reports, payments, records, refunds, penalties, disposition of funds, audits, and assessments.~~

1. ~~Importer~~ Importers for use tax ~~must be reported, paid, collected, refunded, and administered and importers for use are subject to the same penal provisions, and shall file a quarterly tax return with the commissioner on forms prescribed by the commissioner to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to record keeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.~~

2. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.1-17.

SECTION 5. AMENDMENT. Subsection 5 of section 57-43.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and having two axles and a weight exceeding twenty-six thousand pounds [1179.3401 kilograms] or having three or more axles regardless of weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.

SECTION 6. AMENDMENT. Section 57-43.2-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-28. Exemptions. The tax levied under section 57-43.2-26 does not apply to fuel imported into and used in this state in:

1. Operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons for purposes other than for hire or compensation.
2. Operating a motor vehicle having a motor fuel supply tank or tanks with an aggregate capacity of not more than thirty-five gallons {132.48 liters} if such vehicle is not being used as a common or contract carrier of persons or property or as a private commercial carrier of property.
3. Operating vehicles of the government of the United States or any of its agencies, any state, or any political subdivision of any state provided no exemption of the tax levied by section 57-43.2-26 may be construed as an exemption from any other tax levied by law.

SECTION 7. AMENDMENT. Section 57-43.2-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-35. Credit for North Dakota purchases - Refunds. If the ~~credit for~~ tax paid on fuel purchased or acquired by the importer for use from sources within this state for the propulsion of motor

vehicles exceeds the tax which would apply applies to fuel used for the propulsion of motor vehicles on the public highways of this state, the excess credit must tax paid on the fuel may be refunded, or credit applied for the amount against any subsequent tax return the amount may be carried over as a credit against a subsequent tax liability. The importer for use may carry the credit on subsequent tax reports for a period not to exceed eight consecutive calendar quarters.

SECTION 8. AMENDMENT. Section 57-43.2-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-36. Importer for use tax administration reports, payments, records, refunds, penalties, disposition of funds, audits, and assessments.

1. ~~Importer~~ Importers for use tax must be reported, paid, collected, refunded, and administered and ~~importers for use~~ are subject to the same penal provisions, and shall file a quarterly tax return with the commissioner on forms prescribed by the commissioner to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to record keeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.
2. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 722

HOUSE BILL NO. 1290
(A. Hausauer)

COMPRESSED NATURAL GAS SALES

AN ACT to create and enact a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definition of "special fuel wholesaler"; and to amend and reenact subsection 2 of section 23-13-01, subsections 3 and 4 of section 23-13-02.1, sections 57-43.2-05, 57-43.2-06, 57-43.2-07, 57-43.2-08, 57-43.2-09, 57-43.2-10, 57-43.2-11, 57-43.2-22, 57-43.2-23, and 57-43.2-24 of the North Dakota Century Code, relating to the definitions of "filling stations," "self-service motor fuel dispensing facility," and "self-service motor fuel dispensing unit" and administration and imposition of special fuels taxes regarding compressed natural gas and special fuel wholesalers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Filling station" shall mean all places of whatever character or description where gasoline ~~or~~, other inflammable liquids, or compressed natural gas are sold at retail for use in motor vehicles.

SECTION 2. AMENDMENT. Subsections 3 and 4 of section 23-13-02.1 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. "Self-service motor fuel dispensing facility" means any business establishment which offers for sale at retail prices motor fuels or compressed natural gas which are dispensed from self-service motor fuel or compressed natural gas dispensing units.
4. "Self-service motor fuel dispensing unit" means any system, device, or pump for dispensing motor fuels or compressed natural gas into the fuel tanks of motor

vehicles which is intended to be operated by the purchaser of such motor fuel or compressed natural gas, except that such term does not include any system, device, or pump which is coin-operated or currency-operated.

SECTION 3. A new subsection to section 57-43.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.

SECTION 4. AMENDMENT. Section 57-43.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-05. Special fuel wholesaler's or dealer's license required. No person may act as a special fuel wholesaler or dealer in this state unless that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by the commissioner. Application for a special fuel wholesaler's or dealer's license shall be made to the commissioner and a separate license is required for each separate place of business or location where special fuels are regularly sold, delivered, or placed into the tanks of bulk supply vehicles for delivery into supply tanks of special fuel users. The application must be filed upon a form prepared and furnished by the commissioner and shall contain such information as the commissioner requires.

