# CHAPTER 57-40.2
# USE TAX

**57-40.2-01. Definitions.**

In this chapter, unless the context and subject matter otherwise require:

1. "Business", "certified automated system", "certified service provider", "commissioner", "computer software contract", "farm machinery", "gross receipts", "lease or rental", "local governmental unit", "mandatory computer software maintenance contract", "optional computer software maintenance contract", "person", "relief agency", "retail sale", "sale", and "tangible personal property", each has the meaning given to it in section 57-39.2-01.
2. Property used in "processing", as that term is used in subsection 9, means 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 purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.
3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
4. "Purchase price" applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.
5. "Purchased at retail" includes:
   a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
   b. The furnishing of wares, merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
   c. 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.
   d. 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.
   e. The severance of sand or gravel from the soil.
   f. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
   g. The purchase of an item of tangible personal property by 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, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
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 that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may

regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter.

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.
8. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.
9. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

**57-40.2-02. Tax imposed.**

Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-40.2-02.1. Use tax imposed.**

1. Except as otherwise expressly provided in this chapter, 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 the property. Except as provided in 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 the property at the time it was brought into this state.
2. For purposes of manufactured homes, as defined in section 41-09-02, an excise tax is imposed on the storage, use, or consumption in this state of manufactured homes used for residential or business purposes, except as provided in subsection 18 of section 57-40.2-04 purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as provided in 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 a manufactured home used for residential or business purposes at the rate of three percent of the fair market value of a manufactured home used for residential or business purposes at the time it was brought into this state. A manufactured home removed from North Dakota for installation in another state is not stored, used, or consumed in this state. Installation of a manufactured home includes any method established under section 54-21.3-08.
3. Repealed by S.L. 2007, ch. 529, § 7.
4. An excise tax is imposed on the fair market value of sand or gravel severed when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel.

**57-40.2-02.3. Certain sellers located outside this state required to collect and remit sales taxes - Criteria.**

Notwithstanding any other provision of law, any seller of tangible personal property or other taxable product for delivery in this state, which does not have a physical presence in this state, is subject to this chapter and chapter 57-39.2 and shall remit sales or use tax if the seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars in the previous calendar year, or the current calendar year. A seller that exceeds this sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales delivered during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier. The seller shall follow all applicable procedures and requirements of law as if the seller had a physical presence in this state.

**57-40.2-02.4. Marketplace facilitator tax collection requirement.**

1. For the purposes of this section:
   a. "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales or use tax. The term includes a resale certificate or other documentation authorized in section 57-40.2-04 furnished by a buyer to a seller.
   b. "Marketplace" means a physical or electronic place where one or more marketplace sellers sell or offer for sale tangible personal property or other products or services subject to tax under section 57-40.2-02.1, regardless of whether the marketplace seller has a physical presence in this state. A physical or electronic place includes a store, booth, internet website, catalog, television, radio broadcast, or a dedicated sales software application.
   c. (1) "Marketplace facilitator" means a person that:
      (a) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person;
      (b) Engages directly or indirectly, through one or more affiliated persons, in any of the following:
         [1] Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
         [2] Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
         [3] Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
         [4] Software development or research and development activities related to any of the activities described in subparagraph a, if such activities are directly related to a physical presence or electronic marketplace operated by the person or an affiliated person; and
      (c) Engages in any of the following activities with respect to the seller's products:
         [1] Payment processing services;
         [2] Fulfillment or storage services;
         [3] Listing products for sale;
         [4] Setting prices;
         [5] Branding sales as those of the marketplace facilitator;
         [6] Order taking;
         [7] Advertising or promotion; or
         [8] Providing customer service or accepting or assisting with returns or exchanges.
      (2) The term does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as

credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties.

d. "Marketplace seller" means a retailer that sells or offers for sale tangible personal property or other products or services subject to tax under section 57-40.2-02.1, through a marketplace that is owned, operated, or controlled by a marketplace facilitator.

2. Notwithstanding any other provision of law, any marketplace facilitator facilitating sales of tangible personal property or other products or services subject to tax under section 57-39.2-02.1, which does not have a physical presence in this state, is a retailer subject to chapters 57-39.2 and 57-40.2 and shall remit sales or use tax if the marketplace facilitator facilitates or makes sales through the marketplace that, when the sales are combined, meet the threshold amount in section 57-40.2-02.3. A marketplace facilitator exceeding the sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier.

