CHAPTER 57-40.5
AIRCRAFT EXCISE TAX

57-40.5-01. Definitions.

The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning:

1. "Aircraft" includes airplanes, helicopters, manned balloons, and ultralight vehicles.
2. "Director" means the director of aeronautics.
3. "Purchase price" means the total amount paid for the aircraft whether paid in money or otherwise, provided, however, that when an aircraft or a motor vehicle that will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, is taken in trade on an aircraft taxable under this chapter, the trade-in value allowed by the person selling the aircraft must be deducted from the selling price to establish the purchase price of the aircraft being sold and the trade-in allowance allowed by the seller on an aircraft accepted as a trade-in constitutes the purchase price of an aircraft. "Purchase price" also means the fair market value when no current purchase is involved and the aircraft is moved by the owner or user from any other state into this state and on which no sales, use, or excise tax was paid by the owner or user to any other state, or on which a sales, use, or excise tax was paid by the owner or user to another state which does not have reciprocity with this state, and for which aircraft registration is required by section 2-05-11 or registration and licensing required is by section 2-05-18. If an aircraft is purchased by a person who has paid the excise tax and who has had an aircraft stolen or destroyed, a credit must be allowed in the amount the purchaser has paid in tax on the stolen or destroyed aircraft. The purchaser must provide the director with a notarized statement from the insurance company verifying the fact that the original aircraft was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of registration for the replacement aircraft. In instances in which a licensed aircraft dealer or established fixed-base aviation operator located at an airport open for public use and approved by the aeronautics commission, places into service a new or used aircraft for the purpose of renting, leasing, or dealership or fixed-base aviation operator utility service, the reasonable value of the new or used replacement aircraft must be included as a trade-in value if the new or replacement aircraft is properly registered with the aeronautics commission. "Purchase price" when the aircraft is acquired by gift or other transfer for a nominal or no monetary consideration also includes the average value of similar aircraft, established by standards as determined by the director. "Purchase price" when an aircraft is manufactured by a person who registered it under the laws of this state means the manufactured cost of such aircraft and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the aircraft, manufactured cost means the reasonable value of the completed aircraft, as determined by the director.
4. "Purchaser" means any person owning or in possession of an aircraft who makes application to the director for registration of such aircraft.
5. "Sale", "sells", "selling", "purchase", or "acquired" includes any transfer of title or ownership of an aircraft by way of gift, exchange, barter, or by any other manner for or without consideration.
6. "Use" means the exercise by any person of any right incident to ownership of an aircraft, except that it does not include the sale or holding for sale of such an aircraft in the regular course of business.

57-40.5-02. Tax imposed.

There is imposed an excise tax at the rate of five percent on the purchase price of any aircraft purchased or acquired either in or outside of the state of North Dakota or on the lease or rental cost of any aircraft, less fuel, if rented dry and required to be registered under the laws of

this state, except on aircraft or helicopters designed or modified for exclusive use as agricultural aircraft for aerial application of agricultural chemicals, insecticides, fungicides, growth regulators, pesticides, dusts, fertilizer, or other agricultural materials, the excise tax is imposed at the rate of three percent on the purchase price of any such aircraft purchased or acquired in or outside of this state, including the leasing or renting of such agricultural aircraft to users for agricultural purposes.

57-40.5-03. Exemptions.

There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it, the following:

1. Aircraft acquired by disabled veterans as defined by the provisions of Public Law No. 79-663 [38 U.S.C. 3901]. This exemption shall be allowed only with respect to one aircraft owned by any disabled veteran.
2. Any aircraft owned by or in possession of the federal or state government or any of the political subdivisions, departments, agencies, or institutions thereof.
3. Aircraft which were previously titled or registered in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; the transfer of aircraft by gift, inheritance, or devise between a husband and wife, parent and child, or brothers and sisters; and the transfer of aircraft to reflect a new name of the owner caused by a business reorganization, if the ownership of the business organization remains in the same person or persons as prior to the reorganization.
4. Aircraft transferred between a lessee and lessor, if the lessee has been in continuous possession of the aircraft for a period of one year or longer, and if the lessor has paid either the tax imposed under this chapter at the time of registering the aircraft in this state or the use tax imposed by chapter 57-40.2.
5. Aircraft acquired by any parochial or private nonprofit school. To qualify, a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance. The aircraft is not to be used for commercial activities.
6. Aircraft for use as an air ambulance, when purchased by the operator of an emergency medical services operation licensed under chapter 23-27.
7. Aircraft acquired by an aviation museum located in this state that is exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. For purposes of this subsection, the term "acquired" has the meaning as provided in section 57-40.5-01. Any aviation museum acquiring an aircraft under this subsection shall comply with sections 57-40.5-04 and 57-40.5-05. The aircraft may not be used for commercial activities. For purposes of this subsection, commercial activities do not include activities for which a fee is charged when the proceeds are used for the benefit of the aviation museum.