SECTION 5. AMENDMENT. Section 57-43.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-06. License, fee, and bond. No person may act as a special fuel wholesaler or dealer in this state unless the person complies with the provisions of sections 57-43.2-05, 57-43.2-07, 57-43.2-08, and 57-43.2-09.

SECTION 6. AMENDMENT. Section 57-43.2-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-07. Special fuel wholesaler's or dealer's bond.

1. Except as provided in this section, no special fuel wholesaler's or dealer's license shall be issued to any person or continued in force unless the person has furnished a surety bond in the form and amount as the commissioner requires, but not less than five hundred dollars, to secure his compliance with this chapter and

the payment of all taxes, interest, and penalties due or to become due.

2. The commissioner may waive the filing of a bond if, upon investigation, it is found that the bond may be waived without impairing or jeopardizing the revenue collections of this state, or in lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold at public or private sale, without notice to the depositor, if it becomes necessary in order to recover any tax, penalties, or interest due. The commissioner shall pay all moneys deposited as security with the commissioner under the provisions of this subsection to the state treasurer who shall credit them into a special fund to be known as the "special fuels tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, by the person depositing moneys with the tax commissioner as security for the payment of tax, penalty, or interest imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the tax, penalty, and interest due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the person.

SECTION 7. AMENDMENT. Section 57-43.2-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-08. Issuance of licenses - Fees. Upon receipt of the application and bond in proper form and upon the payment by the applicant of a special fuel wholesaler's or dealer's license fee of ten dollars, the commissioner shall issue to the applicant a license to act as a special fuel wholesaler or dealer. The commissioner may refuse to issue a special fuel wholesaler's or dealer's license to any person who formerly held such a license but which was revoked prior to the time of filing the application, or who is a subterfuge for the real party of interest whose license prior to the time of filing of the application has been revoked, or upon other sufficient cause being shown. Before such refusal the commissioner shall grant the applicant a hearing and give the applicant at least ten days' written notice of the time and place of hearing. Each special fuel wholesaler's or dealer's license is valid until suspended or revoked for cause or otherwise canceled. No special fuel wholesaler's or dealer's license is transferable.

SECTION 8. AMENDMENT. Section 57-43.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-09. Revocation, cancellation, and surrender of license and bond. The commissioner may revoke the license of any special fuel wholesaler or dealer for reasonable cause. Before revoking any license the commissioner shall notify the licensee to show cause within fifteen days of the date of the notice why such license should not be revoked. Any time prior to and pending hearing the commissioner may, in the exercise of reasonable discretion, suspend the license. The commissioner shall cancel any license to act as a special fuel wholesaler or dealer immediately upon the surrender of the license by the holder.

SECTION 9. AMENDMENT. Section 57-43.2-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-10. Special fuel wholesaler's or dealer's records. For each location where special fuel is sold or delivered to any special fuel dealer or user the special fuel wholesaler or dealer making the sale or delivery shall prepare and maintain such records as the commissioner may reasonably require with respect to all sales and deliveries, and with respect to inventories, receipts, purchases, sales, or other dispositions of special fuel. The records required under this section must be retained for a minimum period of three years and must be available at all reasonable times for examination by the commissioner.

SECTION 10. AMENDMENT. Section 57-43.2-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-11. Records and returns - Penalties and interest - Powers of commissioner.

1. A special fuel dealer shall keep such records and make such monthly returns and payments of the tax to the commissioner, in the manner, at the time, and pursuant to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The commissioner may require returns and payments of the tax to be made for other than monthly periods.
2. For failure or refusal to keep such records, file returns and make payments of the tax to the commissioner as provided in this chapter, a special fuel dealer is subject to the penalties and interest as provided in this chapter.
3. The commissioner, for good cause shown, may waive the penalty for failure or refusal to file a return within the time required by this chapter or grant a reasonable extension of time for filing such a return. The

commissioner may revoke the license of any special fuel dealer under the conditions and after notice as provided in section 57-43.2-09; assess deficiencies in the tax; determine the tax when returns are not filed as required by this chapter; and permit credit for or authorize refund of erroneously or illegally collected taxes, penalties, or interest imposed by this chapter from undistributed funds received under this chapter, all in the manner and to the same extent as provided in sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20.

4. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter, and may examine the records of special fuel wholesalers or dealers and special fuel users and make such investigations as are deemed necessary in the administration and enforcement of this chapter.
5. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

SECTION 11. AMENDMENT. Section 57-43.2-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-22. Rules - Administration. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter for special fuel wholesalers or dealers and special fuel users. The commissioner may audit and examine the records of special fuel wholesalers or dealers and special fuel users and make other investigations as the commissioner deems necessary in the administration and enforcement of this chapter. If upon audit, examination, or investigation the commissioner finds additional taxes are due, the commissioner may assess the additional taxes, and the penalty and interest must be added as provided in section 57-43.2-15.

SECTION 12. AMENDMENT. Section 57-43.2-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-23. Violations. No person may:

1. Refuse or knowingly or intentionally fail to make and file any statement required by this chapter in the manner or within the time required.
2. Knowingly, or with intent to evade or aid in the evasion of the tax imposed by this chapter, make any false statement or conceal any material fact in any record, return, or affidavit provided for in this chapter.

3. Conduct any activities requiring a license under this chapter without the license or after the license has been surrendered, canceled, or revoked.
4. Assign or attempt to assign a license to act as a special fuel wholesaler or dealer.
5. Receive special fuel in this state into the tanks of a motor vehicle or into supply tanks for eventual use in a motor vehicle upon the highways of this state from a person not holding a valid license as a special fuel dealer.
6. Fail to keep and maintain books, records, or metering devices that are required by this chapter.

SECTION 13. AMENDMENT. Section 57-43.2-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-24. Penalties. Any person violating any provision of this chapter is guilty of a class B misdemeanor. The commissioner shall revoke for a period of not less than one year the special fuel wholesaler's or dealer's license of any special fuel wholesaler or dealer convicted of violating this chapter.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 723

HOUSE BILL NO. 1193
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

GROSS PRODUCTION TAX APPORTIONMENT

AN ACT to amend and reenact section 57-51-15 of the North Dakota Century Code, relating to apportionment of proceeds from the oil and gas gross production tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-15. Apportionment and use of proceeds of tax. The gross production tax provided for in this chapter shall be apportioned as follows:

1. First an amount equal to one percent of the gross value at the well of the oil and gas upon which a tax is collected under this chapter shall be deposited with the state treasurer, who shall distribute credit the revenues in the following manner:
 - a. For taxes received between July 1, 1981, and June 30, 1983:
 - (1) The treasurer shall first distribute an amount which, when added to that distributed to townships from nonrefunded motor vehicle fuel and special fuel taxes under section 57-43-1-03, will result in a total distribution to townships under these two sections of eight million dollars for the 1981-83 biennium. The same distribution formula shall be used for moneys allocated to townships under this section as under 57-43-1-03,
 - (2) The treasurer shall next distribute an amount which, when added to the sum distributed under paragraph 1, does not exceed thirty-two million dollars for the 1981-83 biennium, to the highway

tax distribution fund established under section 54-27-19, and

- (3) The treasurer shall finally distribute any amount over thirty-two million dollars generated by this subsection for the 1981-83 biennium to the state general fund.
- b. For any taxes received after June 30, 1983, all revenues shall be credited to the state general fund.
2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county shall be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The second one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county shall be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above two million dollars from oil or gas produced in any county shall be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county shall be entitled pursuant to this subsection shall be limited based upon the population of the county according to the last official decennial federal census as follows:
- a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year.
 - b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year.
 - c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year.
- Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c shall be deposited instead in the state's general fund.
3. Forty-five percent of all revenues as may be by the legislative assembly be allocated to any county hereunder shall be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county shall be apportioned by the county treasurer quarterly to school districts within the county

on the average daily attendance distribution basis, as certified to him by the county superintendent of schools. However, no school district shall receive in any single academic year an amount under this subsection greater than the county average per-pupil cost multiplied by seventy percent, then multiplied by the number of pupils in average daily attendance or the number of children of school age in the school census for the county whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county shall be entitled to one hundred twenty percent of the county average per-pupil cost multiplied by number of pupils in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share shall be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder shall be paid quarterly by the county treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city shall receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation shall be deposited instead in the county general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section shall be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city shall be included by adding the months all such employees were employed during the prior year and dividing by twelve.

- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city shall be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually shall be included by taking the smaller of either of the following:
 - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 724

SENATE BILL NO. 2079
(Legislative Council)
(Interim Taxation Committee)

OIL EXTRACTION TAXES AND EXEMPTIONS

AN ACT to amend and reenact subsections 4 and 5 of section 38-08-04, and sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to the duties of the industrial commission, the definitions of stripper well property, qualifying secondary recovery project, and qualifying tertiary recovery project for oil extraction purposes, the definition of average price, the rate of the oil extraction tax, and exemption from the oil extraction tax; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 38-08-04 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, ~~and~~ to classify and determine the status and depth of wells that are stripper well property as defined in subsection 5 8 of section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations under section 2 of this Act, and the date of qualification for the reduced rate of oil extraction tax for secondary and tertiary recovery operations.
5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and of subsections ~~1 and, 4, 5, 6, and 8~~ 1 and, 4, 5, 6, and 8 of section 57-51.1-01.

SECTION 2. AMENDMENT. Section 57-51.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-01. Definitions for oil extraction tax. For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period; and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.
2. "Average price" of a barrel of crude oil means the average daily price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the wall street journal, midwest edition, for the period June first through October thirty-first of any year.
3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
- 3- 4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the ~~appropriate governmental regulatory authority~~ industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.
5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission, the project must have been unitized after the effective date of this Act, and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations.
6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
 - a. Miscible fluid displacement.

- b. Steam drive injection.
- c. Microemulsion.
- d. In situ combustion.
- e. Polymer augmented water flooding.
- f. Cyclic steam injection.
- g. Alkaline flooding.
- h. Carbonated water flooding.
- i. Immiscible carbon dioxide displacement.
- j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations.

- 4- 7. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.
- 5- 8. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet or less, fifteen barrels per day for wells of a depth of more than six thousand feet but not more than ten thousand feet, and twenty barrels per day for wells of a depth of more than ten thousand feet during any preceding consecutive twelve-month period beginning after December 31, 1972. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

SECTION 3. AMENDMENT. Section 57-51.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted shall be deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax shall be six and one-half percent of the gross value at the well of the oil extracted, except that for wells drilled and completed after the effective date of this Act, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project, the rate of tax shall be four percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more then the rate of tax for the following calendar year on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted.

*** SECTION 4. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. The activity not otherwise exempt of extracting from the earth the oil that is owned by a royalty owner or royalty owners in the first one hundred barrels, or any lesser amount, of the average daily production of oil that is produced during each calendar day from any well. For a well drilled and completed after the effective date of this Act, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state, except the portion of the amendment to

*** NOTE:** Section 57-51.1-03 was also amended by section 1 of Senate Bill No. 2078, chapter 725. subsection 3 of section 57-51.1-03 relating to removal of the oil extraction tax exemption for oil owned by a royalty owner becomes effective July 1, 1987.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 725

SENATE BILL NO. 2078
(Legislative Council)
(Interim Taxation Committee)

ROYALTY OWNERS' EXTRACTION TAX EXEMPTION

AN ACT to amend and reenact section 57-51.1-03 of the North Dakota Century Code, relating to removal of the royalty owners' exemption from the oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
- 3- The activity not otherwise exempt of extracting from the earth the oil that is owned by a royalty owner or royalty owners in the first one hundred barrels, or any lesser amount, of the average daily production of oil that is produced during each calendar day from any well-

Approved April 7, 1987
Filed April 9, 1987

* NOTE: Section 57-51.1-03 was also amended by section 4 of Senate Bill No. 2079, chapter 724.

CHAPTER 726

HOUSE BILL NO. 1313
(Anderson)

MOBILE HOME TAX DELINQUENCY AND REFUNDS

AN ACT to amend and reenact sections 57-55-03 and 57-55-04.1 of the North Dakota Century Code, relating to delinquent mobile home taxes, and the time for filing claims for refund of mobile home taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-55-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-03. When taxes become due and delinquent - Penalty.