3. A marketplace facilitator shall be considered the retailer of each sale the facilitator facilitates on its forum for a marketplace seller. Each marketplace facilitator shall:
   a. Be required to collect and remit for each sale any tax imposed under chapters 57-39.2 and 57-40.2.
   b. Be responsible for all obligations imposed under chapter 57-40.2 as if the marketplace facilitator was the retailer of the sale.
   c. In accordance with the provisions of section 57-40.2-09, keep such records and information as may be required by the tax commissioner to ensure proper collection and remittance of tax.
   d. Certify to its marketplace sellers that it will collect and remit state and local sales and use tax on sales of tangible personal property or other products or services subject to tax under section 57-40.2-02.1 made through the marketplace. A marketplace seller that accepts a marketplace facilitator's collection certificate in good faith may exclude sales made through the marketplace from the marketplace seller's return of gross receipts under section 57-39.2-11.
   e. Be subject to audit by the tax commissioner with respect to all retail sales for which it is required to collect and pay the tax imposed under chapters 57-39.2 and 57-40.2. Where the tax commissioner audits the marketplace facilitator, the tax commissioner is prohibited from auditing the marketplace seller for the same retail sales unless the marketplace facilitator seeks relief under subsection 4.

4. A marketplace facilitator is not liable under this section for failure to collect and remit sales and use tax if the marketplace facilitator demonstrates to the satisfaction of the department that:
   a. The marketplace facilitator has a system in place to require the seller to provide accurate information and has made a reasonable effort to obtain accurate information from the seller about a retail transaction;
   b. The failure to collect and remit the correct tax was due to reliance upon incorrect or insufficient information provided to the marketplace facilitator by the seller. If the marketplace facilitator is relieved of liability under this subsection, the seller and the purchaser are liable for any amount of uncollected, unpaid, or unremitted tax; and
   c. The marketplace facilitator and marketplace seller are not affiliated. A marketplace facilitator and a marketplace seller are affiliated if:
      (1) Either owns more than five percent of the other; or
      (2) Both are subject to the control of a common entity that owns more than five percent of each.

5. Notwithstanding any other provision of law, the tax imposed under this section may be refunded under the following conditions:
   a. An entity qualifying for an exemption under subsection 5, 6, 24, 32, 43, 48, or 52 of section 57-39.2-04 may apply in writing to the tax commissioner on a form and

in the manner as the tax commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale.

b. The refund is five dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the five dollar limit.

6. A class action may not be brought against a marketplace facilitator on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator, regardless of whether such action is characterized as a tax refund claim.
7. No marketplace facilitator is required to collect or remit sales or use tax under this section on any sale made before October 1, 2019.

**57-40.2-03. Separate and additional use tax.**

Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-40.2-03.1. Separate and additional use tax.**

Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-40.2-03.2. Use tax on 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 cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof.

**57-40.2-03.3. Use tax on contractors. (Effective through June 30, 2029)**

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to the property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of the property would be subject to pay the sales or use tax, the contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless the property has been previously subjected to a sales tax or use tax by this state, and the tax due has been paid. This section does not apply to a contractor or subcontractor that does not enter a contract for the purchase of the tangible personal property.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to:
   a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
   b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
   c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
   d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
   e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;

f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11;
g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14;
h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15; or
i. Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.16.
j. Tangible personal property as authorized or approved for exemption by the tax commissioner as provided in section 57-39.2-04.21.
k. Tangible personal property as authorized or approved for exemption by the tax commissioner as provided in section 57-39.2-04.20.
l. Raw materials, single-use product contact systems, and reagents used for biologic manufacturing as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.19.

**Use tax on contractors. (Effective after June 30, 2029)**

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to the property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of the property would be subject to pay the sales or use tax, the contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless the property has been previously subjected to a sales tax or use tax by this state, and the tax due has been paid. This section does not apply to a contractor or subcontractor that does not enter a contract for the purchase of the tangible personal property.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to:
   a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
   b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
   c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
   d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
   e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;
   f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11;
   g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14;

h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15; or
i. Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.16.
j. Tangible personal property as authorized or approved for exemption by the tax commissioner as provided in section 57-39.2-04.21.
k. Tangible personal property as authorized or approved for exemption by the tax commissioner as provided in section 57-39.2-04.20.

