

# TAXATION

## CHAPTER 688

SENATE BILL NO. 2526

(Moore)

(Approved by the Committee on Delayed Bills)

### AGRICULTURAL PROPERTY ASSESSMENT DEFINITION

AN ACT to amend and reenact subsection 1 of section 57-02-01 of the North Dakota Century Code, relating to the definition of agricultural property for assessment purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-02-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any three of the following conditions exist:
  - a. The land is platted by the owner.
  - b. Public improvements including sewer, water, or streets are in place.
  - c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
  - d. Property is zoned other than agricultural.
  - e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
  - f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
  - g. The property sells for more than four times the county average true and full agricultural value.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 13, 1989  
Filed April 13, 1989

## CHAPTER 689

HOUSE BILL NO. 1238  
(Representatives A. Hausauer, Goetz)  
(Senator Satrom)

### OPTIONAL PROPERTY TAX INCREASE AUTHORITY

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district 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 in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section "base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year and "budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy at most five percent more in the budget year than the amount levied in dollars in the base year. Any levy of a percentage increase under this section must be specifically approved by a resolution approved by the governing body of the taxing district. 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 base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget 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 base year's mill rate for that taxing district to the final budget year 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 budget 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 any of the previous three years 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 unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year 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 under this subsection.
5. In addition to any other increase under this section, 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. A school district choosing to increase its levy authority under this section may apply the allowable percentage increase only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply the allowable percentage increase to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to the allowable percentage increase under this section.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1988, and is thereafter ineffective.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 690

HOUSE BILL NO. 1145  
(Committee on Finance and Taxation)  
(At the request of the State Board of Equalization)

### RELIGIOUS PROPERTY EXEMPTION

AN ACT to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the exemption from ad valorem taxation for a religious corporation or organization; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 57-02-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. All real property, not exceeding two acres [.81 hectares] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of ~~such~~ the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of ~~such~~ services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether ~~such~~ the real property consists of one tract or more. The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax exempt corporation or organization, provided no profit is realized from the rent. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any ~~such~~ of the property, while the ~~same was so~~ property is used for religious purposes, are void.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 691

SENATE BILL NO. 2417  
(Senators Ingstad, Mushik)  
(Representatives J. DeMers, Rydell, Scherber)

### CHILDHOOD FACILITY TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption that may be granted by the governing body of a political subdivision for early childhood service facilities licensed by the state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-02-08 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The governing body of the city, for property within city limits, or of the county, for property outside city limits, may grant a property tax exemption for the portion of fixtures, buildings, and improvements, used primarily to provide early childhood services by a corporation or organization licensed under chapter 50-11.1. However, this exemption is not available for property used as a residence.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 692

HOUSE BILL NO. 1236  
(Representatives A. Hausauer, Graba, Tollefson)  
(Senators Ingstad, Mushik, Yockim)

### NEW RESIDENTIAL PROPERTY TAX EXEMPTION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 57-02-08 of the 1987 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, is 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, is 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. This Act is effective for exemptions approved by city or county governing bodies after December 31, 1988.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 693

SENATE BILL NO. 2083  
(Senators Moore, Dotzenrod, Nalewaja)  
(Representative A. Olson)

### SENIORS PROPERTY TAX CREDIT RETENTION

AN ACT to amend and reenact subsection 1 of section 57-02-08.1 of the North Dakota Century Code, relating to retention of property tax credits for persons confined to certain care facilities and to limit benefits to living applicants; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 57-02-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of twelve thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person. The exemption to which any person may be entitled shall be determined according to the following schedule:
  - a. If the person's income is not in excess of six thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
  - b. If the person's income is in excess of six thousand dollars and not in excess of seven thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.
  - c. If the person's income is in excess of seven thousand five hundred dollars and not in excess of nine thousand dollars, a

\* NOTE: Section 57-02-08.1 was also amended by section 1 of House Bill No. 1245, chapter 694, and section 8 of Senate Bill No. 2229, chapter 142.



reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

- d. If the person's income is in excess of nine thousand dollars and not in excess of ten thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of ten thousand five hundred dollars and not in excess of twelve thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that such income, including that of any dependent, as determined in this chapter does not exceed twelve thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate upon death of the applicant.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 28, 1989

Filed March 28, 1989

## CHAPTER 694

HOUSE BILL NO. 1245  
(Representatives A. Hausauer, A. Olson, Goetz)  
(Senator W. Meyer)

### SENIOR CITIZEN PROPERTY TAX CREDITS

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to property tax credits for persons sixty-five years of age or older with limited income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of ~~twelve~~ thirteen thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. The exemption to which any person may be entitled shall be determined according to the following schedule:
  - a. If the person's income is not in excess of ~~six~~ seven thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
  - b. If the person's income is in excess of ~~six~~ seven thousand dollars and not in excess of ~~seven~~ eight thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.
  - c. If the person's income is in excess of ~~seven~~ eight thousand five hundred dollars and not in excess of ~~nine~~ ten thousand dollars, a reduction of sixty percent of the taxable valuation

\* NOTE: Section 57-02-08.1 was also amended by section 8 of Senate Bill No. 2229, chapter 142, and section 1 of Senate Bill No. 2083, chapter 693.

of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

- d. If the person's income is in excess of ~~nine~~ ten thousand dollars and not in excess of ~~ten~~ eleven thousand ~~five~~ hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of ~~ten~~ eleven thousand five hundred dollars and not in excess of ~~twelve~~ thirteen thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that such income, including that of any dependent, as determined in this chapter does not exceed ~~twelve~~ thirteen thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars. Any person eligible for the exemption provided in this subsection must also sign an affidavit stating that the person has not divested the property within the last three years. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of ~~twelve~~ thirteen thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters shall be eligible for refund for that part of his annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, shall be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of his annual income, but such refund shall not be in excess of two hundred ~~ten~~ thirty dollars. If the calculation for said refund is less than five

dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection shall be made to the tax commissioner before the first day of June of each year by the person claiming the refund. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case shall this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation.

3. All forms necessary to effectuate this section shall be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of same to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.
4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any person dependent upon him and not compensated for by insurance or otherwise shall be deducted. For purposes of this section, the term "medical expenses" shall have the same meaning as it has for state income tax purposes.
5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 shall receive any property tax credit under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1989.

Approved April 14, 1989  
Filed April 17, 1989

## CHAPTER 695

HOUSE BILL NO. 1668  
(Knell)  
(Approved by the Committee on Delayed Bills)

### PIPELINE TAXATION

AN ACT to amend and reenact section 57-02-26 of the North Dakota Century Code, relating to the assessment of pipeline property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-26. Certain property taxable to lessee or equitable owner.

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, shall be considered, for all purposes of taxation, as the property of the person so holding the same.
2. Property held under an easement or a lease for a term of years and any improvements upon that property which are used for any purpose relating to discovery, exploration, processing, or transportation of oil or gas shall be considered the property of the lease or easement holder. For the purposes of this subsection, "improvements" does not include ~~pipelines or~~ property subject to the provisions of chapter 57-06 or property subject to the in lieu of ad valorem tax provisions of chapter 57-51.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 7, 1989  
Filed April 7, 1989

## CHAPTER 696

HOUSE BILL NO. 1075  
(Aas, Tollefson)

### **BANK OF NORTH DAKOTA IN LIEU OF TAX PAYMENTS**

AN ACT to provide for payments to political subdivisions from the board of university and school lands in lieu of property taxes for property obtained by the state of North Dakota as a result of foreclosure of a mortgage to the Bank of North Dakota; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definition. As used in this Act, unless the context or subject matter otherwise clearly indicates, "property subject to valuation" means real property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained after January 1, 1980, by foreclosure or deed in lieu of foreclosure of a mortgage given to the Bank of North Dakota, including a mortgage assigned to the state treasurer under section 54-30-02.

SECTION 2. Imposition of in lieu of tax payments. The board of university and school lands shall annually make payments, subject to legislative appropriations, to any county in which property subject to valuation is located. The payments are in lieu of ad valorem taxes that would be payable to the county if the real property for which the payments are made were not owned by the state. This chapter does not affect the provisions of chapter 57-29.

SECTION 3. Assessment of property - Notice to county auditors. All property subject to valuation must be assessed for the purpose of making the payments under section 2 of this Act, in the same manner as other real property in this state is assessed for tax purposes, except that improvements made to any real property after foreclosure may not be considered in the valuation. Before June thirtieth of each year the county auditor of any county in which property subject to valuation is located shall give written notice to the board of university and school lands and the state tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in the county.

SECTION 4. Appearance before state board of equalization. The state board of equalization shall equalize the values placed upon property subject to valuation. Representatives of the board of university and school lands may appear before the state board of equalization to oppose unreasonable or unjust valuations placed upon property subject to valuation as equalized by the county board of equalization, or to oppose any change in valuations as proposed by the state board of equalization, to the end that all valuations of property subject to valuation may be uniform with valuations of comparable property throughout the state.

SECTION 5. Computation of payment - Remittance to counties. Upon receipt of the decision of the state board of equalization, the board of university and school lands shall compute the payments due to the counties in which property subject to valuation is located by extending the mill levies that apply to taxable property in the taxing districts in which the property is located in the same manner as is used for other taxable property in the taxing districts. After computing the payments due to each county, the board of university and school lands shall, within the limits of legislative appropriations, remit to the counties the amounts due on or before March first of the year following the year for which the assessments were made.

SECTION 6. Allocation of revenue within counties. The revenue to which taxing districts are entitled under this chapter must be determined according to the proportion that the taxing district's mill levy on other real property bears to the total mill levies of all taxing districts on other real property in the taxing districts in which the property subject to valuation is located. The revenue remaining after apportionment to the county shall be apportioned and distributed by the county treasurer among the various taxing districts in which the property for which payments are made is located. The amount of revenue allocated to each taxing district in which property subject to valuation is located shall be divided among the various funds of the district according to the proportion that the mill levy for any fund bears to the total of all mill levies of the taxing district.

SECTION 7. Appropriation. There is hereby appropriated to the board of university and school lands, as a standing and continuing appropriation from the lease rentals of property subject to valuation under this Act, the funds necessary to make the payments required by this Act.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 697

HOUSE BILL NO. 1317  
(Graba, Skjerven, Carlson)

### CITY EMERGENCY LEVIES

AN ACT to amend and reenact subsection 23 of section 57-15-10 and section 57-15-48 of the North Dakota Century Code, relating to limitations on city tax levies for emergency purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 23 of section 57-15-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23. Taxes levied for emergency purposes pursuant to section 57-15-48 may be levied in an amount not exceeding one mill two and one-half mills.

SECTION 2. AMENDMENT. Section 57-15-48 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-48. Tax levy for emergency purposes. The governing body of any city by a two-thirds vote may levy a tax annually for snow removal, natural disaster, or other emergency conditions not exceeding the limitation in subsection 23 of section 57-15-10. No city shall make this levy after the amount of the unexpended funds raised by this levy plus the amount of money due the fund from outstanding taxes, equals three dollars per capita the amount produced by a levy of five mills on the taxable valuation of property within the city or five dollars per capita whichever is greater.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 14, 1989  
Filed March 15, 1989



## CHAPTER 698

HOUSE BILL NO. 1373  
(Goetz, Tollefson, Myrdal)

### FORESTRY LEVY

AN ACT to amend and reenact section 57-15-12.1 of the North Dakota Century Code, relating to tax levies or service charges by cities or park districts for forestry purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-12.1. City or park district tax levy or service charge for forestry purposes.

1. The governing body of a city or park district: ~~upon approval by a fifty-five percent vote of the electors at any citywide or districtwide election;~~ may annually levy a tax not in excess of ~~five~~ two mills on the taxable valuation of property within the city or park district, for the purpose of providing funds for the establishment, operation, and maintenance of forestry activities within the city or park district. The governing board of a city or park district, upon approval by a majority vote of the electors at any citywide or districtwide election, may also annually levy an additional tax not in excess of three mills on the taxable valuation of property within the city or park district, for the purpose of providing funds for forestry activities within the city or park district. Any such tax shall be in addition to and not restricted by any mill levy limit prescribed by law. The proceeds of any such levy may be used for forestry activities, including, but not limited to, the following: prevention or control of Dutch elm disease or other diseases which may affect trees, shrubs, and other vegetation; purchasing, planting, or removal of trees, shrubs, and other vegetation; pruning and maintenance of trees, shrubs, and other vegetation; purchasing of necessary equipment; hiring of personnel; contracting for services; public information and technical assistance; and other items related to forestry activities which may be necessary to provide for proper care, maintenance, propagation, and improvement of forestry resources within the city or park district.
2. In lieu of a mill levy as specified in subsection 1, a city or park district may propose a service charge as an alternative form of financing. Such alternative form of financing shall be approved by a ~~fifty five percent~~ majority vote of the electors at any general or special citywide or districtwide election. The proceeds of any service charge may be used for forestry activities, as specified in subsection 1.