1. a. The tax imposed in this chapter ~~shall become~~ is due and payable on January tenth of each year or ten days after ~~such~~ the mobile home is purchased or first moved into this state. If the tax due for the entire year is paid in full by February fifteenth, the county treasurer shall allow a five percent discount.
- b. If a mobile home is purchased or moved into this state after January tenth and if the tax imposed by this chapter is paid in full within ten days after the mobile home is purchased or moved into this state, the county treasurer shall allow a five percent discount. However, if the tax is not paid within forty days it is subject to a penalty and interest. The penalty is one percent of the tax. The interest is one-half percent of the tax for each full and fractional month of delay.
2. The Except as provided in subdivision b of subsection 1, the tax imposed by this chapter may be paid in two equal installments if the amount of the tax due is forty dollars or more. The first installment is due on January tenth and becomes delinquent on March first and is then subject to a penalty of two percent, and on April first an

additional penalty of two percent, and on May first an additional penalty of two percent, and on June first an additional penalty of two percent. The second installment is due June first and is delinquent on July first and is then subject to a penalty of two percent, and on August first an additional penalty of two percent, and on September first an additional penalty of two percent, and on October first an additional penalty of two percent. If any tax remains due after January first of the next year, interest is due at the monthly rate of one-half percent of the tax due for each month or fraction of a month until the tax and penalties have been paid in full.

SECTION 2. AMENDMENT. Section 57-55-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-04.1. Procedure for abatement, refund, or compromise of tax. Any person having any estate, right, title, or interest in or lien upon any mobile home which has been assessed for taxation purposes pursuant to this chapter may apply for abatement, refund, or compromise, as the case may be, pursuant to chapter 57-23. The application shall be made in writing on the form prescribed by the tax commissioner and shall be filed in triplicate with the county auditor of the county where the mobile home was assessed ~~within six months after the tax imposed by this chapter becomes due, or at any time during the taxable year that a mobile home qualifies under the provisions of section 57-55-10.~~ The county auditor shall promptly serve the county director of tax equalization with one copy of the application. The abatement or compromise shall be granted by the county commissioners if the facts upon which the application is based establish that the assessment contains error, or that the value placed upon the mobile home by the county director of tax equalization was excessive, or that the mobile home is exempt from taxation pursuant to section 57-55-10. The decision of the county commissioners may be appealed in the manner provided by law.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 727

HOUSE BILL NO. 1568
(Knell, Gunsch)

MOBILE HOME MOVING PERMITS

AN ACT to amend and reenact subsection 2 of section 57-55-11 of the North Dakota Century Code, relating to mobile home moving permits; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-55-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Before a mobile home is moved from its existing location, the owner must have a current year's mobile home a moving permit or a tax release statement must be obtained by the owner from the county director of tax equalization indicating that all taxes, penalties, and interest levied against the mobile home have been paid. While the mobile home is being transported, a the moving permit must be displayed on the rear of the mobile home or the owner must provide the mover with a current tax release statement. A violation of. Any person who violates this provision shall constitute is guilty of an infraction, but the minimum penalty shall be one for which a fine of no less than one hundred dollars and no more than five hundred dollars may be imposed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 728

HOUSE BILL NO. 1274
(Kloubec, Knell, Goetz, Gunsch)

COAL GASIFICATION BYPRODUCTS TAX

AN ACT to amend and reenact sections 57-60-01 and 57-60-03 of the North Dakota Century Code, relating to definitions for purposes of the privilege tax on coal facilities, to exempt byproducts of the coal gasification process from the gross receipts tax on coal conversion facilities, and relating to annual reporting by the operator of a coal gasification plant of the quantity of byproducts produced; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-60-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-01. Definitions. As used in this chapter:

1. "Byproducts" means commercially usable products produced during the coal gasification process other than the principal product of a coal gasification plant.
2. "Coal conversion facility" means either:
 - a. A plant, other than an electrical generating plant, together with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including but not limited to coal gasification, coal liquefaction, and the manufacture of fertilizer and other products, and which uses or is designed to use over five hundred thousand tons [453,592.37 metric tons] of coal per year; or
 - b. An electrical generating plant, together with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation

unit with a capacity of one hundred twenty thousand kilowatts or more.