**57-40.2-03.4. Reduced rate for manufacturing machinery and equipment.**
Repealed by S.L. 1991, ch. 680, § 2.

**57-40.2-04. Exemptions.**
This chapter hereby is declared to be an independent and separate tax law but complementary to the retail sales tax laws of this state provided for by chapter 57-39.2 and does not apply to:

1. Any tangible personal property or taxable service upon the sale of which the retail sales tax imposed by chapter 57-39.2 has been collected by a retailer holding the permit prescribed by section 57-39.2-14.
2. Tangible personal property brought into this state by a nonresident thereof for that person's own storage, use, or consumption while temporarily within this state, except that such property is not exempt if brought into this state for storage, use, or consumption in the conduct of a trade, occupation, business, or profession.
3. Any motor vehicle either subject to or expressly exempted from the motor vehicle excise taxes imposed by chapter 57-40.3.
4. Tangible personal property upon which the state now imposes and collects a special tax, whether in the form of license tax, stamp tax, or otherwise.
5. Railway cars and locomotives used in interstate commerce, and tangible personal property which becomes a component part thereof.
6. Newsprint and ink actually used in the publication of a newspaper.
7. Repealed by S.L. 1981, ch. 582, § 3.
8. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition in this state if the sale of the tickets or admissions to the exhibition of the film is subject to the sales tax imposed by chapter 57-39.2.
9. Adjuvants, agrichemical tank cleaners and foam markers, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.
10. Gross receipts from the leasing, or renting, for residential housing, for periods of more than thirty consecutive days, of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation.
11. Bibles, hymnals, textbooks, and prayerbooks used by nonprofit religious organizations.
12. Gross receipts from sales of prosthetic devices, durable medical equipment, or mobility-enhancing equipment. For purposes of this subsection:
    a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
        (1) Can withstand repeated use;
        (2) Is primarily and customarily used to serve a medical purpose;
        (3) Generally is not useful to a person in the absence of illness or injury; and
        (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.

b. "Mobility-enhancing equipment" means equipment not including durable medical equipment sold under a doctor's written prescription, including repair and replacement parts for mobility-enhancing equipment, which:
   (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
   (2) Is not generally used by a person with normal mobility; and
   (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

   "Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

c. "Prosthetic device" means a replacement, corrective, or supportive device sold under a doctor's written prescription, including repair and replacement parts for such a device, worn on or in the body to:
   (1) Artificially replace a missing portion of the body;
   (2) Prevent or correct a physical deformity or malfunction; or
   (3) Support a weak or deformed portion of the body.

   "Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

d. "Supplies for ostomy care or bladder dysfunction" includes:
   (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
   (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, adult diapers, and other items used for the care and management of bladder dysfunction. For the purposes of this paragraph:
      (a) "Adult diapers" means diapers other than children's diapers.
      (b) "Children's diapers" means diapers marketed to be worn by children.
      (c) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

13. Purchases of electricity.
14. The leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid under the election of the purchaser under

subsection 21 of section 57-39.2-01 or subsection 5 of section 57-40.2-01 and the retailer has separately indicated on an invoice, contract, lease agreement, or other supporting sale document that the retailer paid sales or use tax on the retailer's purchase of the tangible personal property.

15. Any tangible personal property or service which would be exempt from the retail sales tax pursuant to an express exemption provided in chapter 57-39.2 if it were purchased in North Dakota.
16. Gross receipts from the sale of money, including all legal tender coins and currency.
17. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.
18. Gross receipts from the sale of a manufactured home that has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota use tax has previously been imposed.
19. The donation by a retailer of tangible personal property to an organization exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
20. Air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.
21. Tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.
22. Gross receipts from the initial sale of beneficiated coal.
23. Gross receipts from electronic games of chance licensed by the attorney general under chapter 53-06.1.
24. Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas or secure geologic storage.
25. Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:
    a. "Specified digital products" means:
        (1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
        (2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and
        (3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.
    b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.
    c. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.

d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

26. **(Contingent effective date - See note)** Gross receipts from sales of liquefied natural gas used for agricultural, industrial, or railroad purposes as defined in section 57-43.2-01.