57-40.5-04. Purchaser to furnish aircraft purchaser's certificate to director of aeronautics.

Any person acquiring an aircraft shall complete an "aircraft purchaser's certificate" in the form the director prescribes, showing a complete description of the aircraft, the seller's name and address, the buyer's name and address, the full purchase price of the aircraft, with no trade-in of aircraft or other property allowed and whether the aircraft was the subject of a gift or inheritance, and any other information that the director may require.

57-40.5-05. Presentation of aircraft purchaser's certificate to director.

No registration may be issued by the director for an aircraft until the applicant presents a properly executed aircraft purchaser's certificate with the application for registration. If a registration application is made for an aircraft that has been previously registered in this state and the applicant is the same person in whose name the registration had previously been issued, the aircraft purchaser's certificate need not be submitted to the director.

57-40.5-06. Aircraft registration not to be issued unless tax paid.

No registration may be issued by the director for the ownership or operation of any aircraft to any applicant for registration unless the tax imposed by this chapter has been paid by the applicant to the director except for those aircraft which have been previously registered and the applicant for registration is the same person in whose name the registration had previously been issued and for aircraft exempt from the tax imposed by this chapter.

57-40.5-07. Presumption.

For the purpose of the proper administration of this chapter, the following presumptions apply:

1. Evidence that an aircraft was sold for delivery in this state is prima facie evidence that it was sold for use in this state.
2. When an application for registration of an aircraft is received by the director within thirty days of the date it was purchased or acquired by the purchaser, it is presumed, until the contrary is shown by the purchaser that it was purchased or acquired for use in this state. This presumption applies whether or not such aircraft was previously titled or registered in another state.

57-40.5-08. Credit for excise tax paid in other states - Reciprocity.

If any aircraft has been subjected to a sales tax, use tax, or excise tax in any other state, in an amount less than the tax imposed by this chapter, the provisions of this chapter apply at a rate measured by the difference between the rate fixed in this chapter and the rate by which the previous tax paid in the other state upon the sale or use was computed. If the tax imposed in another state equals or exceeds the tax imposed by this chapter, then no tax is due on such aircraft. The provisions of this section apply only if such other state allows a credit with respect to the excise tax imposed by this chapter which is substantially similar in effect to the credit allowed by this section.

57-40.5-08.1. Aircraft excise tax refunds - Three-year limitation.

If it appears that any aircraft excise tax paid on or after July 1, 1983, was paid in error, or for any other reason the tax was not due under the provisions of this chapter, the tax must be refunded to the person who paid the tax upon an application made and duly allowed in accordance with section 57-40.5-08.2, provided that the application is made within three years from the date of payment of the tax.

57-40.5-08.2. Procedure for refunding.

Any person entitled to a refund of aircraft excise tax may make application for refund to the tax commissioner in the manner prescribed by the commissioner. Upon the presentation of proof satisfactory to the commissioner, the commissioner shall authorize the refund to be made from moneys appropriated for that purpose. No refund may be authorized by the commissioner until the commissioner 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 must be made by warrant after approval by the office of management and budget and approval of the voucher by the office of the budget.

57-40.5-09. Allocation of revenue.

All moneys collected and received under this chapter must be transmitted monthly by the director to the aeronautics commission special fund.

57-40.5-10. Penalties.

1. Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. Any person who fails to submit a purchase certificate or who submits a false or fraudulent aircraft purchaser's certificate is subject to a penalty of five percent of the true amount of the tax which was due or five dollars, whichever is greater, plus one

percent of such tax for each month or fraction thereof subsequent to the month in which the false or fraudulent aircraft purchaser's certificate was furnished to the director. Any penalty must be paid to the tax commissioner or the director. The director or the tax commissioner, if satisfied that the delay in payment of the tax was excusable, may waive, and if paid, refund all or any part of such penalty and interest. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

3. Whenever a person, including an aircraft dealer, has collected from a person acquiring an aircraft, an aircraft excise tax in excess of the amount prescribed or due under this chapter, and if the person does not refund the excessive tax collected to the person who remitted it, the person who collected the tax shall pay it to the tax commissioner in the quarterly period in which the excessive collection occurred. The penalty and interest provisions of this section apply beginning at termination of each reporting period.

57-40.5-11. Director to act as agent of tax commissioner in administration of aircraft excise tax - Provisions of motor vehicle excise tax applicable.

The tax commissioner is charged with the administration of this chapter. The provisions of chapter 57-40.3, pertaining to the administration of the motor vehicle excise tax, including provisions for the audit and assessment, not in conflict with the provisions of this chapter, govern the administration of the tax levied in this chapter. The tax commissioner may prescribe all rules, not inconsistent with the provisions of this chapter, for the administration of this chapter. The collection of the aircraft excise tax must be carried out by the director who shall act as the agent of the state tax commissioner and who is subject to all rules, not inconsistent with the provisions of this chapter, that may be prescribed by the tax commissioner.