- 2- 3. "Coal gasification" means the production of methane or other commercial gas products synthetic natural gas, methanol, or other principal commercial gaseous or liquid product from coal.
- 3- 4. "Commissioner" means the state tax commissioner.
- 4- 5. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, but not including any revenue derived from transportation, transmission, distribution, or other ~~items~~ events which occur after completion of the process of production of the products of such the facility is completed. For the purpose of computing the tax imposed by this chapter, "gross receipts" does not include any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government nor does it include any revenue derived from the sale of byproducts as herein defined to a maximum of twenty percent of the gross receipts as defined in this subsection.
- 5- 6. "Operator" means any person owning, holding, or leasing a coal conversion facility and conducting the conversion of coal into the products of ~~such facilities~~ the facility.
- 6- 7. "Person" means any individual, estate, trust, corporation, cooperative corporation, or association.
- 7- 8. "Synthetic natural gas" means methane and any admixed gaseous products produced by coal gasification.

SECTION 2. AMENDMENT. Section 57-60-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-03. Measurement and recording of synthetic natural gas, byproducts, or electricity produced. The production of synthetic natural gas, byproducts, or electrical power shall be measured at the place of production or generation, and any person subject to the imposition of the taxes provided by this chapter shall maintain devices to measure and record the cumulative periodic totals of synthetic natural gas, byproducts, and electrical power generated. Any person subject to the taxes imposed by this chapter shall maintain accurate records of the daily and monthly totals of synthetic natural gas and electrical power generated and subject to such taxes. On or before October first of each year the operator of any coal gasification plant shall file a report with the state health officer listing the quantity of byproducts produced during the year ending June thirtieth of that year. The commissioner shall have access to such records at reasonable times and places.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1987.

CHAPTER 729

HOUSE BILL NO. 1065
(Legislative Council)
(Interim Taxation Committee)

COAL SEVERANCE AND CONVERSION TAXES

AN ACT to create and enact a new subsection to section 57-60-01 and a new section to chapter 57-61 of the North Dakota Century Code, relating to definition of the term installed capacity for coal conversion facilities privilege tax purposes, a reduction in the rate of the coal severance tax for coal mined for use in coal conversion facilities, and a separate and additional coal severance tax and allocation of revenue from the tax; to amend and reenact subsection 2 of section 57-60-02, sections 57-61-01, 57-61-10, and 57-62-02 of the North Dakota Century Code, relating to the rate of the coal conversion facilities privilege tax and coal severance tax and the allocation of moneys in the coal development fund; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-60-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Installed capacity" means the number of kilowatts a power unit can produce according to the nameplate assigned to the power unit generator by the manufacturer.

* SECTION 2. AMENDMENT. Subsection 2 of section 57-60-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill ~~on each kilowatt hour of electricity produced for the purpose of sale~~ times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit

* NOTE: Section 57-60-02 was also amended by section 1 of Senate Bill No. 2099, chapter 730.

bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.

SECTION 3. AMENDMENT. Section 57-61-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-01. Severance tax upon coal - Imposition - Computation of increases-- In lieu of sales and use taxes - Payment to the tax commissioner. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax in an amount to be determined as follows:

- 1- Eighty-five cents per ton of two thousand pounds [907.18 kilograms]; and
- 2- For every four point increase in the index of wholesale prices for all commodities prepared by the United States department of labor, bureau of labor statistics, the amount of the severance tax provided in subsection 1 shall be increased one cent per ton of two thousand pounds [907.18 kilograms]. For the purposes of this computation, a fractional point increase shall be disregarded if less than one-half point and treated as one full point if one-half point or more. The state tax commissioner shall determine such increases based upon increases in the wholesale price index from the level of such index as of June 1979 to the level of such index as of December 1979 and of May and November of each year thereafter, and any increases based upon the level of the index in May shall be effective on and after the following July first and any increases based upon the level of the index in November shall be effective on and after the following January first. At no time shall the amount of the severance tax be reduced. If the wholesale price index declines, the severance tax shall remain at the highest level determined prior to such decline, and shall remain at such level until further increases are warranted because of further increases in the wholesale price index beyond the point at which the last increase was determined of seventy-five cents per ton of two thousand pounds [907.18 kilograms].

Such severance tax shall be in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit such tax for each month within twenty-five days after the end of each month, to the state tax commissioner upon such reports and forms as the tax commissioner shall deem necessary. If the method of determining increases in the amount of the severance tax provided in subsection 2 is for any reason held to be invalid, such decision shall not affect the validity of the amount of the tax provided in subsection 1.

