

## HOUSE BILL NO. 1063

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 57-36-09.4, 57-38-60.2, 57-39.2-15.2,  
2 57-40.2-15.1, 57-40.2-15.2, 57-43.1-17.3, 57-43.2-16.2, and 57-43.3-21 of the North Dakota  
3 Century Code, relating to the personal liability of members in a member-controlled limited  
4 liability company for unpaid tobacco products, income withholding, sales or use, motor vehicle  
5 fuel, importer for use, special fuels, and aviation fuel taxes; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 57-36-09.4 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **57-36-09.4. Governor and manager liability.**

- 10 1. If a limited liability company holding a license issued under this chapter fails for any  
11 reason to file the required returns or to pay the taxes due under this chapter, the  
12 governors ~~or~~, managers, or members of a member-controlled limited liability  
13 company, jointly or severally, charged with the responsibility of supervising the  
14 preparation of ~~such~~ the returns and payments, are personally liable for ~~such~~ the  
15 failure. The dissolution of a limited liability company does not discharge a  
16 governor's ~~or~~, manager's, or member's liability for a prior failure of the limited  
17 liability company to file a return or remit the tax due. The taxes, penalty, and  
18 interest may be assessed and collected under the provisions of this chapter.
- 19 2. If the governors ~~or~~, managers, or members elect not to be personally liable for the  
20 failure to file the required returns or to pay the tax due, the limited liability company  
21 must be required to make a cash deposit or post with the tax commissioner a bond  
22 or undertaking executed by a surety company authorized to do business in this  
23 state. The cash deposit, bond, or undertaking provided for in this section must be

in an amount equal to the estimated annual tobacco products tax liability of the limited liability company.

**SECTION 2. AMENDMENT.** Section 57-38-60.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-60.2. Governor and manager liability.**

1. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of the preparation of ~~such~~ the returns and payments are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, 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 taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the governors ~~or~~, managers, or members 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 be required to make a cash deposit or post 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 income tax withholding liability of the limited liability company.

**SECTION 3. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-15.2. Governor and manager liability.**

1. If a limited liability company required to hold a permit under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, 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 taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

2. If the governors ~~or~~, managers, or members 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 be required to make a cash deposit or post 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 sales tax liability of the limited liability company.

**SECTION 4. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**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, ~~or~~ 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 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.

**SECTION 5. AMENDMENT.** Section 57-40.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

1           **57-40.2-15.2. Governor and manager liability.** If a limited liability company fails for  
2 any reason to file the required returns or to pay the taxes due under this chapter, the governor  
3 ~~or~~, manager, or member of a member-controlled limited liability company, jointly or severally  
4 charged with the responsibility of supervising the preparation of the returns and payments, is  
5 personally liable for the failure. The dissolution of a limited liability company does not discharge  
6 a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability  
7 company to file a return or remit the tax due. The sum due for such a liability may be assessed  
8 and collected under the provisions of this chapter.

9           **SECTION 6. AMENDMENT.** Section 57-43.1-17.3 of the North Dakota Century Code  
10 is amended and reenacted as follows:

11           **57-43.1-17.3. Governor and manager liability.**

- 12           1. If a limited liability company holding a license issued under this chapter fails for any  
13 reason to file the required returns or to pay the taxes due under this chapter, the  
14 governors ~~or~~, managers, or members of a member-controlled limited liability  
15 company, jointly or severally, charged with the responsibility of supervising the  
16 preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the  
17 failure. The dissolution of a limited liability company does not discharge a  
18 governor's ~~or~~, manager's, or member's liability for a prior failure of the limited  
19 liability company to file a return or remit the tax due. The taxes, penalty, and  
20 interest may be assessed and collected under the provisions of this chapter.
- 21           2. If the governors ~~or~~, managers, or members elect not to be personally liable for the  
22 failure to file the required returns or to pay the tax due, the limited liability company  
23 must be required to make a cash deposit or post with the tax commissioner a bond  
24 or undertaking executed by a surety company authorized to do business in this  
25 state. The cash deposit, bond, or undertaking provided for in this section must be  
26 in an amount equal to the estimated annual motor vehicle fuel tax liability of the  
27 limited liability company.

28           **SECTION 7. AMENDMENT.** Section 57-43.2-16.2 of the North Dakota Century Code  
29 is amended and reenacted as follows:

30           **57-43.2-16.2. Governor and manager liability.**

- 1           1.    If a limited liability company holding a license issued under this chapter fails for any  
2                    reason to file the required returns or to pay the taxes due under this chapter, the  
3                    governors ~~or~~, managers, or members of a member-controlled limited liability  
4                    company, jointly or severally, charged with the responsibility of supervising the  
5                    preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the  
6                    failure. The dissolution of a limited liability company does not discharge a  
7                    governor's ~~or~~, manager's, or member's liability for a prior failure of the limited  
8                    liability company to file a return or remit the tax due. The taxes, penalty, and  
9                    interest may be assessed and collected pursuant to the provisions of this chapter.
- 10           2.    If the governors ~~or~~, managers, or members elect not to be personally liable for the  
11                   failure to file the required returns or to pay the tax due, the limited liability company  
12                   must be required to make a cash deposit or post with the tax commissioner a bond  
13                   or undertaking executed by a surety company authorized to do business in this  
14                   state. The cash deposit, bond, or undertaking provided for in this section must be  
15                   in an amount equal to the estimated annual special fuel tax liability of the limited  
16                   liability company.

17           **SECTION 8. AMENDMENT.** Section 57-43.3-21 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **57-43.3-21. Governor and manager liability.** If a limited liability company holding a  
20 license issued under this chapter fails for any reason to file the required returns or to pay the  
21 taxes due under this chapter, the governor ~~or~~, manager, or member of a member-controlled  
22 limited liability company, jointly or severally, charged with the responsibility of supervising the  
23 preparation of ~~such~~ the returns and payments, is personally liable for ~~such~~ the failure. The  
24 dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or  
25 member's liability for a prior failure of the limited liability company to file a return or remit the tax  
26 due. The taxes, penalty, and interest may be assessed and collected pursuant to the  
27 provisions of this chapter.

28           **SECTION 9. EFFECTIVE DATE.** This Act is effective for taxable periods beginning  
29 after December 31, 2000.