Approved March 21, 1989  
Filed March 23, 1989

## CHAPTER 699

HOUSE BILL NO. 1251  
(Representatives A. Olson, Myrdal, Shide)  
(Senator Vosper)

### CEMETERY LEVIES BY TOWNSHIPS

AN ACT to amend and reenact section 57-15-27.1 of the North Dakota Century Code, relating to mill levy authority for townships and cities for maintenance of cemeteries; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-27.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-27.1. Cemetery tax levies. Organized townships and cities are hereby authorized to levy a tax, not exceeding two mills on the dollar of the taxable valuations of the organized townships or cities, in addition to all levies now authorized by law, for the purpose and to be used exclusively for the care, maintenance, and improvement of established cemeteries, owned and maintained by such organized townships or cities. In addition to all levies now authorized by law, organized townships may levy a tax not exceeding one-fourth of one mill on the dollar of taxable valuation of property in the township for the care, maintenance, and improvement of established cemeteries maintained but not owned by the township.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 700

SENATE BILL NO. 2304  
(Senator Mushik)  
(Representative Oban)

**SENIOR CITIZEN TAX LEVY USE**

AN ACT to amend and reenact subsections 1 and 2 of section 57-15-56 of the North Dakota Century Code, relating to priorities for use of revenues from tax levies for programs and activities for senior citizens; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 57-15-56 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The board of county commissioners of any county is hereby authorized to levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city in the county is authorized to levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining programs and activities for senior citizens including the expansion of existing senior citizen centers which will provide recreational and other leisure-time activities, informational, health, welfare, counseling, and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city in the county shall become void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax shall not exceed the limitation in subsection 25 of section 57-15-06.7 ~~and~~ or subsection 26 of section 57-15-10. The proceeds of the tax ~~shall~~ must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy shall be in addition to any moneys expended by the board of county commissioners pursuant to section 11-11-58 or by the governing body of any city pursuant to section 40-05-16.
2. The levy authorized by this section ~~shall~~ may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation ~~and has contracted with the board of county commissioners or the governing body of the city in regard to the manner in which the funds will be expended and the services to be provided.~~ Governing bodies may enter into contracts with county councils on aging or comparable representative groups in counties or cities that do not have a council on aging to determine jointly and to administer distribution of funds in accordance with the

contract and the provisions of this section. An organization or agency and its program which receives funds under the provisions of this section ~~shall~~ must be reviewed or approved annually by the board of county commissioners or the governing body of the city to determine its eligibility to receive funds under the provisions of this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1989.

Approved April 19, 1989  
Filed April 19, 1989

## CHAPTER 701

SENATE BILL NO. 2322  
(Lodoen)

**SCHOOL DISTRICT RESERVE FUND WITHDRAWAL**

AN ACT to amend and reenact section 57-19-06 of the North Dakota Century Code, relating to school district authority to withdraw from special reserve funds; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-19-06. Special reserve fund - How and when used.

1. Whenever collections from the taxes levied for the current budget are insufficient to meet the requirements of ~~such~~ the budget for teacher salaries, heat, light, and fuel, a majority of the governing body of the school district, by resolution, may provide for the issuance of vouchers directed to the county treasurer, drawing on funds in ~~said~~ the special reserve fund of ~~such~~ the district. ~~Such~~ The voucher may be substantially in the same form as a warrant, but ~~shall~~ may not be a negotiable instrument, and ~~shall~~ must direct the county treasurer to pay over to the school district from the special reserve fund the amount of money specified in the voucher. Subject to the limitations in ~~the next~~ section 57-19-07, the county treasurer shall transfer from the special reserve fund to the school district general fund the sum so specified, and shall enter ~~such~~ the voucher in a book to be known as the special reserve fund voucher register in the order in which they are issued.
2. The governing body of the school district, by resolution, may withdraw without repayment fifty percent of the funds from the special reserve fund of the school district.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 19, 1989  
Filed April 19, 1989

## CHAPTER 702

HOUSE BILL NO. 1483  
(Representatives Aarsvold, Stofferahn)  
(Senator Lodoen)

### DELINQUENT PROPERTY TAXES

AN ACT to create and enact a new section to chapter 57-20 of the North Dakota Century Code, relating to the collection of delinquent taxes; and to amend and reenact sections 57-20-09 and 57-28-04 of the North Dakota Century Code, relating to the inapplicability of tax payment discounts and service of notice of the expiration of the period of redemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Priority for delinquent taxes. When payment is made for any real or personal property taxes or special assessments, payments must be applied first to the oldest unpaid delinquent taxes or special assessments due, if any, shown to exist upon the property for which the tax payments are made, including any penalty and interest. The discounts applicable to payment of taxes set out in section 57-20-09 do not apply to payment of taxes made on property upon which tax payments are delinquent.

SECTION 2. AMENDMENT. Section 57-20-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-09. Discount for early payment of tax. ~~The~~ Except as provided in section 1 of this Act, the county treasurer shall allow a five percent discount to all taxpayers who shall pay all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. Such discount shall apply to all general real estate taxes levied for state, county, city, township, school district, fire district, park district, and any other taxing districts, but shall not apply to personal property taxes or special assessment installments. Whenever the county commissioners, by resolution, determine that an emergency exists in any county by virtue of weather or other catastrophe they may extend the discount period for an additional thirty days.

SECTION 3. AMENDMENT. Section 57-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-04. Service of notice by registered mail of the expiration of the period of redemption. The county auditor shall serve the notice of the expiration of the period of redemption upon the owner of the record title of the real estate sold to the county for taxes, and upon each mortgagee, lienholder, and other interested person ~~interested therein~~ as may appear from

the records of the register of deeds and the clerk of the district court of said the county. Said Except for property upon which there is a homestead, the notice shall must be served by registered or certified mail, and a registry and return receipt shall must be demanded and filed with proof of service. For property upon which there is a homestead, the notice must be served as provided in subsection 2 of section 57-27-02. The expense of such the service by registered or certified mail shall must be added to the amount required to redeem, and shall must be paid by the person making the redemption in addition to the amounts stated in the notice. The auditor shall make proof of such service by affidavit showing the names and addresses of all parties upon whom such the notice was served, with the date of mailing in each case, and shall must attach the registry, certification, and return receipts thereto, and shall must file such the affidavit and receipts with the original notice of the expiration of the period of redemption. The register of deeds and the clerk of the district court, upon request by the county auditor, and within ten days thereafter, shall furnish him the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the said real estate, upon whom the notice of the expiration of the period of redemption must be served.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 703

SENATE BILL NO. 2197  
(Committee on Finance and Taxation)  
(At the request of the Tax Department)

**FINANCIAL INSTITUTION TAX PAYMENT DATES**

AN ACT to amend and reenact sections 57-35-05, 57-35-08, and 57-35.1-05 of the North Dakota Century Code, relating to payment of tax by banks and trust companies and building and loan associations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-35-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35-05. Due date. All taxes levied and assessed under the terms and provisions of this chapter shall become due on the thirty-first day of December following the report to the tax commissioner provided in section 57-35-07, and shall become delinquent on the first day of March ~~next after they become due~~ following the due date. Thereupon a penalty of five percent shall attach and be charged upon all delinquent taxes, and ~~thenceforth~~ interest shall be charged at the rate of one percent per month of the original amount of the tax until the same is paid.

SECTION 2. AMENDMENT. Section 57-35-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35-08. Computation and certification of tax. On or before August first of each year, the tax commissioner shall compute the total tax to be assessed under the terms and provisions of this chapter, and shall certify the same to ~~the~~ each county auditor of the county in which ~~each~~ the taxpayer ~~is located~~ has a location.

SECTION 3. AMENDMENT. Section 57-35.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35.1-05. Tax payment - Delinquency payment. The taxes levied and assessed under this chapter shall be payable on the thirty-first day of December following the report to the tax commissioner under section 57-35.1-03, and shall become delinquent if not paid on or before the first day of March ~~next~~ following the due date; ~~thereafter~~ thereupon a penalty of five percent shall attach and be charged upon all delinquent taxes, and interest shall be charged at the rate of one percent per month of the original amount of the tax until the same is paid.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 9, 1989  
Filed March 9, 1989



## CHAPTER 704

HOUSE BILL NO. 1539  
(Representatives Frey, Mertens, Peterson)  
(Senators Lips, Waldera, Mushik)

## UNSTAMPED CIGARETTE SALES

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to wholesale sales of unstamped cigarettes to enrolled tribal members; and to amend and reenact sections 57-36-02, 57-36-07, 57-36-08, 57-36-10, and 57-36-11 of the North Dakota Century Code, relating to the requirement that all cigarettes sold in North Dakota be stamped within the state and to allow licensed distributors to sell unstamped cigarettes to enrolled tribal members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including any distributor or dealer, ~~shall~~ must secure a license from the attorney general before engaging or continuing to engage in such business or continuing to engage therein. A separate application and license ~~shall be~~ is required for each distributor at each outlet or place of business within the state, and a separate dealer's license ~~shall be~~ is required for each retail outlet when a person ~~shall own~~ owns or ~~control~~ controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer ~~shall~~ will be granted a distributor's license except a retailer who also performs, in the usual course of business, performed a distributor's or wholesaler's function, and has performed such functions for at least one year prior to filing application for said license the license application. Such license shall be issued by the attorney general on applications stating, on a form prescribed by him, The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business at which it is proposed to engage in such business, the type of business, and such other information as may be required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license ~~shall~~ must be accompanied by a fee of twenty-five dollars and a surety bond to be approved by the attorney general in the sum of not less than one thousand dollars or more than five thousand dollars. Each application for a dealer's outlet license ~~shall~~ must be accompanied by a fee of fifteen dollars. Stamps or insignia provided for in this chapter ~~shall~~ may be sold to and affixed only in North Dakota by licensed distributors only. Licensed dealers may sell or, buy, or have in their possession only cigarettes upon which such stamps or insignia have been were previously affixed. A distributor's license does not authorize the holder thereof to make retail sales at retail. Each license issued ~~shall~~ must be prominently displayed on the premises covered by the license.

SECTION 2. AMENDMENT. Section 57-36-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-07. Packaging - Presumption from possession - Stamps to be affixed. Cigarettes ~~shall~~ must be packaged and stamped as follows:

1. All cigarettes sold in this state ~~shall~~ must be ~~put up~~ in packages containing five or more cigarettes each.
2. ~~Immediately upon receipt~~ Within seventy-two hours of receipt by the licensee, each package of cigarettes, except as otherwise provided in this chapter, ~~shall~~ must have a securely affixed ~~thereto~~ securely a suitable stamp denoting the tax ~~thereon~~, and ~~such~~ each stamp ~~shall~~ must be properly canceled prior to sale or removal for consumption, under such regulations as prescribed by the tax commissioner shall prescribe.
3. If the cigarettes are to be sold to an enrolled tribal member pursuant to section 6 of this Act, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.
- 3- 4. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers ~~or otherwise, within or upon the premises from which sale thereof may be where consumer sales are made to consumers shall be~~ is conclusively presumed conclusively to be intended for sale to consumers and to be displayed, exhibited, stored, or possessed for such purpose, and each. Each package of cigarettes, at the time the same is displayed, exhibited, stored, or possessed upon such premises, except as hereinafter otherwise provided, shall must have a securely affixed thereto securely a suitable stamp, or stamps, denoting the tax thereon. Such stamp or stamps shall ~~Stamps must be canceled as provided in this chapter, and the possession of any unstamped package of cigarettes, within or upon any premises, shall be~~ is prima facie evidence of a violation of this chapter.

SECTION 3. AMENDMENT. Section 57-36-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-08. Stamps prepared by commissioner. The tax commissioner ~~shall~~ must prepare and have suitable stamps for use on each kind of package prescribed in this chapter, and ~~shall~~ keep an accurate record of all stamps received and delivered, ~~and a further accurate record of all stamps coming into and leaving his hands.~~ The tax commissioner ~~shall~~ may sell the stamps herein provided for only to persons holding a "distributor's license", ~~issued as provided in this chapter, but wholesale.~~ Wholesale distributors of cigarettes located outside of this state, may apply for and receive a "distributor's license", as provided in section 57-36-02, and may purchase stamps from the tax commissioner and affix the same. The stamps must be affixed on cigarettes to be sold in this state, and shall cancel the same in the manner prescribed by the regulations of canceled pursuant to the tax commissioner commissioner's regulations. In such case, the purchaser within this state receiving such stamped cigarettes will not be required to purchase and affix stamps thereon.

