

**SENATE BILL NO. 2060**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subsection 2 of section 57-38-45, subsection 1 of  
2 section 57-39.2-18, and subsection 1 of section 57-40.2-15 of the North Dakota Century Code,  
3 relating to penalties for income tax and sales or use tax purposes; to provide a penalty; and to  
4 provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Subsection 2 of section 57-38-45 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to  
9 ~~additions to tax and penalty penalties~~ as follows:

- 10 a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall  
11 fail to pay the amount shown as tax due on any return, including tax withheld  
12 by an employer, filed on or before the due date or extended due date  
13 prescribed therefor, there shall be added to the tax a penalty of five percent  
14 thereof, or five dollars, whichever is greater.
- 15 b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall  
16 fail to file a return, including the employer's withheld tax return, on or before  
17 the due date or extended due date prescribed therefor, there shall be added a  
18 penalty equal to five percent of the tax required to be reported, or five dollars,  
19 whichever is greater, if the failure is for not more than one month, counting  
20 each fraction of a month as an entire month, with an additional five percent for  
21 each additional month or fraction thereof during which the failure continues,  
22 not exceeding twenty-five percent in the aggregate.

- 1 c. If upon audit of a taxpayer's return, including tax withheld by an employer, an  
2 additional tax is found to be due, there shall be added to the tax penalty as  
3 prescribed in subdivision a or b.
- 4 d. If the mathematical verification of a taxpayer's return, including tax withheld by  
5 an employer, results in additional tax due, there shall be added to the tax  
6 penalty as prescribed in subdivision a or b.
- 7 e. The provisions of subdivision a, b, c, or d do not apply to the extent it has  
8 been determined that the taxpayer has offsetting overpayments of income  
9 taxes which have not been refunded.
- 10 f. ~~An employer, required to file returns under subsection 1 of section 57-38-60,~~  
11 ~~with four to eight delinquent original tax returns or payments is subject to a~~  
12 ~~penalty of ten percent of the tax due or twenty five dollars, whichever is~~  
13 ~~greater. An employer with nine or more delinquent original returns or~~  
14 ~~payments is subject to a penalty of fifteen percent of the tax due or one~~  
15 ~~hundred dollars, whichever is greater.~~

16 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-18 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18 1. a. If any person fails to file a return or corrected return or to pay any tax within  
19 the time required by this chapter or, if upon audit, is found to owe additional  
20 tax, the person is subject to ~~a penalty of five percent of the amount of tax due~~  
21 ~~or of five dollars, whichever is greater, plus interest of one percent of the tax~~  
22 ~~per month or fraction of a month of delay except the first month after the~~  
23 ~~return or the tax became due. Any person on a monthly filing schedule with~~  
24 ~~seven to fourteen delinquent original returns or payments, and any person~~  
25 ~~other than a monthly filer with four to eight delinquent original returns or~~  
26 ~~payments, is subject to a penalty of ten percent of the tax due or twenty five~~  
27 ~~dollars, whichever is greater, plus interest of one percent of the tax per month~~  
28 ~~or fraction of a month of delay except the first month after the return or the tax~~  
29 ~~became due. Any person on a monthly filing schedule with fifteen or more~~  
30 ~~delinquent original returns or payments, and any person other than a monthly~~  
31 ~~filer with nine or more delinquent original returns or payments, is subject to a~~

~~penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or the tax became due.~~

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 other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

**SECTION 3. AMENDMENT.** Subsection 1 of section 57-40.2-15 of the North Dakota Century Code is amended and reenacted as follows:

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

1 ~~whichever is greater, plus interest of one percent of the tax for each month or~~  
2 ~~fraction of a month except the first month after the return or the tax became~~  
3 ~~due. Any person on a monthly filing schedule with seven to fourteen~~  
4 ~~delinquent original returns or payments, and any person other than a monthly~~  
5 ~~filer with four to eight delinquent original returns or payments, is subject to a~~  
6 ~~penalty of ten percent of the tax due or twenty five dollars, whichever is~~  
7 ~~greater, plus interest of one percent of the tax per month or fraction of a~~  
8 ~~month of delay except the first month after the return or tax became due. Any~~  
9 ~~person on a monthly filing schedule with fifteen or more delinquent returns or~~  
10 ~~payments, and any person other than a monthly filer with nine or more~~  
11 ~~delinquent original returns or payments, is subject to a penalty of fifteen~~  
12 ~~percent of the tax due or one hundred dollars, whichever is greater, plus~~  
13 ~~interest of one percent of the tax due per month or fraction of a month of delay~~  
14 ~~except the first month after the return or tax became due.~~

15 b. In addition to the tax and interest prescribed in this chapter, a taxpayer is  
16 subject to penalties as follows:

- 17 (1) If any taxpayer, without intent to evade any tax imposed by this chapter,  
18 fails to file a return, on or before the prescribed or extended due date, a  
19 penalty equal to five percent of the tax required to be reported, or five  
20 dollars, whichever is greater, must be added if the failure is for not more  
21 than one month, counting each fraction of a month as an entire month,  
22 with an additional five percent for each additional month or fraction of a  
23 month during which the failure continues, not exceeding twenty-five  
24 percent in the aggregate.
- 25 (2) If any taxpayer, without intent to evade any tax imposed by this chapter,  
26 fails to pay the amount shown as tax due on any return, filed on or  
27 before the prescribed or extended due date, a penalty of five percent of  
28 the tax due, or five dollars, whichever is greater, must be added to the  
29 tax.
- 30 (3) If upon audit of a taxpayer's return an additional tax is found to be due,  
31 penalty as prescribed in subdivision a or b must be added to the tax.

1                   (4)   The commissioner, if satisfied that the delay was excusable, may  
2                               waive, and if paid, refund all or any part of the penalty and interest. The  
3                               penalty and interest must be paid to the commissioner and disposed of  
4                               in the same manner as the tax with respect to which it is attached.  
5                               Unpaid penalties and interest may be enforced in the same manner as  
6                               is the tax.

7                   **SECTION 4. EFFECTIVE DATE.** This Act is effective for tax periods beginning after  
8   December 31, 2000.