

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2159
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 2 of section 5-01-17, subsection 2 of section 57-35.3-02, subsections 3, 4, 5, and 6 of section 57-36-09.5, section 57-38-30.3, subsection 15 of section 57-39.2-04, subsection 1 of section 57-40.3-01, section 57-51-02.2, and subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code, relating to farm winery license label registration, correction of statutory references in the financial institutions tax law, collection of tobacco products taxes, calculation of adjustments for individual income tax, exemption of gross receipts from contractor sales, the definition of an all-terrain vehicle for motor vehicle excise tax purposes, gross production tax on gas, and statements made by a person paying the gross production tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A license authorizes the sale, on the farm winery premises, of table or sparkling wines produced by that farm winery at on-sale or off-sale, in retail lots, and not for resale, in total quantities not in excess of one thousand gallons in a calendar year; glassware; wine literature and accessories; cheese, cheese spreads, and other snack food items; and the dispensing of free samples of the wines offered for sale. Subject to local ordinance, sales at on-sale and off-sale may be made on Sundays between twelve noon and twelve midnight. Labels for each type or brand produced must be registered with the state ~~treasurer~~ tax commissioner, without fee before sale. A farm winery may not engage in any wholesaling activities. All sales and delivery of wines to any other retail licensed premises may be made only through a wholesale liquor license.

SECTION 2. AMENDMENT. Subsection 2 of section 57-35.3-02 of the North Dakota Century Code is amended and reenacted as follows:

2. In determining "taxable income" there must be subtracted from federal taxable income:
 - a. The adjustments provided by subdivisions b; ~~and c; and d~~ of subsection 1 of section 57-38-01.3;
 - b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
 - c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
 - d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
 - e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through

57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;

- f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision a b that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; and
- h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions.

SECTION 3. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-36-09.5 of the North Dakota Century Code are amended and reenacted as follows:

- 3. ~~To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the lien with the recorder of the county in which the property is located. 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 recorder of each county commissioner shall prepare and keep index in the recorder's office a book known as "index of tax liens", so ruled as to show in appropriate columns all of central indexing system the following data, under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. ~~The name "State of North Dakota" as claimant~~ tax identification number or social security number of the taxpayer.
 - c. ~~The time notice of lien was received~~ name "State of North Dakota" as claimant.
 - d. ~~The date of and time the notice of lien was indexed.~~
 - e. The amount of the lien ~~when due.~~
 - f. ~~The date of satisfaction.~~

~~The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same and shall index is effective as of eight a.m. next day following the indexing of the notice in the index book and the lien is effective from the time of indexing. Any notice of lien filed by the commissioner with a recorder 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 filing fees as otherwise provided by law for the filing indexing of a lien ~~the notice of lien~~ or ~~the~~ for its satisfaction of a lien.

6. Upon payment of a tax as to which the commissioner has ~~filed indexed notice with the recorder in the central indexing system~~, the commissioner shall ~~file with the recorder index a satisfaction of tax and the recorder shall enter the satisfaction on the notice on file and indicate the fact on the index~~ the lien in the central indexing system.

SECTION 4. AMENDMENT. Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.3. Simplified method of computing tax.

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection. For a nonresident individual, estate, or trust, the tax is equal to the tax determined in accordance with the applicable schedule in subdivisions a through e multiplied by the fraction under subdivision f.

- a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

- b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

- c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

- d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	2.10%
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

- e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$352.45 plus 5.54% of amount over \$8,900

- f. For a nonresident individual, estate, or trust, the tax determined under the applicable schedule in subdivisions a through e must be multiplied by a fraction in which:
 - (1) The numerator is the individual's federal adjusted gross income derived from North Dakota sources; and
 - (2) The denominator is the individual's federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 3.
 - g. If married individuals who file a joint federal income tax return are required to file separate state income tax returns under any provision of this chapter, the tax under this subsection for each spouse must be determined by applying the rates under subdivision b to the spouses' joint North Dakota taxable income and prorating the result between the spouses based on their separate North Dakota taxable incomes.
 - h. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
 - d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended.

- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
 - f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- ~~3.~~ ~~Each adjustment in subsection 2 may be allowed only to the extent the adjustment is attributable to income allocated and apportioned to this state.~~
- ~~4.~~ Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
- ~~5.~~ 4. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.
- b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return.
- ~~6.~~ 5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
- ~~7.~~ 6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
- ~~8.~~ 7. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.
- ~~9.~~ 8. A taxpayer filing a return under this section is entitled to the exemptions or credits provided under sections 40-63-04, 40-63-06, and 40-63-07.
- ~~10.~~ 9. a. A taxpayer is entitled to a credit against the tax imposed by this section for any unused federal credit for prior year minimum tax. "Unused federal credit for prior year minimum tax" means the amount of the federal credit for prior year minimum tax attributable to federal alternative minimum tax included in the taxpayer's federal income tax liability for purposes of this section for taxable years beginning before January 1, 2001, reduced by the total amount of the federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return for all taxable years beginning after December 31, 2000.

- b. The credit under this subsection is equal to fourteen percent of the portion of the unused federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return and may not exceed the taxpayer's tax liability under this section for the taxable year. For a nonresident taxpayer, the credit determined under this subsection must be multiplied by the percentage that the nonresident taxpayer's North Dakota adjusted gross income is of the nonresident's federal adjusted gross income.
 - c. The credit under this subsection is not allowed for taxable years beginning after December 31, 2004.
44. ~~10.~~ a. At the election of an individual taxpayer engaged in a farming business, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
 - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.
- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended.
 - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
 - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
42. ~~11.~~ The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.
43. ~~12.~~ An individual, estate, or trust is entitled to a credit against the tax determined under this section as calculated under section 57-38.6-03.
44. ~~13.~~ A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.

SECTION 5. AMENDMENT. Subsection 15 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- 15. Gross receipts from sales in which a contractor 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 shall be in the form prescribed by the commissioner and shall 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. Any contractor furnishing such certificate must report and remit the tax to the commissioner on purchases taxable under

this chapter made by the contractor in the same manner as retailers remit such tax under this chapter.

SECTION 6. AMENDMENT. Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of ~~six hundred~~ one thousand pounds [~~272.15~~ 453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

SECTION 7. AMENDMENT. Section 57-51-02.2 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.2. Gross production tax - Gas. A gross production tax is levied upon all gas produced within North Dakota ~~less any part thereof, the ownership or right to which~~ except gas that is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. The gas tax rate is four cents times the gas base rate adjustment for each fiscal year as calculated under subsection 2.
2.
 - a. The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for each fiscal year beginning on July first.
 - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
 - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first.
 - d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
 - e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code are amended and reenacted as follows:

1. The tax herein provided for must be paid to the commissioner and the person paying the tax shall file with the commissioner at the time the tax is required to be paid a statement ~~under oath~~ on forms prescribed by the commissioner. The commissioner may require a purchaser to file the statement or report by electronic data interchange or other electronic media.
2. Any person engaged in the production, within this state, of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement ~~under oath~~ upon forms prescribed by the commissioner. The commissioner may waive the

requirement that a producer file a well production report. A waiver by the commissioner of the requirement to file a well production report does not release the producer from any obligation to remit the tax under this chapter. A waiver does not release the producer from any duty or obligation under section 57-51-07 to maintain production records for inspection by the commissioner.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2159.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 91 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State