\* SECTION 4. AMENDMENT. Section 57-36-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-10. Stamps may be purchased at discount. Any licensed distributor ~~located within or without this state~~ may purchase stamps for taxed cigarettes at a discount of five percent of the face value thereof, and the tax commissioner may allow such the discount in the settlement of the account of such the wholesale distributor upon the payment to him of any moneys which may be or become due to the state by reason of the sale, delivery, or consignment to such the distributor of such the stamps.

A licensed distributor may purchase stamps for untaxed cigarettes at a cost not to exceed the cost of producing the stamps. No discount is allowed for the purchase of untaxed cigarette stamps.

SECTION 5. AMENDMENT. Section 57-36-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-11. Tax meter machines.

1. The tax commissioner, in lieu of selling stamps, may authorize any manufacturer or distributor ~~located within or without the state~~ to stamp cigarettes with a tax meter machine, ~~and, under such regulations as he shall prescribe, may provide.~~ The tax commissioner may prescribe regulations for the leasing of a tax meter machine to any such manufacturer or distributor, and for supervising and checking the operation thereof of the meter. Meters must not be used to stamp untaxed cigarettes. In such case, the ~~The~~ tax commissioner shall collect and receive the tax prescribed by this chapter on all cigarettes sold in or delivered to dealers in the state for sale, barter, gifts, or any other purpose, ~~and any.~~ Any cigarette so stamped with a tax meter machine need not have stamps affixed ~~thereon~~ stamps prescribed in this chapter, and the same may be possessed lawfully and sold by any wholesale or retail dealer in this state. Any manufacturer or distributor ~~who stamps~~ stamping cigarettes with a tax meter machine, pursuant to the provisions of this section, ~~shall be is~~ entitled to the discount provided for in section 57-36-10.
2. The tax commissioner may designate ~~the a~~ county auditor of any county of this state as ~~his~~ the representative for the setting of tax meter machines for any particular distributor and for the collection of the cigarette tax due upon each ~~such~~ setting. Any designated county auditor so designated shall must transmit each amount of the tax collected and report each meter machine setting to the tax commissioner on or before the next business day, provided that a business day shall not include Saturday; he shall and perform such the duties in accordance with the procedure prescribed by the tax commissioner. The duties of the county auditor pursuant to this section shall be are within the coverage of his the official bond. Any designated county auditor when designated by the tax commissioner pursuant to this section shall receive from the distributor for his services for setting a meter machine a fee of five dollars for each meter setting and all such fees received by the county auditor shall be payable to him personally for his services and shall not be credited to any county fund or to any other public fund may collect a fee of five dollars

\* NOTE: Section 57-36-10 was also amended by section 1 of Senate Bill No. 2475, chapter 705.

from the distributor for each meter setting. The auditor may retain the fee for the services and need not credit the fee to any public fund.

3. In instances where it is inappropriate ~~for any reason~~ for the tax commissioner to designate ~~the~~ a county auditor of any county of ~~this state~~ as ~~his~~ the representative for the setting of tax meter machines for any particular distributor and for the collection of the cigarette tax due upon each such setting, the tax commissioner may delegate ~~such~~ the responsibility to an individual or a corporate setting agent within or without this state. Any ~~designated individual or corporation as designated shall~~ must transmit ~~each amount of the tax collected and~~ report each meter machine's setting to the tax commissioner on or before the next business day, ~~provided that a business day shall not include Saturday; the setting agent shall and perform such the duties in~~ accordance with the procedure prescribed by the tax commissioner. ~~Before commencing the duties of a setting agent, the setting agent shall submit to the tax commissioner a bond in the amount to be set by the tax commissioner. The setting agent must submit a bond in an amount determined by the tax commissioner prior to beginning the agent's duties. Any setting agent when designated by the tax commissioner pursuant to this section shall must receive a meter setting fee from the distributor for his services for setting a meter machine a fee to cover the cost of that portion of a bond which shall be is attributable to any that particular distributor plus a reasonable fee for the setting of the tax meter as determined by agreement among the setting agent, the distributor, and the tax commissioner.~~

SECTION 6. A new section to chapter 57-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sales of untaxed cigarettes. An enrolled tribal member conducting authorized cigarette sales activities within the exterior boundaries of the Indian reservation of the tribe of the enrolled tribal member may purchase from a licensed distributor cigarettes stamped as untaxed.

When a distributor makes an untaxed cigarette sale to an enrolled tribal member, the distributor must obtain from the tribal member, on forms prescribed by the tax commissioner, the following information:

1. Name of the tribal member.
2. Social security number of the tribal member.
3. Name of the tribe of the tribal member.
4. Tribal enrollment number of the tribal member.
5. Residential address of the tribal member.
6. Business address and business location of the retail sales of the tribal member.
7. Certification that the tribal member has been granted authority from the tribe to conduct cigarette sales activity within the external boundaries of the reservation.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 705

SENATE BILL NO. 2475  
(Senators Maxson, Nalewaja)  
(Representatives Rydell, Wentz)

### TOBACCO TAXES

AN ACT to amend and reenact sections 57-36-10, 57-36-25, subsection 1 of section 57-36-26, subsection 1 of section 57-36-28, and section 57-36-32 of the North Dakota Century Code, relating to compensation available to distributors and the rate of excise tax on the wholesale purchase price of tobacco products; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\*SECTION 1. AMENDMENT. Section 57-36-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-10. Stamps may be purchased at discount. Any licensed distributor located within or without this state may purchase stamps at a discount of five percent of the face value thereof, and the tax commissioner may allow such the discount in the settlement of the account of such the wholesale distributor upon the payment to him the tax commissioner of any moneys which may be or become due to the state by reason of the sale, delivery, or consignment to such the distributor of such the stamps. The discount is computed as a percentage of the face value of the stamp at the following rates:

1. Five percent of the face value for the first one hundred thousand dollars purchased each fiscal year.
2. Four percent of the face value for the next one hundred and twenty-five thousand dollars purchased each fiscal year.
3. Three percent of the face value for the next one hundred and seventy-five thousand dollars purchased each fiscal year.
4. Two percent of the face value for purchases over four hundred thousand dollars for each fiscal year.
5. The total discount under this section for any distributor may not exceed twenty-five thousand dollars for each fiscal year.

SECTION 2. AMENDMENT. Section 57-36-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-25. Cigars, snuff, and other tobacco products - Excise tax on wholesale purchase price - Penalty - Reports - Collection - Allocation of revenue.

\* NOTE: Section 57-36-10 was also amended by section 4 of House Bill No. 1539, chapter 704.

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 ~~twenty~~ twenty-five 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.
2. Any person failing to file any prescribed forms of return or to pay any tax within the time required or permitted by this section shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof excepting the portion of the month within which such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
3. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.
4. Repealed by S.L. 1975, ch. 106, § 673.

SECTION 3. AMENDMENT. Subsection 1 of section 57-36-26 of the 1987 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, 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 ~~twenty~~ twenty-five percent of the wholesale purchase price at the time ~~such the~~ such the 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.~~ However, the dealer may elect to report and remit the tax on his cost price of ~~such the~~ such the products rather than on the wholesale purchase price. The proceeds of ~~such the~~ such the tax, together with ~~such the~~ such the forms of return and in accordance with ~~such the~~ such the 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~~ an annual 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.

SECTION 4. AMENDMENT. Subsection 1 of section 57-36-28 of the 1987 Supplement to 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 those~~ such those consumers, at the rate of ~~twenty~~ twenty-five percent of the cost to the consumer of ~~such those~~ such those products.

SECTION 5. AMENDMENT. Section 57-36-32 of the 1987 Supplement to 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 ~~eight and one-half~~ ten mills on each ~~such~~ 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 the~~ such the 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 6. EXPIRATION DATE. Sections 2 through 5 of this Act are effective through June 30, 1991, and after that date are ineffective.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 706

SENATE BILL NO. 2236  
(Committee on Judiciary)  
(At the request of the Attorney General)

### CONTROLLED SUBSTANCE TAXATION

AN ACT to create and enact a new chapter to title 57 of the North Dakota Century Code, relating to the imposition of a tax upon marijuana and other controlled substances; and to provide civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions. In this chapter, unless the context otherwise requires:

1. "Commissioner" means the state tax commissioner.
2. "Dealer" means a person who in violation of law manufactures, produces, ships, transports, or imports into this state or in any manner acquires or possesses more than forty-two and one-half grams of marijuana, or seven or more grams of any other controlled substance, or ten or more dosage units of any other controlled substance which is not sold by weight.
3. "Marijuana" means any marijuana, whether real or counterfeit, as defined in section 19-03.1-01, that is held, possessed, transported, transferred, delivered, sold, or offered to be sold in violation of law.
4. "Other controlled substance" means any drug or controlled substance, other than marijuana, whether real or counterfeit, as defined in section 19-03.1-01, that is held, possessed, transported, transferred, delivered, sold, or offered to be sold in violation of law.

Administration. The commissioner shall administer this chapter. Payments required by this chapter must be made to the commissioner on the form provided by the commissioner. Dealers are not required to give their name, address, social security number, or other identifying information on the form. The commissioner shall collect all taxes under this chapter.

Rules. The commissioner may adopt rules necessary to enforce this chapter. The commissioner shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for marijuana and other controlled substances on which a tax is imposed.



Tax payment required for possession. No dealer may possess any marijuana or other controlled substance upon which a tax is imposed by this chapter unless the tax has been paid on the marijuana or other controlled substance as evidenced by a stamp or other official indicia.

No immunity. Nothing in this chapter may in any manner provide immunity for a dealer from criminal prosecution pursuant to law.

Pharmaceuticals. Nothing in this chapter requires persons registered under chapter 19-03.1 or otherwise lawfully in possession of marijuana or other controlled substance to pay the tax required under this chapter.

Measurement. For purposes of this chapter, a quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

Tax rate. A tax is imposed on marijuana and other controlled substances as defined in this chapter at the following rates:

1. On each gram of marijuana, or portion of a gram, three dollars and fifty cents.
2. On each gram, or portion of a gram, of any controlled substance other than marijuana that is sold by weight, two hundred dollars.
3. On each fifty dosage units, or portion of fifty dosage units, of any controlled substance that is not sold by weight, two thousand dollars.

Penalties - Criminal provisions.

1. Civil penalty. Any dealer violating this chapter is subject to a penalty of one hundred percent of the tax in addition to the tax imposed by this chapter. The penalty will be collected as part of the tax.
2. Interest. In addition to any tax or penalty imposed by this chapter, a dealer shall pay interest on the unpaid tax or penalty at a rate of twelve percent per annum from the date of the violation of this chapter.
3. Criminal penalty. In addition to the civil penalty imposed, a dealer delivering or possessing marijuana or other controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a class C felony.
4. Statute of limitations. Notwithstanding chapter 29-04, or any other provision of the criminal laws of this state, an indictment may be found and filed, or an information or complaint filed, upon any criminal offense specified in this section, in the proper court within six years after the commission of an offense under this section.

**Stamp price.** Official stamps, labels, or other indicia to be affixed to all marijuana or other controlled substances must be purchased from the commissioner. The purchaser shall pay one hundred percent of face value for each stamp, label, or other indicia at the time of the purchase.

**Payment due.**

1. Stamps affixed. When a dealer purchases, acquires, transports, or imports into this state marijuana or other controlled substances on which a tax is imposed by this chapter, and if the indicia evidencing the payment of the tax have not already been affixed, the dealer shall have them permanently affixed on the marijuana or other controlled substance immediately after receiving the substance. Each stamp or other official indicia may be used only once.
2. Payable on possession. Taxes imposed upon marijuana or other controlled substances by this chapter are due and payable immediately upon acquisition or possession in this state by a dealer.