SECTION 4. A new section to chapter 57-61 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional coal severance tax - Lignite research contracts. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, which is hereby created, to be known as the lignite research fund. Moneys in the lignite research fund shall be available to the industrial commission for contracts with research facilities within this state. Such moneys must be used for contracts for land reclamation research projects and for lignite development research and hydroelectricity impact studies. The industrial commission shall adopt rules for submission and consideration of research proposals and entering into contracts under this section.

SECTION 5. AMENDMENT. Section 57-61-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-10. Coal development fund established. Moneys collected by the state tax commissioner pursuant to the provisions of sections 57-61-01 through 57-61-09 shall be paid to the state treasurer within fifteen days from the date they are received by the state tax commissioner and shall be credited to a special fund in the state treasury, to be known as the coal development fund. The moneys accumulated in such fund shall be allocated by the state treasurer as provided by law and as appropriated by the legislative assembly and such allocation shall occur within fifteen days from the date the moneys are received by the state treasurer from the state tax commissioner.

SECTION 6. AMENDMENT. Section 57-62-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-02. Allocation of moneys in coal development fund. Moneys deposited in the coal development fund shall be apportioned quarterly monthly by the state treasurer as follows:

1. Thirty-five percent shall be credited to a special fund in the state treasury for distribution through grants by the energy development impact office to coal impacted cities, counties, school districts, and other taxing districts, subject to appropriation by the legislative assembly.
- 2- Fifteen percent shall be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to

section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 16, chapter 626, 1979 Session Laws shall also be deposited in the trust fund created pursuant to this subsection. The fund shall be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03. The board of university and school lands shall have full authority to may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust shall be used first to replace uncollectible loans made from the fund and the balance shall be deposited in the state's general fund. Loan principal payments shall be redeposited in the trust fund. Such trust fund shall be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter.

- 3- 2. Twenty Thirty-five percent shall be allocated to the coal-producing counties and shall be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such ~~quarterly~~ monthly period. Allocations under subdivision a shall be apportioned by the county treasurer within fifteen days from the date the moneys are received from the state treasurer and allocations under subdivision b shall be apportioned by the state treasurer as follows:
- a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision shall be allocated as follows:
 - (1) Thirty percent shall be paid by the county treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent shall be deposited by the county treasurer in the county general fund to be used for general governmental purposes.
 - (3) Thirty percent shall be apportioned by the county treasurer to school districts within the county on the average daily membership basis, as

certified to ~~him~~ the county treasurer by the county superintendent of schools.

- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned from that coal mining operation according to this subsection shall be allocated, subject to the definitions of terms and the requirements in paragraph 4, as follows:
- (1) Thirty percent shall be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent shall be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion shall be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. ~~It shall be the duty of the~~ The county director of tax equalization of the coal-producing county ~~to~~ shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.
 - (3) Thirty percent shall be apportioned by the state treasurer to school districts within the

coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.

(4) For the purposes of this subdivision:

- (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that ~~produces~~ produced more than one hundred fifty thousand tons [136,077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
- (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136,077.71 metric tons] of coal ~~are~~ were mined in the prior quarterly period.
- (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68,038.86 metric tons] of coal ~~are~~ were mined in the prior quarterly period.
- (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68,038.86 metric tons] of

coal ~~are~~ were mined in the prior quarterly period.

- (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a ~~quarterly~~ monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same ~~quarterly~~ monthly period.

4- 3. Thirty Fifty percent shall be deposited in the state's general fund.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the lignite research fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much thereof as may be necessary, to the industrial commission for the purposes of entering contracts for land reclamation research, lignite development research, and hydroelectricity impact studies under section 4 of this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 8. APPROPRIATION. There is hereby appropriated the sum of \$1,050,000 out of any moneys in the coal development impact fund, not otherwise appropriated, to the energy development impact office of the state of North Dakota, for the purpose of making coal development impact grants, for the biennium beginning July 1, 1987, and ending June 30, 1989. If the unobligated balance on September 1, 1987, exceeds the appropriation contained in this section, the state emergency commission may authorize the expenditure of those amounts at the request of the board of university and school lands.

