CHAPTER 57-61
COAL SEVERANCE TAX

57-61-01. Severance tax upon coal - Imposition - In lieu of sales and use taxes - Payment to the tax commissioner. (Effective through June 30, 2031)

1. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax of thirty-seven and one-half cents per ton of two thousand pounds [907.18 kilograms]. The severance tax is in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit the tax for each month, within twenty-five days after the end of each month, to the tax commissioner on reports and forms as the tax commissioner deems necessary. For the purposes of this chapter, commercial leonardite is taxed in the same manner as coal.
2. The board of county commissioners, by resolution, may grant to the operator of a mine from which the coal or commercial leonardite is mined a partial or complete exemption from up to seventy percent of the tax imposed under this section for a period not to extend past June 30, 2031. Any tax revenue exceeding thirty percent of the tax imposed under this subsection must be allocated to the county under subsection 3 of section 57-62-02.

Severance tax upon coal - Imposition - In lieu of sales and use taxes - Payment to the tax commissioner. (Effective after June 30, 2031) (Contingent effective date - See note)
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57-61-01.1. Severance tax exemption for coal used for space heating purposes and by the state and political subdivisions.

No severance tax may be imposed on coal used primarily for heating buildings in this state, including the heating of buildings with steam created by the burning of coal, nor may any severance tax be imposed on coal used by the state or any political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal for heating of buildings, for resale to consumers for heating of buildings, or for use by the state or any political subdivision of the state to certify the amount of the coal purchased which will be used for heating purposes or by the state or any political subdivision.

57-61-01.2. When coal or commercial leonardite considered severed.

Coal or commercial leonardite is considered to be severed for the purposes of this chapter when it is first removed from where it was placed by nature, unless within thirty days of first removal it is placed into a long-term inventory storage deposit, in which case it is considered to be severed when removed from the deposit or it is pledged as collateral on a loan. A long-term inventory storage deposit is one which is so identified in a mining plan approved by the public service commission pursuant to chapter 38-14.1 and which as part of that plan is covered with soil and subjected to reclamation requirements during the time it serves as a deposit and before coal or commercial leonardite is removed therefrom.

57-61-01.3. Severance tax reduction for coal mined for certain users.

The rate of severance tax determined and imposed as provided in section 57-61-01 must be reduced by fifty percent if the coal is to be burned in a cogeneration facility which is designed to use renewable resources as fuel to generate ten percent or more of its energy output measured in British thermal units. The coal mine owner or operator must certify, or require the person purchasing the coal to certify, that the coal will be used in the manner required by this section to qualify for the reduced tax rate.

57-61-01.4. Severance and sales and use tax exemptions for coal used in certain plants.

No state severance tax may be imposed on coal used in, or coal used to produce steam that is used in, agricultural commodity processing facilities as defined in subsection 4 of section 57-39.2-04.4 located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. No state severance tax may be imposed on coal purchased for improvement through the process of coal beneficiation defined in section 57-60-01 which is subsequently used in, or used to produce steam that is used in, agricultural commodity processing facilities located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal to certify that amount of coal purchased for use in agricultural commodity processing facilities or for beneficiation and subsequent use in agricultural commodity processing facilities or any facility owned by the state or a political subdivision of the state or to produce steam that is used in any of those facilities.

57-61-01.5. Separate and additional coal severance tax - Lignite research, development, and marketing program - Continuing appropriation - Administration.

1. There is imposed upon all coal or commercial leonardite severed for sale or for industrial purposes by coal or commercial leonardite 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 or commercial leonardite 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, known as the lignite research fund. 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, development, and marketing proposals and entering into contracts under the lignite research, development, and marketing program.
2. The state treasurer shall deposit in the lignite research fund seventy percent of the taxes collected and deposited subsequent to July 1, 1994, in the permanent trust fund established by section 21 of article X of the Constitution of North Dakota and shall, beginning in July 1991, no less than monthly, deposit in the lignite research fund seventy percent of the taxes collected and deposited in the permanent trust fund. All moneys in the lignite research fund as well as any moneys received from federal and private sources for lignite research, development, and marketing, including interest on all such moneys, are appropriated to the industrial commission, and may be spent only within limits of legislative appropriations, for the administration, development, and funding of the lignite research, development, and marketing program.

57-61-01.6. Lignite research fund - Continuing appropriation.