**Assessments of tax and penalties - Enforcement.**

1. Assessment procedure. A dealer not possessing valid stamps or other official indicia showing that the tax has been paid is subject to immediate assessment of tax and applicable penalties. The commissioner shall assess a tax and applicable penalties based on personal knowledge or information available to the commissioner; mail the dealer at the dealer's last known address or serve in person, a written notice of the amount of tax and penalty; demand its immediate payment; and, if payment is not immediately made, collect the tax and penalty as permitted by law including section 57-01-13, except that the commissioner need not await the expiration of the time periods specified in section 57-01-13.
2. Standard of proof. The tax and penalties assessed by the commissioner are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the commissioner with a court or any other certificate by the commissioner of the amount of tax and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts it contains.
3. Enforcement. If a dealer fails to pay any tax, penalty, or interest imposed by this chapter, the attorney general shall bring an action for the recovery of the amount of the tax, penalty, or interest which may be due, in the name of the state, in any court of competent jurisdiction.

**Lien upon unpaid tax - Penalty - Interest.**

1. Whenever a dealer liable to pay a tax or penalty imposed refuses or neglects to pay the tax or penalty, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the amount, are a lien in favor of the state of North Dakota upon all property and rights to property,

whether real or personal, belonging to the dealer. The lien attaches at the time the tax becomes due and payable and continues until the liability is satisfied.

The lien is preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, and satisfied upon compliance with the procedures prescribed in sections 57-38-49 and 57-38-50.

2. The attorney general, upon the request of the tax commissioner, shall bring suit without bond, to enforce payment of any taxes, penalties, and interest and to foreclose any lien provided for in this chapter, and, in such action, the attorney general shall have the assistance of the state's attorney of the county in which the action is brought. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy provided by law for the enforcement or collection of tax, penalty, or interest.

**Confidential nature of information.**

1. Disclosure prohibited. Notwithstanding any law to the contrary, neither the commissioner nor a public employee may reveal facts contained in a report or return required by this chapter or any information obtained from a dealer; nor can any information contained in such a report or return obtained from a dealer be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes or penalties due under this chapter from the dealer.

This provision may not be construed to prohibit the inspection by the attorney general or other legal representatives of the state of the report, return, or other information of, or regarding, a dealer who brings an action to set aside or review the tax, penalty, or interest based thereon, or against whom an action or proceeding has been instituted to recover any tax, penalty, or interest imposed by this chapter.

2. Penalty for disclosure. Any person violating this section is guilty of a class A misdemeanor.
3. Statistics. This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

**Investigatory powers.** For the purpose of determining the correctness of any return, determining the amount of tax that should have been paid, determining whether or not the dealer should have made a return or paid taxes, or collecting any taxes under this chapter, the commissioner may examine, or cause to be examined, any books, papers, records, or memoranda, that may be relevant to making such determinations, whether the books, papers, records, or memoranda, are the property of or in the possession of the dealer or another person. The commissioner may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to

attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the commissioner or any examiner or investigator, the district court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, and memoranda. The commissioner may also issue subpoenas. Disobedience of subpoenas issued under this chapter is punishable by the district court of the district in which the subpoena is issued, or, if the subpoena is issued by the commissioner, by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of court.

Controlled substances not subject to assessment of tax. Marijuana or other controlled substances seized or obtained by a law enforcement agent or a person acting at the direction of such agent shall not be subject to assessment of tax under this chapter if such marijuana or other controlled substances were illegally seized or obtained and would not be admissible in evidence against the dealer in a criminal prosecution for their possession.

Approved March 28, 1989  
Filed March 28, 1989

## CHAPTER 707

SENATE BILL NO. 2196  
(Committee on Finance and Taxation)  
(At the request of the Tax Department)

### INCOME TAX FEDERALIZATION

AN ACT to amend and reenact subsection 3 of section 57-38-01 of the North Dakota Century Code, relating to federalization for income tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-38-01 of the 1987 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 1986, as amended ~~to and including December 31, 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. Provided, that one-half of the amount not allowed as 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 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 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 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.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 9, 1989  
Filed March 9, 1989

## CHAPTER 708

HOUSE BILL NO. 1164  
(Committee on Finance and Taxation)  
(At the request of the Tax Department)

### CORPORATE ALTERNATIVE MINIMUM AND WATER'S EDGE FILINGS

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 and a new subsection to section 57-38-01.3 of the North Dakota Century Code, relating to net operating loss deductions and special deductions; and to amend and reenact subsection 4.2 of section 57-38-01, subsection 5 of section 57-38-30.3, subsections 1 and 5 of section 57-38.4-01, and section 57-38.4-02 of the North Dakota Century Code, relating to alternative minimum taxable income and individual and corporation income tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4.2 of section 57-38-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4.2. "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, increased by the amount of any net operating loss deductions to the extent that those items were deducted in determining federal alternative minimum taxable income, increased by the amount of any special deductions to the extent that those items were deducted in determining federal alternative minimum taxable income, and either increased or decreased by the adjustments provided in subdivisions a and b of subsection 3 of section 57-38-01 and subdivision g of subsection 1 of section 57-38-01.3, 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. The sum calculated pursuant to this subsection must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to this subsection, the excess may be carried back or carried forward for the same time period that an identical federal net operating loss may be carried back or carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In

addition, no deduction may be taken for a carryback or carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 2. A new subdivision to subsection 1 of section 57-38-01.3 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Increased by the amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income.

SECTION 3. A new subsection to section 57-38-01.3 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The sum calculated pursuant to subsection 1 of section 57-38-01.3 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1 of section 57-38-01.3, the excess may be carried back or carried forward for the same time period that an identical federal net operating loss may be carried back or carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryback or carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 4. AMENDMENT. Subsection 5 of section 57-38-30.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. For the purposes of this section, the term "federal income tax liability" means the individual's, estate's, or trust's federal income tax liability as computed for federal income tax purposes using tax tables or ~~schedule F~~, tax rate schedules, or form 8615, plus additional taxes due on federal income tax schedules or forms 4970, 4972, ~~5544~~, ~~5405~~, section 72(m)(5) penalty tax, ~~4625~~, ~~6251~~, and 5329, 6251, and 8656, and before credit for contributions to ~~candidates for public office~~, credit for the elderly (~~schedule R&RP~~) or the disabled (schedule R), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 1116), ~~work incentive credit~~ (~~form 4074~~) general business credit (form 3800), jobs credit (form 5884), ~~residential energy credit~~ (~~form 5695~~) credit for alcohol used as fuel (form 6478), credit for increasing research activities (form 6765), low income housing credit (form 8586) and nonconventional fuel credit, and before reduction for federal income tax withheld, estimated payments, earned income credit, ~~excess Federal Insurance Contributions Act~~ (~~chapter 21 of the Internal Revenue Code of 1954, as amended~~) amount paid with form 4868, excess social security tax, and the federal Railroad Retirement Tax Act (~~chapter 22 of the Internal Revenue Code of 1954, as amended~~), taxes tax withheld, credit for federal ~~taxes tax~~ on gasoline and special fuels and oils



(form 4136), and regulated investment company credits (form 2439). The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 or form 8656 must be reduced, but not below zero, by the amount of any investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251 or form 8656.

SECTION 5. AMENDMENT. Subsections 1 and 5 of section 57-38.4-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock of which is owned directly or indirectly by the parent corporation or another corporate member of the water's edge combined group.
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~~ inside 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.

SECTION 6. AMENDMENT. Section 57-38.4-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38.4-02. 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~~ five consecutive taxable years after making the election.
  - d. The corporation must file with the tax commissioner a domestic disclosure spreadsheet, after which the corporation must file a domestic disclosure spreadsheet only every third year while the election remains in effect.

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.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 709

HOUSE BILL NO. 1384  
(Martinson)

### PATROLMEN'S BENEFIT DEDUCTIONS

AN ACT to amend and reenact subdivision j of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to an income tax deduction for highway patrolmen's retirement benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision j of subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- j. Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the United States Civil Service Retirement Act, firemen's relief associations authorized by chapters 18-05 and 18-11, ~~or~~ policemen's pension funds authorized by chapter 40-45, or the highway patrolmen's retirement system authorized by chapter 39-03.1; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 3, 1989  
Filed April 3, 1989

\* NOTE: Subdivision j of subsection 1 of section 57-38-01.2 was also amended by section 17 of House Bill No. 1049, chapter 134.

## CHAPTER 710

SENATE BILL NO. 2201  
 (House on Finance and Taxation)  
 (Request of the Tax Department)

## INCOME TAX RATE INCREASE

AN ACT to amend and reenact section 57-38-29, subsections 2 and 6 of section 57-38-30.3, and subsection 2 of section 57-38-31 of the North Dakota Century Code, relating to individual income tax rates and filing methods; to repeal sections 57-38-01.15 and 57-38-34.2 of the North Dakota Century Code, relating to proration and itemization of deductions and filing of separate income tax returns; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-29 of the 1987 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~~ three and twenty-four hundredths percent.
2. On taxable income in excess of three thousand dollars and not in excess of five thousand dollars, a tax of four ~~and eighty-six~~ hundredths percent.
3. On taxable income in excess of five thousand dollars and not in excess of eight thousand dollars, a tax of ~~five and thirty-three~~ six and forty-seven hundredths percent.
4. On taxable income in excess of eight thousand dollars and not in excess of fifteen thousand dollars, a tax of ~~six and sixty-seven~~ eight and ten hundredths percent.
5. On taxable income in excess of fifteen thousand dollars and not in excess of twenty-five thousand dollars, a tax of ~~eight nine and~~ seventy-one hundredths percent.
6. On taxable income in excess of twenty-five thousand dollars and not in excess of thirty-five thousand dollars, a tax of ~~nine eleven 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 ~~ten and sixty-seven~~ twelve and ninety-six hundredths percent.

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8. On taxable income in excess of fifty thousand dollars, a tax of twelve fourteen and fifty-seven hundredths percent.

SECTION 2. AMENDMENT. Subsections 2 and 6 of section 57-38-30.3 of the 1987 Supplement to the North Dakota Century Code are 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 is fourteen seventeen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year.
6. Where a husband and wife determine their federal income tax liability for the taxable year on a joint federal income tax return they may elect to determine their North Dakota income taxes separately. The federal income tax liability must be apportioned between them in the proportion that the adjusted gross income of each bears to their combined adjusted gross income. The adjusted gross income of each must be determined in the same way that each would have been required to determine it if they had filed separate federal income tax returns. A husband and wife filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.

SECTION 3. AMENDMENT. Subsection 2 of section 57-38-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A husband and wife each having separate income may include their income in a single joint return; or if they have separate income from personal or professional services or from business or property in which the other has no ownership and if they file a joint federal income tax return in which such income is reported; they may file separate returns in which the separate income of each is reported in the same way that they would have been required to report it in separate federal returns if they had filed separate federal returns.

A husband and wife who have income from property or business in which both have an ownership interest may file a single joint return in which the income of both, along with any other income they may be required to report, is included; or they may file separate returns in the same way as provided in the preceding paragraph; provided, that the income from the property or business in which both have an ownership interest shall be allocated between them according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such property or business; pursuant to rules and regulations promulgated by the tax commissioner for the reasonable allocation thereof. The same filing status and deduction method used by a husband and wife when filing federal income tax returns must be used when filing state income tax returns. If either

spouse is a resident and the other is a nonresident, separate state income tax returns must be filed.

SECTION 4. REPEAL. Section 57-38-34.2 of the North Dakota Century Code and section 57-38-01.15 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

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

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 1989

Filed April 19, 1989

## CHAPTER 711

HOUSE BILL NO. 1530  
(Representatives A. Hausauer, Belter, G. Berg)  
(Senators Ingstad, Moore, Stromme)

### CORPORATE ALTERNATIVE MINIMUM INCOME TAXES

AN ACT to amend and reenact section 57-38-30 of the North Dakota Century Code, relating to the imposition and rate of income tax on corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-30 of the 1987 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~~ two calculations under subsections 1 and 2:

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.
  - 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.
  - c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
  - 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.
  - e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
  - f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. ~~Five~~ Six 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.