27. a. Gross receipts from sales to a senior citizen organization that provides informational, health, welfare, counseling, and referral services for senior citizens in this state if the senior citizen organization:
    (1) Is recognized by the internal revenue service as having exempt status under 26 U.S.C. 501(c)(3);
    (2) Is recognized by the secretary of state as a charitable organization; and
    (3) Either:
        (a) Provides services through the aging services division of the department of health and human services;
        (b) Receives grant funds through the department of transportation which are used for enhanced mobility of seniors and individuals with disabilities; or
        (c) Provides services through a contract with the department of health and human services as a program of all-inclusive care for the elderly.

    b. The department of health and human services and the department of transportation shall notify the tax commissioner if a senior citizen organization no longer meets the criteria in paragraph 3 of subdivision a.

**57-40.2-04.1. Use tax exemption for food and food ingredients.**

Gross receipts from sales for human consumption of food and food ingredients are exempt from taxes imposed under 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 taxes imposed by this chapter. For purposes of this section, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, which are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food ingredients" do not include:
    a. Alcoholic beverages.
    b. Candy or chewing gum.
    c. Dietary supplements.
    d. Prepared food.
    e. Soft drinks containing fifty percent or less fruit juice.
    f. Tobacco.
2. For purposes of this section:
    a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
    b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
    c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR 101.36.

d. "Prepared food" means:
   (1) Food sold in a heated state or heated by the seller;
   (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
   (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

e. "Prepared food" does not mean:
   (1) Food that is only cut, repackaged, or pasteurized by the seller.
   (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
   (3) If sold without eating utensils provided by the seller:
      (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
      (b) Food sold in an unheated state by weight or volume as a single item.
      (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
      (d) Food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.

f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

3. For purposes of this section, "eating utensils provided by the seller" is determined as follows:
   a. Determine the prepared food ratio, where the numerator is the sum of food defined in paragraphs 1 and 2 of subdivision d of subsection 2 plus food when plates, bowls, glasses, or cups are necessary for the purchaser to receive the food and the denominator is all sales of food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in either the numerator or denominator.
   b. If the prepared food ratio is seventy-five percent or less, utensils are provided by the seller if the seller's practice is to physically give or hand them to the purchaser, except plates, bowls, glasses, or cups necessary for the purchaser to receive the food need only be made available.
   c. If the prepared food ratio is greater than seventy-five percent, utensils are provided by the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.
   d. When a seller sells food items that have a utensil placed in a package by a person other than the seller and that person's North American industry classification system classification code is that of manufacturers (sector 311), the seller shall not be considered to have provided the utensils except as in subdivisions b and c. For any other packager with any other North American industry classification system classification code, the seller shall be considered to have provided the utensil.

e. The prepared food ratio is to be calculated by the seller for each calendar or fiscal year not later than ninety days after the end of each year and based on the seller's data from the previous year.
f. A single prepared food ratio will be determined annually and used for all of the seller's locations in the state.
g. A new business shall make a good-faith estimate of the prepared food ratio for the first year and shall adjust its good-faith estimate after the first three months if the actual prepared food ratio is materially different than the estimate.

**57-40.2-04.2. Use tax exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
   a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
      (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
   b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
   c. "Power plant" means:
      (1) An electrical generating plant, and all additions to the plant, which processes or converts coal in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
      (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2015, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
      (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
   d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
   e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
   f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal in its natural form or beneficiated coal into electric power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in process units are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.

4. To receive the exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

**57-40.2-05. Evidence of use.**

For the purpose of the proper administration of this chapter, and to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state is prima facie evidence that such tangible personal property was sold for use in this state.

**57-40.2-06. Payment of tax.**

The tax imposed by this chapter must be paid in the following manner:

1. The tax upon tangible personal property which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the commissioner shall authorize pursuant to subsection 2 of section 57-40.2-07, must be collected by the retailer and remitted to the commissioner as provided by section 57-40.2-07; provided, that any such retailer may not collect the tax on any purchases made by a contractor who furnishes to the retailer a certificate which includes the contractor's license number assigned to the contractor under the provisions of chapter 43-07 and the use tax account number assigned to the contractor by the commissioner pursuant to section 43-07-04. Such certificate must be in the form prescribed by the commissioner and must be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer.
2. The tax, when not paid in conformity with subsection 1, must be paid to the commissioner directly by any person storing, using, or consuming such property within this state, pursuant to the provisions of section 57-40.2-07.