All money deposited in the lignite research fund is appropriated as a continuing appropriation to the industrial commission, except as provided in section 54-17.5-05, to be used for the purposes stated in chapter 54-17.5.

57-61-01.7. Severance tax reduction for coal or commercial leonardite mined for out-of-state shipment.

For coal or commercial leonardite subject to taxes under this chapter which is shipped out of state after June 30, 2001:

1. The coal or commercial leonardite is subject to thirty percent of the taxes imposed under section 57-61-01 and the entire revenue under this subsection must be deposited in the coal development trust fund for use as provided in subsection 1 of section 57-62-02 and allocation to the lignite research fund as provided in subsection 2 of section 57-61-01.5.

2. In addition to the taxes under subsection 1, the coal or commercial leonardite may be subject to up to seventy percent of the severance taxes imposed under section 57-61-01 at the option of the county in which the coal or commercial leonardite is mined. The board of county commissioners, by resolution, may grant to the operator of a mine from which the coal or commercial leonardite is shipped out of state a partial or complete exemption from this portion of the severance tax. Any tax revenue from full or partial taxation under this subsection must be allocated to the county under subsection 2 of section 57-62-02.
3. Taxes imposed under section 57-61-01.5 apply to coal or commercial leonardite subject to this section and must be allocated as provided in section 57-61-01.5.

57-61-01.8. Tax reduction for coal burned in small boilers.

Repealed by S.L. 2001, ch. 535, § 14.

57-61-01.9. Severance and sales and use tax exemptions for coal used in a coal processing facility that utilizes coal as a feedstock.

1. Severance tax may not be imposed on the first one million tons [907,184.74 metric tons] of coal per year used as a feedstock by a coal processing facility that utilizes coal as a feedstock in this state as defined in section 57-39.2-04.21.
2. The owner or operator of a coal processing facility that utilizes coal as a feedstock shall certify to the coal mine owner or operator the amount of coal measured in tons:
   a. Purchased for use as a feedstock by the facility.
   b. Used as a feedstock by the facility for extraction of critical minerals or rare earth elements from lignite coal.
   c. Used as a feedstock by the facility to create tangible personal property other than electricity, water, gas, or steam from lignite coal, including lignite coal from which critical minerals or rare earth elements have been extracted.
   d. Resold or used in any manner other than as a feedstock at the facility, including use in an electrical generating plant or coal gasification facility.
3. The coal mine owner or operator shall report the amounts certified under subsection 2. The amount of coal certified under subdivision d of subsection 2 is not eligible for the exemption in this section. The coal mine owner or operator shall report the amount of coal certified under subdivision d of subsection 2 on its return for the month following the month of certification and shall remit the severance tax due with the return. The tax commissioner shall waive penalty and interest under section 57-61-05 for severance tax remitted in accordance with this subsection.

57-61-02. When tax due - When delinquent.

The severance tax as provided in this chapter is due within twenty-five days after the end of each month, and if not received by the twenty-fifth day, becomes delinquent and must be collected as herein provided. The tax 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 is not delinquent until the extended period has expired. The tax commissioner shall require a report to be filed monthly by each owner or operator of a coal or commercial leonardite mine, in such form as the tax commissioner may specify, to list a full description of the mine, the number of tons of coal or commercial leonardite severed, the amount of tax due and remitted, and any other information deemed necessary by the tax commissioner for the proper administration of this chapter.

57-61-03. Powers of state tax commissioner.

The state tax commissioner has the power to require any person engaged in such production, and the agent or employee of such person, or purchaser of such coal or commercial leonardite, or the owner of any royalty interest therein, to furnish any additional information the tax commissioner deems necessary for the purpose of correctly computing the amount of said tax; to examine the books, records, and files of such person; to conduct hearings and compel

the attendance of witnesses, the production of books, records, and papers of any person; and to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the true facts as to the amount of production from any coal or commercial leonardite mine or of any company or other producer thereof and as to the rendition thereof for taxing purposes.

57-61-04. Tax commissioner to compute tax on incorrect or omitted returns.