3. To the extent the tax calculation under subsection 2 exceeds the tax calculation under subsection 1, a credit for the excess amount shall be allowed against the tax liability for any future years calculated under subsection 1. This credit carryover is not allowed to the extent that the liability computed under subsection 2 would result if the only adjustments and items of tax preference taken into account to arrive at federal alternative minimum taxable income were exclusion preferences as defined in section 53(d)(1)(B) of the Internal Revenue Code.
4. The credit allowed under subsection 3 for any taxable year may not exceed the excess, if any, of tax liability of the corporation for the taxable year as calculated under subsection 1 over the tax liability of the corporation for the taxable year as calculated under subsection 2.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 22, 1989  
Filed March 23, 1989



## CHAPTER 712

HOUSE BILL NO. 1634  
(Schneider, W. Williams)

### INCOME TAX REFUND INTEREST

AN ACT to amend and reenact section 57-38-35.2, subsection 1 of section 57-38-45, and subsection 1 of section 57-38-62 of the North Dakota Century Code, relating to interest on refunds and additional assessments of individual and corporation income tax and declarations of estimated tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-35.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-35.2. Interest payments. Interest at the ~~adjusted~~ rate ~~established under 26 U.S.C. 6621(a)(2) of ten percent~~ 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. AMENDMENT. Subsection 1 of section 57-38-45 of the 1987 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 is 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 established under 26 U.S.C. 6621(a)(2)~~ of twelve percent 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 must be added to the tax interest at the rate of ~~one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2)~~, of such tax for each one percent per 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 must be added to the additional tax due interest at the rate of ~~one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2)~~, one percent 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 must be added to the additional tax interest at the rate of ~~one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2)~~, one percent 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. 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 3. AMENDMENT. Subsection 1 of section 57-38-62 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. All individuals, estates, and trusts that are required to file a federal declaration of subject to section 6654 of the Internal Revenue Code relating to a taxpayer's failure to pay estimated income tax shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the current taxable year if their estimated tax due the state from all sources, including wages, salaries, bonuses, or other emoluments, not subject to withholding, 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. Married taxpayers who file a joint federal estimate shall each be deemed to be subject to the federal provision. If a declaration of estimated tax is required, the taxpayer shall make, at the times prescribed in this chapter, total estimated payments in an amount which is the lesser of the following:

- a. An amount which, when added to the taxpayer's withholding, equals or exceeds ninety percent of the taxpayer's total current year tax liability. No interest or penalty provisions of this chapter shall apply if the total amount of estimated tax due pursuant to this subdivision is less than two hundred dollars. The two hundred dollar floor shall apply per return.
- b. An amount which, when added to the taxpayer's withholding, equals or exceeds one hundred percent of the taxpayer's total tax liability for the immediately preceding year.
  - (1) This provision is not available for any taxpayer who was a nonfiler or a part-year resident for the immediately preceding year.
  - (2) In order to satisfy the requirements of this subdivision, taxpayers who file separate returns for the current year but filed a North Dakota joint return for the prior year, shall each be required to pay estimated tax in an amount which, when added to the taxpayer's withholding, is equal to the tax liability which would have been incurred in the immediately preceding year if separate returns had been filed.

SECTION 4. EFFECTIVE DATES. Section 1 of this Act is effective for refunds made after June 30, 1989. Section 2 of this Act is effective for interest additions made after June 30, 1989. Section 3 of this Act is effective for tax years beginning after December 31, 1989.

Approved April 14, 1989  
Filed April 17, 1989

## CHAPTER 713

HOUSE BILL NO. 1030  
(Committee on Finance and Taxation)  
(At the request of the Office of Management and Budget)

### BINGO CARD SALES TAX

AN ACT to amend and reenact subsections 7, 8, and 9 of section 57-39.2-01, subdivision c of subsection 1 of section 57-39.2-02.1, and subsections 6, 7, and 8 of section 57-40.2-01 of the North Dakota Century Code, relating to the imposition of a sales and use tax on the gross receipts from furnishing bingo cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7, 8, and 9 of section 57-39.2-01 of the North Dakota Century Code without the amendments made in section 2 of chapter 687 of the 1987 Session Laws 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, and communication service to retail consumers or users; the furnishing of bingo cards; 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 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, 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; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; 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. 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.
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, or communication, the furnishing of bingo cards, 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 2. AMENDMENT. Subdivision c of subsection 1 of section 57-39.2-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 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 furnishing of bingo cards and 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.

SECTION 3. AMENDMENT. Subsections 6 and 7 of section 57-40.2-01 of the 1987 Supplement to the North Dakota Century Code and subsection 8 of section 57-40.2-01 of the North Dakota Century Code without the amendments made in section 5 of chapter 687 of the 1987 Sessions Laws are 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 includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. 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.
7. "Retailer maintaining a place of business in this state", or any like term, means 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 includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. 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.

\* NOTE: Section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2458, chapter 714.

8. "Tangible personal property" means:
- a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, 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.

Approved April 6, 1989  
Filed April 7, 1989

## CHAPTER 714

SENATE BILL NO. 2458  
(Satrom)

## SALES AND USE TAX ]

714  
Secs. 1, 3, 5, 7, 8  
R. M.  
Disapproved

AN ACT to create and enact chapter 57-39.3 of the North Dakota Century Code, relating to an in lieu fee to be collected by out-of-state retailers making sales into North Dakota if federal legislation is adopted; 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, 57-40.2-03.2, 57-40.3-02, and 57-40.5-02 of the North Dakota Century Code, relating to sales, use, motor vehicle excise, and aircraft excise tax rates; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the 1987 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 ~~five~~ six 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, ~~cable television or other video programming services~~, 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. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

\* NOTE: Section 57-39.2-02.1 was also amended by section 2 of House Bill No. 1030, chapter 713.



- 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~~ four 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 for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to ~~December 9, 1986~~ May 1, 1989, 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 the bid was submitted.

SECTION 2. AMENDMENT. Section 57-39.2-03.2 of the 1987 Supplement to 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 ~~six~~ seven 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 1987 Supplement to 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:

<del>¢0-01</del> to <del>¢0-15</del> .....	no tax
<del>¢0-16</del> through <del>¢0-20</del> .....	<del>1¢</del> tax
<del>¢0-21</del> through <del>¢0-40</del> .....	<del>2¢</del> tax
<del>¢0-41</del> through <del>¢0-60</del> .....	<del>3¢</del> tax
<del>¢0-61</del> through <del>¢0-80</del> .....	<del>4¢</del> tax
<del>¢0-81</del> through <del>¢1-00</del> .....	<del>5¢</del> tax
Each additional <del>¢1-00</del> - <del>5¢</del> additional tax, or	
each additional <del>20¢</del> or fraction thereof over	
<del>¢1-00</del> - <del>1¢</del> additional tax:	
<del>\$0.01</del> through <del>\$0.08</del> .....	no tax
<del>\$0.09</del> through <del>\$0.24</del> .....	<del>1¢</del> tax
<del>\$0.25</del> through <del>\$0.41</del> .....	<del>2¢</del> tax
<del>\$0.42</del> through <del>\$0.58</del> .....	<del>3¢</del> tax
<del>\$0.59</del> through <del>\$0.74</del> .....	<del>4¢</del> tax
<del>\$0.75</del> through <del>\$0.91</del> .....	<del>5¢</del> tax
<del>\$0.92</del> through <del>\$1.08</del> .....	<del>6¢</del> tax
Each additional <del>\$1.00</del> - <del>6¢</del> additional tax, or	
each additional <del>15¢</del> or fraction thereof over	
<del>\$1.00</del> - <del>1¢</del> additional tax.	

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~~ four percent of such price or charge.

SECTION 4. Chapter 57-39.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-39.3-01. In lieu fee imposed. An in lieu fee is imposed on sales with a destination within North Dakota if the sales are made by a person who by virtue of federal law is required to collect and pay the sales and use tax imposed by sections 57-39.2-02.1 and 57-40.2-02.1.

57-39.3-02. Rate of in lieu fee. The in lieu fee is imposed at a rate calculated annually by the tax commissioner. The rate is calculated by dividing the total local option sales and use tax revenues collected pursuant to sections 11-09.1-05 and 40-05.1-06 in the recent fiscal year by total state sales and use tax revenues collected pursuant to sections 57-39.2-02.1 and 57-40.2-02.1, and then multiplying the resulting quotient by the sales and use tax rate established in sections 57-39.3-02.1 and 57-40.2-02.1, and rounding the resulting product to the nearest twenty-five hundredths percent.

57-39.3-03. Election to collect actual tax. Any person required to collect and pay the in lieu fee imposed in section 57-39.3-01 may elect, on an annual basis, to collect and pay the local sales and use tax imposed in each political subdivision pursuant to sections 11-09.1-05 and 40-05.1-06.

57-39.3-04. Filing of returns and payment of tax. The person paying either the in lieu fee pursuant to section 57-39.3-01 or the local sales tax pursuant to section 57-39.3-03 must file returns and pay the tax due on the same date required by the sales and use tax imposed pursuant to sections 57-39.2-02.1 and 57-40.2-02.1, unless federal law requires a less frequent schedule. If federal law specifies a less frequent schedule, the tax commissioner shall adopt rules necessary to conform the filing and payment schedule to federal law. The returns must include such information as the tax commissioner may require consistent with federal law.

57-39.3-05. Administration. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the in lieu fee imposed in this chapter.

57-39.3-06. Distribution of revenues. The tax commissioner shall deposit all moneys collected and received under this chapter with the state treasurer and shall certify to the treasurer, on a schedule consistent with federal law, the distribution of the in lieu fees collected pursuant to section 57-39.3-01 to the political subdivisions imposing a sales and use tax pursuant to sections 11-09.1-05 and 40-05.1-06. The distribution is based on the proportion that the political subdivision's sales and use tax receipts bears to the total sales and use tax receipts collected by political subdivisions pursuant to sections 11-09.1-05 and 40-05.1-06. The calculations are based on data for the most recent fiscal year. The state treasurer must make the distributions on a schedule consistent with federal law.

\* SECTION 5. AMENDMENT. Section 57-40.2-02.1 of the 1987 Supplement to 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 ~~five~~ six 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 ~~five~~ six 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~~ four percent of the purchase price thereof.

\* NOTE: Section 57-40.2-02.1 was also amended by section 3 of House Bill No. 1499, chapter 716.

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~~ four 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 ~~December 17, 1986~~ May 1, 1989, 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 6. AMENDMENT. Section 57-40.2-03.2 of the 1987 Supplement to 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 ~~six~~ seven 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.

SECTION 7. AMENDMENT. Section 57-40.3-02 of the 1987 Supplement to 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 ~~five~~ six 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 8. AMENDMENT. Section 57-40.5-02 of the 1987 Supplement to 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 ~~five~~ six 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~~ four 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 9. EFFECTIVE DATE. This Act is effective for taxable events occurring after April 30, 1989, unless this Act is not passed as an emergency measure by the legislative assembly, in which case this Act is effective for taxable events occurring after June 30, 1989. Section 4 of this Act is effective on the same date the federal law authorizing the collection of the in lieu fee imposed in section 57-39.3-01 or the local sales and use tax elected pursuant to section 57-39.3-03 of this chapter becomes effective.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1989  
Filed April 7, 1989

**CHAPTER 715**

HOUSE BILL NO. 1674  
(Representative Kloubec)  
(Senator Heigaard)

(Approved by the Committee on Delayed Bills)

**SALES TAX TEMPORARY INCREASE SUSPENDED**

AN ACT to suspend sections 4, 6, 7, and 8 of chapter 687 of the 1987 Session Laws, relating to separate and additional sales, use, motor vehicle excise, and aircraft excise taxes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. SUSPENSION. Sections 4, 6, 7, and 8 of chapter 687 of the 1987 Session Laws are hereby suspended.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on May 1, 1989, and is effective during the time Senate Bill No. 2458, as approved by the Fifty-first Legislative Assembly, is effective, through June 30, 1989.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 716

HOUSE BILL NO. 1499  
(Representatives Huether, Gerntholz, Graba)  
(Senator Stromme)

### MANUFACTURING EQUIPMENT SALES TAX REDUCTION

AN ACT to create and enact a new section to chapter 57-39.2 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to a reduced sales and use tax rate for manufacturing equipment purchased by a new or expanding business; and to amend and reenact section 57-40.2-02.1 of the North Dakota Century Code, relating to a reduced use tax rate for manufacturing equipment purchased by a new business.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY 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:

Reduced rate for manufacturing machinery and equipment.

1. Sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease is subject to the tax at the rate of three percent of the purchase price. To qualify for the reduction, the machinery or equipment must be used in a new manufacturing plant or in expansion of an existing manufacturing plant. Expansion of a manufacturing plant occurs when the purchase of machinery or equipment results in either a physical expansion or economic expansion of the plant. An economic expansion is accomplished by increasing production volume, employment, or the number of different types of products which can be manufactured. Machinery or equipment purchased to replace existing machinery or equipment does not qualify for the tax reduction, unless the purchase price of the replacement machinery or equipment results in either a physical expansion or an economic expansion of the plant.
2. To receive the reduced rate at the time of purchase, the manufacturer must receive, from the commissioner, a certificate that the machinery or equipment the manufacturer intends to purchase qualifies for the reduced rate. If a certificate is not received prior to the purchase, the manufacturer shall pay the six percent sales tax rate and apply to the commissioner for a refund.
3. In the event the machinery or equipment is purchased or installed by a contractor subject to tax imposed by this chapter, the manufacturer shall apply for a refund of the difference between the amount remitted by the contractor and the reduced rate imposed by this section.
4. For purposes of this section the following definitions apply:

- a. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.
- b. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in the manufacturing process. Machinery includes electrical, mechanical, and electronic components which are part of machinery and necessary for a machine to produce its effect or result.
- c. The terms "machinery" and "equipment" do not include handtools, buildings, transportation equipment not directly used in manufacturing, office machines and equipment, machines and equipment used in administrative accounting sales or other businesses, or any other equipment or machinery not used directly and solely in manufacturing.
- d. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.
- e. "Used directly" means used solely in the actual production during processing, fabrication or assembly of raw materials, or partially finished materials into the form in which the product is finalized, packaged, and ready for market. It also means:
- (1) To effect a direct and immediate physical change upon the tangible personal property.
  - (2) To guide or measure a direct and immediate physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
  - (3) To test or measure the property on the production line or at a site in the immediate location of production.
  - (4) To transport, convey, or handle the tangible personal property during the manufacturing.
  - (5) To package the product for sale and shipment.

SECTION 2. A new section to chapter 57-40.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced rate for manufacturing machinery and equipment.

1. Sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease is subject to the tax at the rate of three percent of the purchase price. To qualify for the reduction, the machinery or equipment must be used in a new manufacturing plant or in expansion of an existing manufacturing plant. Expansion of a manufacturing plant occurs when the purchase of machinery or equipment results in either a physical expansion or economic expansion of the plant. An



economic expansion is accomplished by increasing production volume, employment, or the number of different types of products which can be manufactured. Machinery or equipment purchased to replace existing machinery or equipment does not qualify for the tax reduction, unless the purchase price of the replacement machinery or equipment results in either a physical expansion or an economic expansion of the plant.

2. To receive the reduced rate at the time of purchase, the manufacturer must receive, from the commissioner, a certificate that the machinery or equipment the manufacturer intends to purchase qualifies for the reduced rate. If a certificate is not received prior to the purchase, the manufacturer must pay the six percent sales tax rate and apply to the commissioner for a refund.
3. In the event the machinery or equipment is purchased or installed by a contractor subject to tax imposed by this chapter, the manufacturer must apply for a refund of the difference between the amount remitted by the contractor and the reduced rate imposed by this section.
4. For purposes of this section the following definitions apply:
  - a. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.
  - b. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in the manufacturing process. Machinery includes electrical, mechanical, and electronic components which are part of machinery and necessary for a machine to produce its effect or result.
  - c. The terms "machinery" and "equipment" do not include handtools, buildings, transportation equipment not directly used in manufacturing, office machines and equipment, machines and equipment used in administrative accounting sales or other businesses, or any other equipment or machinery not used directly and solely in manufacturing.
  - d. "Used directly" means used solely in the actual production during processing, fabrication or assembly of raw materials, or partially finished materials into the form in which the product is finalized, packaged, and ready for market. It also means:
    - (1) To effect a direct and immediate physical change upon the tangible personal property.
    - (2) To guide or measure a direct and immediate physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
    - (3) To test or measure the property on the production line or at a site in the immediate location of production.

- (4) To transport, convey, or handle the tangible personal property during the manufacturing.
- (5) To package the product for sale and shipment.

\* SECTION 3. AMENDMENT. Section 57-40.2-02.1 of the 1987 Supplement to 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, and section 2 of this Act relating to the reduced rate for manufacturing equipment purchased by a new business, 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 five percent of the purchase price of ~~such~~ the 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 five percent of the fair market value of ~~such~~ the 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 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.

Approved April 28, 1989  
Filed April 28, 1989

\* NOTE: Section 57-40.2-02.1 was also amended by section 5 of Senate Bill No. 2458, chapter 714.

## CHAPTER 717

HOUSE BILL NO. 1267  
(Gerl, Ulmer)

**CANADA-MONTANA RESIDENT SALES TAX EXEMPTIONS**

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a refund of sales tax for purchases made by residents of Canada; and to amend and reenact subsection 12 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for purchases made by residents of certain adjoining states.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. Gross receipts from all sales a sale otherwise taxable under this chapter when made to persons a person who are residents is a resident of an adjoining states state which do does not impose or levy a retail sales tax or are residents of Canada; provided that such persons are under the following conditions:
  - a. The nonresident is in the state of North Dakota for the express purpose of making such purchases a purchase, and not as tourists; and provided, further, that any such person furnish a tourist.
  - b. The nonresident furnishes to the North Dakota retailer a certificate signed by him the nonresident in such a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless such the certificate is furnished it shall be presumed, until the contrary is shown, that such person the nonresident was not in the state of North Dakota for the express purpose of making such purchases; provided, further, that this exemption shall not apply to any a purchase.
  - c. The sale to any person who is a resident of another state if the sales price is twenty-five dollars or less or to any person who is a resident of Canada if the sales price is twenty-five dollars or less is fifty dollars or more.

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

Refunds for Canadian residents. The tax imposed under this chapter on gross receipts from sales made to a person who is a resident of Canada may be refunded under the following conditions:

1. The Canadian resident was in North Dakota for the express purpose of making a purchase, and not as a tourist.
2. The goods will be removed from North Dakota within thirty days of purchase and will be used permanently outside North Dakota.
3. The Canadian resident applies in writing to the commissioner on a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale.
4. The qualifying sale is one in which the total gross receipts from each individual transaction, which may involve one or more items, equals twenty-five dollars or more.
5. The refund is fifteen dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the fifteen dollar limit.
6. Notwithstanding the provisions of section 57-39.2-23, the commissioner may provide names and addresses of Canadian residents claiming a North Dakota sales tax refund to the director of tourism.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 718

HOUSE BILL NO. 1283  
(Gerl, J. DeMers)

### SALES TAX FOR CERTAIN BEVERAGES

AN ACT to amend and reenact subsection 33 of section 57-39.2-04, section 57-39.2-04.1, subsection 18 of section 57-40.2-04, and section 57-40.2-04.1 of the North Dakota Century Code, relating to removal of sales and use tax exemption for purchases of coffee, tea, cocoa, and certain bottled water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 33 of section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

33. Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.

\* SECTION 2. AMENDMENT. Section 57-39.2-04.1 of the 1987 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, and 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 Purchases made 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. For purposes of this section, "food" and "food products" does not include:

1. Alcoholic beverages or mixed drinks made from alcoholic beverages.
2. Candy or chewing gum.

\* NOTE: Section 57-39.2-04.1 was also amended by section 1 of House Bill No. 1573, chapter 720.

3. Carbonated beverages.
4. Beverages commonly referred to as soft drinks containing less than seventy percent fruit juice.
5. Powdered drink mixes.
6. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.
7. Coffee and coffee substitutes.
8. Tea.
9. Cocoa or cocoa products.

SECTION 3. AMENDMENT. Subsection 18 of section 57-40.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18. Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.

\* SECTION 4. AMENDMENT. Section 57-40.2-04.1 of the 1987 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, and 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 Purchases made 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. For purposes of this section, "food" and "food products" does not include:

1. Alcoholic beverages or mixed drinks made from alcoholic beverages.
2. Candy or chewing gum.
3. Carbonated beverages.

\* NOTE: Section 57-40.2-04.1 was also amended by section 2 of House Bill No. 1573, chapter 720.

4. Beverages commonly referred to as soft drinks containing less than seventy percent fruit juice.
5. Powdered drink mixes.
6. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.
7. Coffee and coffee substitutes.
8. Tea.
9. Cocoa or cocoa products.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 719

HOUSE BILL NO. 1613  
(Representatives Goetz, Hoffner)  
(Senators Satrom, Moore)

### COAL BENEFICIATION TAXES

AN ACT to create and enact a new subsection to section 57-39.2-04, a new subsection to section 57-40.2-04, two new subsections to section 57-60-01, and a new subsection to section 57-60-02 of the North Dakota Century Code, relating to the exemption of beneficiated coal from the sales tax and use tax, the definition of coal beneficiation, and the imposition of a tax upon the operator of a coal beneficiation plant; and to amend and reenact subsections 1 and 2 of section 57-60-01 and section 57-60-03 of the North Dakota Century Code, relating to the inclusion of coal beneficiation plants in the definition of a coal conversion facility and the measurement and recording of beneficiated coal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the initial sale of beneficiated coal taxed under chapter 57-60.

SECTION 2. A new subsection to section 57-40.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the initial sale of beneficiated coal.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 57-60-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Byproducts" means commercially usable products produced during the coal gasification or coal beneficiation process other than the principal product of a coal gasification plant or of a coal beneficiation plant.
2. "Coal conversion facility" means ~~either~~ any of the following:
  - a. A plant, other than an electrical generating plant or a coal beneficiation 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 [453592.37 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; or
- c. A plant, together with all additions thereto, which is designed for coal beneficiation.

SECTION 4. Two new subsections to section 57-60-01 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Coal beneficiation" means improving the physical, environmental, or combustion qualities of coal, but does not include crushing or treatment with dust suppressants or freeze-proofing agents.

"Design capacity of a coal beneficiation plant" means the number of tons a coal beneficiation plant is designed to produce as certified by a registered professional engineer.

SECTION 5. A new subsection to section 57-60-02 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For coal beneficiation plants the tax shall be twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess of eighty percent of the design capacity of the coal beneficiation plant is exempt from such tax.

SECTION 6. AMENDMENT. Section 57-60-03 of the 1987 Supplement to 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, beneficiated coal, or electricity produced. The production of synthetic natural gas, byproducts, beneficiated coal, 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, beneficiated coal, 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, beneficiated coal, 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.

Approved March 22, 1989  
Filed March 23, 1989

## CHAPTER 720

HOUSE BILL NO. 1573  
(R. Larson)**FOOD STORE SAMPLES EXEMPTION**

AN ACT to amend and reenact sections 57-39.2-04.1 and 57-40.2-04.1 of the North Dakota Century Code, relating to sales and use tax exemptions for food samples given to customers in food stores.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 57-39.2-04.1 of the 1987 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~~ 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. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are 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~~ 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. Section 57-40.2-04.1 of the 1987 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~~ 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

\* NOTE: Section 57-39.2-04.1 was also amended by section 2 of House Bill No. 1283, chapter 718.

\*\* NOTE: Section 57-40.2-04.1 was also amended by section 4 of House Bill No. 1283, chapter 718.

for consumption off the premises where purchased, shall be exempt from the use tax imposed by chapter 57-40.2. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the use 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~~ 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.

Approved March 22, 1989

Filed March 23, 1989

## CHAPTER 721

HOUSE BILL NO. 1534  
(W. Williams)

**DELINQUENT SALES TAX RETURN PENALTIES**

AN ACT to amend and reenact subsection 1 of section 57-39.2-18 and subsection 1 of section 57-40.2-15 of the North Dakota Century Code, relating to penalties for delinquent sales and use tax returns and payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, ~~such the person shall be~~ is subject to a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, plus interest of one percent of ~~such the tax for each per month of delay or fraction thereof, excepting of a month of delay except the first month after such the return was required to be filed or such or the tax became due.~~ Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. Any person on a monthly filing schedule with fifteen or more delinquent original returns or payments, and any person other than a monthly filer with nine or more delinquent original returns or payments, is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or the tax became due. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of such the penalty and interest. Such The penalty and interest shall must be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

SECTION 2. AMENDMENT. Subsection 1 of section 57-40.2-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person failing to file a return or corrected return or to pay any tax imposed pursuant to this chapter, within the time required by this chapter, ~~shall be~~ is subject to a penalty of five percent

of the amount of tax due or of five dollars, whichever is greater, plus interest of one percent of ~~such the~~ tax for each month of ~~delay~~ or fraction thereof, ~~excepting of a month except the first month after such the return was required to be filed or such the tax became due.~~ Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or tax became due. Any person on a monthly filing schedule with fifteen or more delinquent returns or payments, and any person other than a monthly filer with nine or more delinquent original returns or payments, is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or tax became due. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of ~~such~~ the penalty and interest. ~~Such~~ The penalty and interest ~~shall~~ must be paid to the commissioner and disposed of in the same manner as the tax with respect to which it is attached. Unpaid penalties and interest may be enforced in the same manner as is the tax.