**57-40.2-07. Collection of use tax.**

The tax imposed by this chapter must be collected in the following manner:

1. Except as otherwise provided by section 57-39.2-14.1, every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of section 57-40.2-04, before making any sales shall obtain a permit from the commissioner to collect the tax imposed by this chapter, which permit is subject to all of the requirements, conditions, and fees for its issuance that apply with respect to a retail sales tax permit, and at the time of making such sales, whether within or without the state, shall except as otherwise provided in subsection 1 of section 57-40.2-06, collect the tax imposed by this chapter from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the commissioner, if the commissioner, by regulation, shall require such receipt. Each such retailer shall list with the commissioner the name and address of all of the retailer's agents operating in this state and the location of each of the retailer's distribution or sales houses or offices or other places of business in this state.
2. The commissioner, upon application, may authorize the collection of the tax imposed by this chapter by any retailer not maintaining a place of business within the state, who, to the satisfaction of the commissioner, furnishes adequate security to ensure collections and payment of the tax. To such retailer must be issued a permit to collect the tax in such manner and subject to such regulations and agreements as the commissioner shall prescribe. When so authorized, such retailer shall, except as otherwise provided in subsection 1 of section 57-40.2-06, collect the tax upon all

tangible property sold to the retailer's knowledge for use within this state, as a retailer maintaining a place of business within this state collects such tax. Such authority and permit may be canceled at any time, if the commissioner considers the security inadequate, or believes that such tax can be collected more effectively from the person using such property in this state.

3. The tax required to be collected, and any tax collected, by any retailer under subsections 1 and 2 constitutes a debt owed by the retailer to this state.
4. Except as provided in subsection 7, each retailer required or authorized, pursuant to this section, to collect such tax shall pay the tax in quarterly installments on or before the last day of the month next succeeding each quarterly period ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Except that when there is a sale of any business by any retailer required or authorized, pursuant to this section, to collect such tax or when any business is discontinued by such retailer, the tax becomes due immediately prior to the sale or discontinuance of such business and, if not paid within fifteen days thereafter, it becomes delinquent and subject to the penalties provided in section 57-40.2-15. Every retailer, at the time of making the return required by this chapter, shall compute and pay to the commissioner the tax due for the preceding period.
5. Except as provided in subsection 7, the retailer, on or before the last day of the month following the close of the first quarterly period as defined in subsection 4, and on or before the last day of the month following each subsequent quarterly period of three months, shall make out a return for the preceding quarterly period in such form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by such return, and such further information as the commissioner may require to enable the commissioner correctly to compute and collect such tax, but the commissioner, upon receipt of a proper showing by any retailer of the necessity therefor, may grant such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any retailer, the time in which the retailer is required to make payment must be extended for the same period. If the commissioner deems it necessary or advisable in order to ensure the payment of the tax, or if the commissioner deems it practical, the commissioner may require returns and payment of the tax to be made for annual periods or other than quarterly periods, the provisions of this chapter to the contrary notwithstanding. A return must be signed by the taxpayer or the taxpayer's duly authorized agent and must contain a written declaration that it is made and subscribed under penalties of this chapter.
6. Except as provided in subsection 7, any person who uses any property upon which the said tax has not been paid, either to the retailer or directly to the commissioner, is liable therefor, and, on or before the last day of the month next succeeding each quarterly period, shall pay the tax upon all such property used by that person during the preceding quarterly period, in such manner and accompanied by such returns as the commissioner shall prescribe.
7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter is payable monthly on or before the last day of the next succeeding month. The tax commissioner may, upon request and for good cause shown, waive the requirement to file and remit monthly. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty must be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed must be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement applies separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, a person may return to quarterly installments. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the

reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this section.