1. The tax commissioner has the power and authority to ascertain and determine whether or not any return or remittances filed with the tax commissioner are correct, and if the owner or operator has made an untrue or incorrect return or remittance or has failed to make the required return, the tax commissioner shall ascertain the correct amount of taxes due and give immediate notice to the owner or operator filing the incorrect return or remittance or who failed to file the required return. Any coal or commercial leonardite mine operator or owner receiving notice from the tax commissioner that the owner or operator has filed an incorrect return or remittance or failed to file the required return shall remit the tax assessed by the tax commissioner within fifteen days of such notice unless within fifteen days of the notice such person makes application in writing to the tax commissioner for a hearing under chapter 28-32 before the tax commissioner. The tax becomes delinquent if within fifteen days of the notice it is not paid or an application for a hearing is not made. Taxes assessed by decision of the tax commissioner pursuant to chapter 28-32, if not paid, become delinquent five days after the time for appeal from the tax commissioner's decision has expired, except that if an appeal from the tax commissioner's decision is taken to the district court of Burleigh County, such taxes if not paid become delinquent five days following final judicial determination.
2. If an owner or operator has filed an incorrect return or has failed to file a return as required by this chapter, the tax commissioner has six years from the date that the return was first due within which to give the notice provided in subsection 1 of taxes due, except that when false or fraudulent information is given in a return or when the failure to file a return is due to the fraudulent intent or the willful attempt of the owner or operator in any manner to evade the tax, no time limitation for giving the notice of taxes due applies.

57-61-05. Penalty on delinquency - Failure to file returns.

When the severance tax provided for in this chapter becomes delinquent, there is hereby imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due. The tax commissioner, for good cause shown, may waive the penalty or the interest provided by this section. If the return is not filed within twenty-five days after the end of any month and taxes due paid, the tax commissioner shall notify the delinquent owner or operator of such delinquency, and if such return and remittance are not filed within an additional fifteen days, the tax commissioner shall notify the public service commission, which shall forthwith suspend such owner's or operator's license or permit until such time as payment is received or the issues settled to the satisfaction of the tax commissioner.

57-61-06. Lien for tax.

The severance tax herein referred to must, at all times, be and constitutes a first and paramount lien against the producer's property as the case may be, both real and personal. In all cases when such tax is not paid, it may be recovered in a civil action by the state tax commissioner, brought in the name of the state, in any court of competent jurisdiction of the county where any such property, assets, and effects are located.

57-61-06.1. Refund of overpayments.

If it appears that as a result of a mistake an overpayment of a tax, penalty, or interest was made which was not due under the provisions of this chapter, then such amount must be

credited against any amount due under the provisions of this chapter from the person who made the erroneous payment or must be refunded to such person; provided, that the person entitled to the overpayment makes a written claim for it to the state tax commissioner within six years after the date the overpayment was received by the commissioner. If a refund is authorized by the tax commissioner, the tax commissioner shall certify the amount of the refund, the reason for it, and the name of the person entitled to it to the office of management and budget which shall thereupon draw a warrant for such amount on the funds to which the overpayment was credited.

57-61-07. Appeal from decision of tax commissioner.

Any person aggrieved because of any action or decision of the tax commissioner under the provisions of sections 57-61-01 through 57-61-08 may within fifteen days of written notification thereof from the commissioner make application in writing to the commissioner for a hearing to be governed by the provisions of chapter 28-32 and may appeal the commissioner's decision following such hearing to the district court of Burleigh County as provided in chapter 28-32.

57-61-08. Rules - Bond.

The tax commissioner may prescribe all necessary rules for the making and filing of all returns under this chapter and otherwise necessary to the enforcement of sections 57-61-01 through 57-61-08. The tax commissioner may require a sufficient bond from any coal mine operator or owner charged with the making and filing of returns and the payment of the taxes imposed under this chapter. The bond must run to the state of North Dakota and must be conditioned upon the making and filing of returns as required by law or rule, and for the prompt payment, by the principal therein, of all taxes justly due the state under sections 57-61-01 through 57-61-08.

57-61-09. Penalty.

Any person intentionally violating any of the provisions of sections 57-61-01 through 57-61-08 is guilty of a class A misdemeanor.

57-61-10. Coal development fund established.

Moneys collected by the state tax commissioner pursuant to the provisions of sections 57-61-01 through 57-61-09 must be paid to the state treasurer not later than the third working day of the month following the month in which they are received by the state tax commissioner and must be credited to a special fund in the state treasury to be known as the coal development fund. The moneys accumulated in such fund must be allocated by the state treasurer as provided by law and as appropriated by the legislative assembly.