Approved March 22, 1989

Filed March 23, 1989

## CHAPTER 722

SENATE BILL NO. 2168  
(Committee on Transportation)  
(At the request of the Motor Vehicle Department)

### **SPECIALTY MOTOR VEHICLE EXCISE TAX EXEMPTION**

AN ACT to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to an exemption from motor vehicle excise tax for specialty motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-40.3-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any motor vehicle with a gross vehicle weight of at least a class six, seven, or eight chassis, purchased for installation or assembly of heavy duty equipment by a person engaged in the business of installing or assembling the equipment, which when completed forms an integral part of a vehicle, has limited marketability, and is not normally sold to the general public. This exemption applies only when the manufacturer's statement of origin is reassigned to the installer or assembler by a licensed new motor vehicle dealer on a form prescribed by the tax commissioner. The motor vehicle and installed equipment must be sold as a unit when completed. "Heavy duty equipment" includes fuel delivery tanks, refuse bodies, cranes, aerial bucket devices, bus bodies regardless of gross vehicle weight, and digger derricks.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 723

SENATE BILL NO. 2029  
 (Committee on Finance and Taxation)  
 of the Office of Management and Budget)

## RATE AND VEHICLE EXCISE TAX ALLOCATION

AN ACT to amend and reenact section 57-40.3-10, subsection 1 of section 57-43.1-02, and subsection 1 of section 57-43.2-02 of the North Dakota Century Code, relating to motor vehicle excise tax allocation and motor fuel taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.3-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-10. Allocation of revenue. All moneys collected and received under this chapter shall be transmitted monthly by the registrar to the state tax commissioner and ~~by him~~ shall be paid to the state treasurer to be transferred and credited ~~as follows~~:

1. ~~Fifty percent of the tax accruing under this chapter on motor vehicles purchased or acquired outside of this state for use in this state, shall be credited to the motor vehicle registration fund.~~
2. ~~The remaining fifty percent of the tax accruing under this chapter on motor vehicles purchased or acquired outside of the state for use in this state shall be credited to the general fund.~~
3. ~~All moneys accruing under this chapter on motor vehicles purchased in this state shall be credited to the general fund.~~

SECTION 2. AMENDMENT. Subsection 1 of section 57-43.1-02 of the 1987 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 ~~seventeen~~ seventeen ~~twenty~~ nineteen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.

\* SECTION 3. AMENDMENT. Subsection 1 of section 57-43.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An excise tax of ~~seventeen~~ seventeen ~~nineteen~~ nineteen 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

\* NOTE: Subsection 1 of section 57-43.2-02 was also amended by section 10 of Senate Bill No. 2251, chapter 727.

723  
 R.M. Sec. 2, 3  
 Disapproved

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.

Approved April 14, 1989  
Filed April 17, 1989



**CHAPTER 724**

HOUSE BILL NO. 1549  
(Representatives Stenehjerm, D. Larson)  
(Senators Stenehjerm, Thane)

**MOTOR VEHICLE RETURN EXCISE TAX REFUND**

AN ACT to amend and reenact section 57-40.4-01.1 of the North Dakota Century Code, relating to refunds of motor vehicle excise taxes with respect to returned motor vehicles; and to provide for application of the Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.4-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.4-01.1. Refund of tax on returned vehicles. ~~Any~~ The owner of a passenger motor vehicle; ~~if such motor vehicle is~~ returned to the manufacturer under ~~the provisions of chapter 51-07 or the owner of a motor vehicle, as defined under section 57-40.3-01, when the purchase is canceled by the dealer,~~ may claim a refund of motor vehicle excise tax on the amount paid to the owner by the manufacturer or dealer.

SECTION 2. APPLICATION. This Act applies to purchases of motor vehicles canceled after June 30, 1988.

Approved March 22, 1989  
Filed March 23, 1989

## CHAPTER 725

SENATE BILL NO. 2141  
(Committee on Transportation)  
(At the request of the Motor Vehicle Department)

**MOTOR VEHICLE TAX REFUNDS AND MOBILE HOMES**

AN ACT to amend and reenact sections 57-40.4-02 and 57-55-01.2 of the North Dakota Century Code, relating to motor vehicle excise tax refunds and statements of full consideration for mobile homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.4-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.4-02. Procedure for refunding. Any person entitled to a refund of motor vehicle excise tax, may make application for ~~such~~ the refund to the ~~tax commissioner registrar~~ registrar in the manner prescribed by the ~~commissioner registrar~~ commissioner registrar. Upon the presentation of proof satisfactory to the ~~commissioner registrar~~ registrar, ~~he~~ the registrar shall authorize the refund to be made from moneys appropriated for that purpose. No refund ~~shall~~ may be authorized by the ~~commissioner registrar~~ registrar until ~~he~~ the registrar is fully satisfied through the production of necessary purchase agreements, tax receipts, and other documents and information that the refund is warranted. Payment of the refund ~~shall~~ must be made by warrant prepared by the ~~office of management and budget~~ after approval of the voucher by the office of the budget registrar.

SECTION 2. AMENDMENT. Section 57-55-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-01.2. Statements of full consideration to be filed with application for title to mobile homes - Sales ratio study - Penalty. Any person who has purchased a mobile home and is applying for a title ~~and license of a mobile home~~ under section 39-18-03 shall present, with the application, ~~his~~ a certified statement of the full consideration paid for the mobile home. The registrar of motor vehicles shall not issue a certificate of title to the mobile home until the certified statement is received. The registrar of motor vehicles shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in his office pursuant to this section. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out the purposes of this section, and the forms must contain a space for the explanation of special circumstances which may have contributed to the amount of the consideration. The state board of equalization shall furnish this information to the state tax commissioner who shall conduct a sales ratio study to determine the proper assessment values of mobile homes under this chapter. Any person who, in the statement provided for in this section, willfully falsifies the consideration paid for the transferred mobile home is guilty of a class B misdemeanor.

Approved April 6, 1989  
Filed April 7, 1989

## CHAPTER 726

SENATE BILL NO. 2088  
(Committee on State and Federal Government)  
(At the request of the Director of Institutions)

### EMERGENCY 911 TELEPHONE LOCATION SYSTEM

AN ACT to amend and reenact subsection 2 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota, relating to the emergency service communications system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

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 workable local governmental location system. 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.~~

Approved March 9, 1989  
Filed March 9, 1989

## CHAPTER 727

SENATE BILL NO. 2251  
(Committee on Finance and Taxation)  
(At the request of the Tax Department)

### FUELS TAXES REVISIONS

AN ACT to create and enact two new sections to chapter 57-43.1 and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to determination of motor vehicle fuel tax if no return is made and a credit for motor fuel and special fuel taxes paid on worthless accounts; and to amend and reenact subsection 3 of section 57-43.1-01, sections 57-43.1-04, 57-43.1-06, 57-43.1-09, 57-43.1-10, 57-43.1-16, subsections 4 and 5 of section 57-43.2-01, subsection 1 of section 57-43.2-02, sections 57-43.2-11 and 57-43.2-15 of the North Dakota Century Code, relating to definition of "importer for use" as applied to motor vehicle fuel taxes, refund claims for motor vehicle fuel, refunds for tax paid on motor fuel when taken out of North Dakota, refunds for fuel used for heating purposes, invoices issued to purchasers of motor vehicle fuel, the witness requirements for motor fuel dealers' reports, definitions of "highway purposes" and "importer for use" as applied to special fuel taxes, the imposition of special fuel tax on fuel blended with recovered oil, and penalties for failure to pay special fuels tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-43.1-01 of the 1987 Supplement to 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 gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle 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 57-43.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the

- \* NOTE: Section 57-43.1-04 was also amended by section 1 of House Bill No. 1214, chapter 728.

claimant that it is made under the penalties of perjury. It must have attached the original invoice or invoices showing the purchase of the motor vehicle fuel on which a refund is claimed; The refund claim must state the name of the person from whom the motor vehicle fuel was purchased; the date of purchase; the total amount of such motor vehicle fuel; that the purchase price has been paid and that in the price was included the motor vehicle fuel tax payable to the state of North Dakota under this chapter; that the motor vehicle fuel was used or is to be used by the claimant other than in motor vehicles operated or intended to be operated upon the public highways of this state, the manner in which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. The original invoice or invoices indicating the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. If the original invoice or invoices are lost, the claimant may substitute duplicate invoices plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets.

\* SECTION 3. AMENDMENT. Section 57-43.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-06. Refund to prevent double taxation - Reduction for agriculturally derived fuel tax fund. Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state to a state which requires payment of a tax upon the use of the fuel in that state shall be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. ~~The refund of tax paid pursuant to this chapter shall be reduced by the amount provided in section 57-43.1-03; and the reduction shall be deposited in the agriculturally derived fuel tax fund.~~ The refund shall be granted only upon application to the commissioner on forms prescribed by the commissioner, including proof of payment of the tax imposed by the other state, and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 shall not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section.

SECTION 4. AMENDMENT. Section 57-43.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-09. Refunds to private individuals or corporations prohibited - Exception. No tax refund shall be paid to any person on any motor vehicle fuel used, except ~~liquefied petroleum gas~~ fuel used for heating purposes, if the work performed by a person is paid for from public funds of the United States, state, or any political subdivision.

SECTION 5. AMENDMENT. Section 57-43.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-10. Invoice issued to purchaser. Every seller of motor vehicle fuel shall issue to each purchaser, who purchases motor vehicle fuel for agricultural or industrial purposes, a duplicate original invoice for each sale, ~~using double faced carbon~~ which must be in the form prescribed by the commissioner and must show the date, name, residence and license number, if any, of the seller, and the number of gallons [liters] of motor vehicle

\* NOTE: Section 57-43.1-06 was also amended by section 8 of House Bill No. 1200, chapter 81.

fuel sold. Each invoice so issued must be signed by the purchaser and the seller shall retain one of such duplicate invoices as part of the seller's business records for not less than two years.

SECTION 6. AMENDMENT. Section 57-43.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-16. Report by dealer to commissioner. Each dealer in motor vehicle fuel who engages in the sale or use of motor vehicle fuel in this state shall render to the commissioner, not later than the twenty-fifth day of each calendar month, on the form prescribed, prepared, and furnished by the commissioner a statement ~~witnessed by two witnesses~~ of the number of gallons [liters] of motor vehicle fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If the commissioner deems it necessary to ensure the payment of the tax imposed by this chapter, the commissioner may require returns and payment of the tax to be made for periods other than monthly periods. If the dealer is a domestic corporation, the statement must be signed by the president or secretary, and if a foreign corporation, by the resident general agent, attorney in fact, or by a chief accountant or officer. If the dealer is a firm, or an association of individuals, the statement must be made by the managing agent or owner. The report must contain a statement of the quantities of motor vehicle fuel sold, used, received, and delivered within this state from the dealer's place of business. If any motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement must show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom it was sold and delivered.

SECTION 7. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Determination if no return made. If any motor vehicle fuel dealer, whether or not licensed as such, fails, neglects, or refuses to file a motor vehicle fuel tax return when due, the commissioner shall, on the basis of available information, determine the tax liability of the motor vehicle fuel dealer for the period during which no return was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.1-21. An assessment made by the commissioner under this section or section 57-43.1-21 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

SECTION 8. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for taxes paid on worthless accounts. Taxes paid on motor vehicle fuel represented by accounts found to be worthless and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected.

SECTION 9. AMENDMENT. Subsections 4 and 5 of section 57-43.2-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. "Highway purposes" means any use of special fuels in any motor vehicle or in any phase of construction, reconstruction, repair, or maintenance of farm-to-market roads as defined in subsection 2 and of highways as defined in subsection 3, ~~except that special fuel known as liquefied petroleum gas used for heating purposes, and but~~ does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
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 gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle 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 10. AMENDMENT. Subsection 1 of section 57-43.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An excise tax of 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 57-43.2-11 of the 1987 Supplement to 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

\* NOTE: Subsection 1 of section 57-43.2-02 was also amended by section 3 of Senate Bill No. 2029, chapter 723.

- 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 to pay the tax due or 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 12. AMENDMENT. Section 57-43.2-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-15. Refusal or failure to file return or pay tax when due - Deficiencies - Penalties. If any special fuel dealer refuses or fails to file a return required by this chapter or fails to pay the tax due within the time prescribed by section 57-43.2-12, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which such refusal or failure continues, excepting the month within which the tax became due. The commissioner, for good cause shown, may waive the penalty or the interest provided by this section. If a special fuel dealer files a return but fails to pay in whole or in part the tax due under this chapter, there shall be added to the amount due and unpaid, interest at the rate of one percent per month or fraction of a month from the date the tax was due to the date of payment in full. If it is determined by the commissioner that the tax reported by any special fuel dealer is deficient, the commissioner shall proceed to assess the deficiency on the basis of available information and add to this deficiency interest at the rate of one percent per month or fraction of a month from the date the return was due.