8. The commissioner, when in the commissioner's judgment it is necessary and advisable to do so in order to secure the collection of such tax, may require any person subject to the tax to file with the commissioner a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the commissioner may fix, to secure the payment of any tax or penalties due or which may become due from such person. In lieu of such bond, securities approved by the commissioner, in an amount which the commissioner may prescribe, may be deposited with the commissioner, and such securities must be kept in the custody of the commissioner, and may be sold by the commissioner at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax or penalties due. Upon such sale, the surplus, if any remains above the amounts due, must be returned to the person who deposited the securities.
9. The commissioner may adopt rules for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax.

**57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer registered to report and remit sales, use, or gross receipts tax imposed under chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed one hundred ten dollars per return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4. If a retailer fails to timely file a return or pay the tax due, the tax commissioner may, for good cause shown, allow the retailer to deduct and retain the compensation under this section.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**57-40.2-08. Unlawful advertising.**

It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer, or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the retailer, or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded.

**57-40.2-09. Records required.**

Each retailer required or authorized to collect the tax imposed by this chapter, and each person using in this state tangible personal property purchased for resale or for use shall keep such records, receipts, invoices, and other pertinent papers as the commissioner shall require and each such retailer or person shall preserve for a period of three years and three months all invoices and other records of such tangible personal property purchased for resale or for use. The commissioner, or any duly authorized agent, may examine the books, papers, records, and equipment of any person who sells tangible personal property or who is liable for such tax, and may investigate the character of the business of any such person to verify the accuracy of any return made, or if no return was made, to ascertain and determine the amount due. Any such books, papers, and records must be made available within this state for such examination upon reasonable notice if the commissioner shall make an order to that effect.

**57-40.2-10. Revocation of permit and authority to do business.**

If any retailer maintaining a place of business in this state, or authorized to collect the tax imposed by this chapter, fails to comply with any of the provisions of this chapter, or with any order or regulation of the commissioner, the commissioner, by order, may revoke the permit, if any was issued to such retailer, or if the retailer is a corporation or limited liability company authorized to do business in this state, the commissioner may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules, or regulations. The secretary of state, upon receipt of such certified copy, may revoke the certificate authorizing such corporation or limited liability company to do business in this state, and shall issue a new certificate only when the corporation or limited liability company shall have obtained from the commissioner an order finding that the corporation or limited liability company has complied with its obligations under this chapter. Any order shall be made under this section only after a retailer has had an opportunity, upon ten days' notice of the time, place, and purpose of a hearing, to show cause why such order should not be made. The commissioner may issue a new permit after a revocation.

**57-40.2-11. Tax paid on articles in other states or political subdivisions of other states.**

If tax has been paid on any article or tangible personal property in any other state or political subdivision thereof in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter apply, but in an amount equal to the difference between the tax imposed by this chapter and the tax paid in the other state or political subdivision thereof. If the tax paid in the other state or political subdivision thereof is the same or more, then no tax is due on such article. The provisions of this section apply only if such other state or political subdivision thereof allows a tax credit with respect to the retail sales and use taxes imposed by this state which is substantially similar in effect to the credit allowed by this section. The tax commissioner may require the taxpayer to provide written proof from the other state or political subdivision that the tax was legally due and paid.

**57-40.2-12. Unlawful sale or soliciting.**

No agent, canvasser, or employee of any retailer, not authorized by permit from the commissioner, may collect the tax as prescribed by this chapter, nor sell, solicit orders for, nor deliver, any tangible personal property in this state.

**57-40.2-13. Provisions of sales tax law applicable.**

The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including provisions for refund or credit provided therein, not in conflict with the provisions of this chapter, govern the administration of the tax levied in this chapter.

**57-40.2-14. Contractor's performance bonds for payment of use tax.**

For the purposes of this section, the term "contractor" includes any person or group or combination of persons acting as a unit; "subcontractor" includes a person or group or combination of persons acting as a unit, who undertakes to perform all or any part of work covered by the original contract entered into by the contractor, including the furnishing of any supplies, materials, equipment, or any other tangible personal property; "surety" means a bond or undertaking executed by a surety company authorized to do business in this state; and "surety company" means any person executing the surety.

Whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement, or repair of real property in this state and the contractor or subcontractor furnishes surety for the faithful performance of such contract, there is hereby imposed the additional obligation upon the surety company to the state of North Dakota that said contractor or subcontractor shall promptly pay all use taxes which may accrue to the state of North Dakota under this chapter. In the case of a contractor and the contractor's surety company, this additional obligation shall include liability to pay to the commissioner on purchases made by either the contractor or the subcontractor all such use taxes which have not been paid to a retailer authorized or required to collect such taxes; and the contractor or the contractor's surety company may recover from the subcontractor the amount of any use taxes accruing with respect to purchases made by the subcontractor which the contractor or the surety company may be required to pay to the commissioner, or to withhold from the amount due the subcontractor under the subcontract an amount equal to any use taxes accruing with respect to purchases of the subcontractor which have not been paid by the subcontractor to the commissioner or to a retailer authorized or required to collect such taxes. Such liability on the part of the surety company is limited to three percent of the amount of the contract price.

The surety company within sixty days after executing such surety shall send written notice of the same to the commissioner, which notice must give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to be performed. After the completion of the contract and the acceptance of the improvement by the owner of the real property improved, the surety company shall give written notice of such completion and acceptance to the commissioner.

Six months after the completion of the contract and the acceptance of the improvement by the owner thereof, the additional obligation imposed upon the surety company ceases unless written notice, within such period of time, of unpaid use taxes, is given to the surety company by the commissioner.

This section does not modify or repeal any provision of chapter 48-01.2.

**57-40.2-15. Penalties - Offenses.**

1. a. Any person failing to file a return or corrected return or to pay any tax imposed under this chapter, within the time required by this chapter, is subject to interest of one percent of the tax for each month or fraction of a month except the first month after the return or the tax became due.
   b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:
      (1) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

(2) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.
(3) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.
(4) The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest. The penalty and interest 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.

2. Repealed by S.L. 1975, ch. 106, § 673.
3. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter is prima facie evidence thereof.
4. Any person failing to comply with any of the provisions of this chapter, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to the tax imposed under the provisions of this chapter, is guilty of a class A misdemeanor.

**57-40.2-15.1. Corporate officer liability.**

1. If a corporation fails for any reason to file the required returns or to pay the tax due under this chapter, the president, vice president, secretary, or treasurer of the corporation, jointly or severally, having control or supervision of, or charged with the responsibility for making the returns and payments are personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for the liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers, governors, managers, or members of a member-controlled limited liability company elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability company must be required to make a cash deposit or post and maintain with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual use tax liability of the corporation or limited liability company.

**57-40.2-15.2. Governor and manager liability.**

1. If a limited liability company fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor, manager, or member of a member-controlled limited liability company, jointly or severally charged with the responsibility of supervising the preparation of the returns and payments, is personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter.
2. If the governors, managers, or members of a limited liability company elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must make a cash deposit or post and maintain with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual use tax liability of the limited liability company.

**57-40.2-15.3. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership required to hold a permit under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post and maintain with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual use tax liability of the limited liability limited partnership.

**57-40.2-16. Lien of tax - Collection - Action authorized.**

1. Whenever any person liable for payment to the commissioner of the tax imposed by this chapter or for any penalties in respect thereto refuses or neglects to pay the same the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest must be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
2. The lien aforesaid attaches at the time the tax first becomes payable, as provided by section 57-40.2-07, and continues until the liability for such amount is satisfied.
3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
   a. The name of the taxpayer.
   b. The name "State of North Dakota" as claimant.
   c. The date and time the notice of lien was indexed.
   d. The amount of the lien.
   e. The internal revenue service taxpayer identification number or social security number of the taxpayer.

   The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.
5. The commissioner is exempt from the payment of the recording and filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.
6. Upon payment of the tax as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. The attorney general, upon the request of the commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action shall have the assistance of the state's attorney of the county in which the action is pending.

8. It is expressly provided that the foregoing remedies of the state are cumulative and that 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 hereunder to the exclusion of any other remedy provided by law.
9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to ensure payment of the taxes, including penalties, interest, and other costs, are self-explanatory.
10. Remittances on account of tax due under this chapter may not be deemed or considered payment thereof unless or until the commissioner has collected or received the amount due for such tax in cash or equivalent credit.

**57-40.2-17. Disposition of excess tax collections.**

Whenever a retailer maintaining a place of business in this state has collected a use tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer must be paid by the retailer to the tax commissioner in the return filed for the period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may file an amended return with the tax commissioner for the period the excess tax was collected and file a claim for refund.