SECTION 9. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 24, 1987
Filed April 30, 1987

CHAPTER 730

SENATE BILL NO. 2099
(Maixner)

COAL GASIFICATION TAXES

AN ACT to amend and reenact section 57-60-02 of the North Dakota Century Code, relating to the rate of the coal conversion facility privilege tax imposed on coal gasification plants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-60-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax shall be computed as follows:

1. For all coal conversion facilities, ~~other than electrical generating plants and coal gasification plants as provided in subsections 2, 3, and 4 except as otherwise provided in this section,~~ the tax shall be measured by the gross receipts derived from such facility for the preceding month and shall be in the amount of two and one-half percent of such gross receipts. For purposes of this subsection, "gross receipts" of a coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.
2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there shall be a tax at the rate

* NOTE: Section 57-60-02 was also amended by section 2 of House Bill No. 1065, chapter 729.

of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale.

4. For coal gasification plants ~~constructed prior to July 1, 1985,~~ the tax shall be the greater of either the amount provided in subsection 1 or ~~fifteen~~ seven cents on each one thousand cubic feet [28,316.85 liters] of synthetic natural gas produced for the purpose of sale, whichever is greater but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day.
5. For coal gasification plants ~~constructed after July 1, 1985,~~ the tax shall be either the amount provided in subsection 1 or ten cents on each one thousand cubic feet [28,316.85 liters] of synthetic natural gas produced for the purpose of sale, whichever is greater.
- 6- a. For all coal conversion facilities, other than electrical generating plants, ~~which commence construction after July 1, 1985,~~ the production from the facilities shall be exempt from sixty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility or for a period of five years from the effective date of this Act, whichever is later. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
- b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining thirty-five percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection shall be allocated entirely to the county for allocation as provided in section 57-60-15.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 731

SENATE BILL NO. 2436
(Keller)

COAL CONVERSION TAX ALLOCATIONS

AN ACT to amend and reenact section 57-60-14 of the North Dakota Century Code, relating to the time for distribution of the privilege tax on coal facilities by the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-60-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-14. Allocation of revenue. The state treasurer, ~~on or before July fifteenth of each year,~~ shall quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, thirty-five percent to the county and sixty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02, which shall be deposited in the state general fund.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 732

HOUSE BILL NO. 1601
(Haugen, Anderson)

OIL AND GAS IMPACT LOANS

AN ACT to amend and reenact subsection 2 of section 57-62-02 and section 57-62-03 of the North Dakota Century Code, relating to loans to oil and gas development impacted counties, cities, and school districts through the coal development trust fund; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-62-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Fifteen percent shall be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 16, chapter 626, 1979 Session Laws shall also be deposited in the trust fund created pursuant to this subsection. The fund shall be held in trust and administered by the board of university and school lands for loans to coal and oil and gas development impacted counties, cities, and school districts as provided in section 57-62-03. The board of university and school lands shall have full authority to invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust shall be used first to replace uncollectible loans made from the fund and the balance shall be deposited in the state's general fund. Loan principal payments shall be redeposited in the trust fund. Such trust fund shall be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter.

SECTION 2. AMENDMENT. Section 57-62-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-03. Loans - Terms and conditions - Repayment. The board of university and school lands is authorized to make loans to coal and oil and gas development impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. The amount which is available for loans to oil and gas development impacted counties, cities, and school districts may not exceed five million dollars from the coal development trust fund during the 1987-89 biennium. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the energy development impact office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants shall bear interest at a rate not to exceed six percent. The warrants executed as evidence of loans to mitigate coal development impact shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor shall such loans be considered as indebtedness of the county, city, or school district. Warrants executed as evidence of loans to mitigate oil and gas development impact are payable from any funds of the borrowing political subdivision and constitute a general obligation and indebtedness of the political subdivision. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of ~~the~~ a loan to mitigate coal development impact shall provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter shall be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The terms of the loan to mitigate oil and gas development impact shall provide for repayment of the loan from any moneys available to the political subdivision. The amount withheld by the state treasurer as which constitutes payment of interest shall be deposited in the general fund and the amount withheld by the state treasurer as which constitutes payment of principal shall be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district shall have all of the qualities and incidents of negotiable paper, and shall not be subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal shall be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys under this chapter to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district shall be obligated to repay the loan from such allocation. A loan made to mitigate oil and gas development impact shall not be canceled for any reason. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 10, 1987
Filed April 14, 1987