SECTION 13. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for taxes paid on worthless accounts. Taxes paid on special fuels represented by accounts found to be worthless and actually charged off for income tax purposes may be taken as a credit against subsequent taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected.



## CHAPTER 728

HOUSE BILL NO. 1214  
(Whalen)

### FUELS TAX REFUND CLAIMS

AN ACT to amend and reenact section 57-43.1-04 of the North Dakota Century Code, relating to forms used for refunds of taxes paid on motor vehicle fuels.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 57-43.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. It must have attached the original invoice or invoices showing the purchase of the motor vehicle fuel on which a refund is claimed, must state the name of the person from whom the motor vehicle fuel was purchased, the date of purchase, the total amount of such motor vehicle fuel, that the purchase price has been paid and that in the price was included the motor vehicle fuel tax payable to the state of North Dakota under this chapter, that the motor vehicle fuel was used or is to be used by the claimant other than in motor vehicles operated or intended to be operated upon the public highways of this state, the manner in which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. If the original invoice or invoices are lost, the claimant may substitute duplicate invoices plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets.

Approved March 14, 1989  
Filed March 15, 1989

\* NOTE: Section 57-43.1-04 was also amended by section 2 of Senate Bill No. 2251, chapter 727.

## CHAPTER 729

HOUSE BILL NO. 1538  
(J. DeMers)

**IMPORTER FOR USE SPECIAL FUELS EXCISE TAX**

AN ACT to amend and reenact sections 57-43.2-03 and 57-43.2-04 of the North Dakota Century Code, relating to a special fuels excise tax levy and to the collection and payment of the tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.2-03 of the 1987 Supplement to 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~~ fuels, 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~~, if the special fuels are sold to a special fuels user in this state, and the same rate of tax is imposed if the special fuel is imported for use in this state by a special fuels 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. The special excise tax applies to all sales of special fuels taxed under section 57-43.2-02 for which taxes are later refunded to a special fuels user. For purposes of this section, "use" means the consumption of fuel for heating, agricultural, or railroad purposes, or for industrial purposes other than in the performance of a contract with any unit of government. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due. The provisions for credit in this section apply only if the other state or its political subdivisions allow a credit with respect to the tax imposed by this section which is substantially similar in effect to the credit provided in this section.

SECTION 2. AMENDMENT. Section 57-43.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-04. Collection and payment of tax. The tax imposed by section 57-43.2-03 attaches at the time of sale of any special fuel by a special fuel dealer to a special fuel user. The tax imposed by section 57-43.2-03 on special fuels imported for use in this state attaches when the fuel is used in this state. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this

chapter unless the tax is collected as provided in section 57-43.2-02 if the tax imposed by that section was paid to the commissioner and refunded to the special fuel user. If the tax imposed by section 57-43.2-02 was paid by a special fuels user and the special fuel was used for an exempt purpose, the tax must be refunded by the tax commissioner and the tax imposed by section 57-43.2-03 must be deducted from the refund. The tax imposed by section 57-43.2-03 on special fuels imported for use in the state by a special fuels user will be collected directly by the tax commissioner.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 730

HOUSE BILL NO. 1495  
(R. Anderson, Whalen, Stofferahn)

### **SPECIAL FUEL DEALER TAX DEDUCTION**

AN ACT to create and enact a new section to chapter 57-43.2 of the North Dakota Century Code, relating to a deduction for the cost of collecting and remitting special fuels taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Deduction of cost of collecting and remitting. On making payments to the commissioner as provided in this chapter the dealer shall deduct one percent from the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and remitting it to the commissioner.

Approved April 10, 1989  
Filed April 11, 1989

**CHAPTER 731**

SENATE BILL NO. 2536  
(Maixner)  
(Approved by the Committee on Delayed Bills)

**OIL AND GAS PRODUCTION TAX INTERPRETATION**

AN ACT to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the taxation of the federal land bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-51 of the North Dakota Century Code is hereby created and enacted to read as follows:

Type of tax. For purposes of interpreting chapter 785 of the 1987 Session Laws, relating to federal land bank taxation and to the taxation of other governmental entities if their immunity from taxation has been waived, the gross production tax is a real property tax on oil and gas producing mineral estates and interests.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 732

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

### OIL AND GAS TAX ADMINISTRATION

AN ACT to amend and reenact subsection 1 of section 57-51-05, subsection 3 of section 57-51-06, and sections 57-51-17 and 57-51-19 of the North Dakota Century Code, relating to interest to be paid on oil and gas production tax if an extension of time for payment has been granted, reports filed to facilitate the administration of the oil and gas production tax, and refunds of the oil and gas production tax; and to repeal sections 57-51-20 and 57-51.1-04 of the North Dakota Century Code, relating to statement sheets for oil or gas and the authority of the commissioner to accept production reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The gross production tax on oil or gas, as herein provided, shall be paid on a monthly basis. The tax on oil shall be due and payable on the twenty-fifth day of the month succeeding the month of production. The tax on gas shall be due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it shall become delinquent and shall be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when such a request is granted the tax shall not be delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve percent per annum from the date the tax was due to the date the tax is paid.

SECTION 2. AMENDMENT. Subsection 3 of section 57-51-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Reports from either the purchaser or producer, as the case may be, shall be delinquent after the last day fixed for their filing the same, and every person required to file such a report shall be subject to a penalty of twenty-five dollars per day for each property upon which such the person shall fail or refuse to file such the reports. The penalties herein prescribed shall be for failure to file reports and shall be in addition to the penalty

imposed by section 57-51-10 and shall likewise constitute a lien against the assets of ~~such~~ the person failing or refusing to file ~~such the~~ reports. The penalties prescribed under this section shall be collected in the same manner as gross production taxes and shall be apportioned as other gross production tax penalties; provided, that the commissioner may, for good cause shown, ~~remit~~ waive any penalties imposed under this section. When royalty is claimed to be exempt from taxation by law, the facts on which ~~such the~~ claims of exemption are based and ~~such other relevant~~ information ~~pertaining thereto as~~ must be furnished when requested by the commissioner may require shall be furnished in the report.

SECTION 3. AMENDMENT. Section 57-51-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-17. Reports by carriers of oil and gas transported - Reports of refiners - Reports by persons purchasing or storing oil. It shall be the duty of every railroad company, pipeline or transportation company to furnish to the commissioner, upon ~~forms prescribed by the commissioner~~ request, any and all information relative to the transportation of oil or gas subject to gross production tax, that may be required to properly enforce the provisions of this chapter; and ~~such report shall contain, along with other information required, the name of shipper, amount of oil and gas transported, point of receipt of shipment and point of destination;~~ said the commissioner may require any ~~such~~ pipeline or transportation company to install suitable measuring devices to enable ~~such the~~ company to include in such reports provide information concerning the quantity of oil or gas transported within, into, out of, or across the state of North Dakota. It ~~shall be~~ is the duty of every person engaged in the operation of a refinery for the processing of oil or gas, in the state of North Dakota, to furnish monthly to the commissioner, upon ~~forms prescribed by the commissioner~~ request, any and all information, relative to ~~the amount of~~ oil or gas subject to gross production tax that has been processed by it during such monthly period; and oil on hand at the close of such period; that may be required to properly enforce the provisions of this chapter. It shall be the duty of every person engaged in the purchase or storing of oil or gas subject to gross production tax in the state of North Dakota to furnish monthly a report to the commissioner, upon ~~forms prescribed by the commissioner~~ request, showing the amount of ~~such~~ oil or gas in storage, and giving, along with ~~other~~ information required, the location, identity, character and capacity of the storage receptacle in which ~~such the~~ oil or gas is stored. All such reports Information requested under this section shall be filed for each month and shall be delinquent if not filed on or before the twenty-fifth day of the next succeeding month after production for oil and the fifteenth day of the second succeeding month after production for gas as provided in subsection 4 of section 57-51-05 provided within forty-five days of the request.

The failure of any person to comply with the provisions of this section shall make ~~any such~~ that person liable to a penalty of twenty-five dollars for each day ~~it that person~~ shall fail or refuse to furnish ~~such statement~~ the information or comply with the provisions of this chapter; ~~such any~~ penalty may be recovered at the suit of the state, on relation of the commissioner; and ~~such the~~ penalty so collected shall be apportioned to the state general fund; provided, that the ~~tax~~ commissioner may, for good cause shown, excuse any or all penalties imposed under this section.

SECTION 4. AMENDMENT. Section 57-51-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-19. Refund of overpayments, duplicate payments, and erroneous payments. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue ~~his~~ a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of ~~such~~ the certificate to the state auditor, the state auditor shall issue a warrant for the purpose of refunding any ~~such overpaid overpayment, duplicate payment, or erroneous tax payment made in error~~ out of the unapportioned gross production tax in the state treasury and a pro rata share thereof shall be charged against the county entitled to share in ~~such~~ the tax.

SECTION 5. REPEAL. Sections 57-51-20 and 57-51.1-04 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1989  
Filed March 9, 1989



## CHAPTER 733

HOUSE BILL NO. 1302  
(Representatives Wald, Solberg, Haugen)  
(Senators Maixner, Waldera, Yockim)

### OIL AND GAS IMPACT GRANT FUND

AN ACT to create and enact a new section to chapter 57-62 of the North Dakota Century Code, relating to an oil and gas impact grant fund to be used to offset negative impact from oil and gas development and funded by a portion of oil and gas gross production tax revenues; to amend and reenact subsection 1 of section 57-51-15 of the North Dakota Century Code, relating to allocation of oil and gas gross production tax revenues; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding five million dollars per biennium including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.

SECTION 2. A new section to chapter 57-62 of the North Dakota Century Code is hereby created and enacted to read as follows:

Oil and gas impact grant fund - Continuing appropriation. The moneys accumulated in the oil and gas impact grant fund must be allocated as provided by law and as appropriated by the legislative assembly for distribution through grants by the energy development impact office to oil and gas development impacted cities, counties, school districts, and other taxing districts. The amounts deposited in the oil and gas impact grant fund under subsection 1 of section 57-51-15 are hereby appropriated as a standing and continuing appropriation to the energy development impact office for grants as provided in this section.

SECTION 3. EFFECTIVE DATE. Sections 1 and 2 of this Act become effective on July 1, 1991.

Approved April 11, 1989  
Filed April 11, 1989

## CHAPTER 734

HOUSE BILL NO. 1479  
(Goetz, Haugen, Gerhardt)

### **OIL EXTRACTION TAX EXEMPTION FOR WORK-OVER PROJECTS**

AN ACT to create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to an exemption from the oil extraction tax for a well requiring a work-over project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded either a minimum of sixty-five thousand dollars or a minimum of thirty thousand dollars if production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by 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.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 735

HOUSE BILL NO. 1028  
(Committee on Finance and Taxation)  
(At the request of the Office of Management and Budget)

### COAL SEVERANCE TAX FOR RESEARCH

AN ACT to create and enact a new section to chapter 57-61 of the North Dakota Century Code, relating to a separate and additional coal severance tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 must 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 research, development, and marketing of lignite and products derived from lignite. The industrial commission shall adopt rules for submission and consideration of research proposals and entering into contracts under this section.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 736

SENATE BILL NO. 2258  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

**ENERGY DEVELOPMENT IMPACT OFFICE  
ADMINISTRATION**

AN ACT to amend and reenact section 57-62-04 of the North Dakota Century Code, relating to the location of the energy development impact office within the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-62-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-04. Energy development impact office - Appointment of director. There is hereby created an energy development impact office, to be a division within the office of the commissioner of the board of university and school lands, the director of which shall be appointed by and serve at the pleasure of the board of university and school lands. ~~The director's appointment shall be confirmed by the senate.~~ The director shall have knowledge of state and local government and shall have experience or training in the fields of taxation and accounting. The salary of the director shall be set by the ~~board commissioner~~ of university and school lands within the limits of legislative appropriations. The director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose. The board of university and school lands shall fill any vacancy in the position of director in the same manner as listed above and, in addition, shall serve as an appeals board under rules promulgated by the board of university and school lands to reconsider grant applications for aid under this chapter which have been denied by the director. All action by the board of university and school lands, including appointment of a director, shall be by majority vote.

Approved March 9, 1989  
Filed March 9, 1989