

Introduced by

1 A BILL for an Act to create and enact chapters 57-64, 57-65, 57-66, 57-67, 57-68, 57-69, and
2 57-70 of the North Dakota Century Code, relating to imposition of sales and use taxes and
3 taxes on realty improvement contracts; to amend and reenact sections 5-01-16, 5-01-17,
4 subsection 1 of section 6-09.8-01, sections 10-33-93, 11-09.1-05, subsection 5 of section
5 11-37-08, subsection 1 of section 12.1-32-09, section 20.1-13-21, subsection 3 of section
6 25-04-16, sections 27-17-06, 37-27-06, subsection 16 of section 40-05.1-06, sections
7 40-57.3-01, 40-57.3-04, subsection 8 of section 40-63-01, sections 40-63-04, 40-63-06,
8 40-63-07, 47-21-08.1, subsection 1 of section 50-06.3-06, section 51-04-08, subsection 2 of
9 section 52-06-30, sections 54-09-09, 54-17.2-23, 57-01-13, subsections 15 and 27 of section
10 57-02-08, sections 57-32-01.1, 57-34-04.5, subsection 2 of section 57-35.3-01, sections
11 57-35.3-02, 57-35.3-06, 57-35.3-11, 57-35.3-12, subsection 1 of section 57-35.3-13,
12 subsection 14 of section 57-35.3-15, subsection 5 of section 57-40.3-01, sections 57-40.3-04,
13 57-40.3-11, 57-40.5-03, 57-59-02, 57-63-10, and 65-04-26 of the North Dakota Century Code,
14 relating to revisions to references to state sales and use taxes and state individual and
15 corporate income taxes; to repeal chapter 10-30.1, sections 10-33-124, 40-63-09, and chapters
16 52-02.1, 57-38, 57-38.1, 57-38.3, 57-38.4, 57-38.5, 57-38.6, 57-39.2, 57-39.3, 57-39.5, 57-39.6,
17 and 57-40.2 of the North Dakota Century Code, relating to elimination of state individual and
18 corporate income taxes and replacement of statutory provisions relating to imposition of sales
19 and use taxes; and to provide an effective date.

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

21 **SECTION 1. AMENDMENT.** Section 5-01-16 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **5-01-16. Direct sale from out-of-state seller to consumer - Penalty.**

- 1 1. No person in the business of selling alcoholic beverages may knowingly or
2 intentionally ship, or cause to be shipped, any alcoholic beverage from an
3 out-of-state location directly to a person in this state who is not a wholesaler.
- 4 2. No person in the business of transporting goods may knowingly or intentionally
5 transport any alcoholic beverage, from an out-of-state location of a person in the
6 business of selling alcoholic beverages, directly to a person in this state who is not
7 a wholesaler.
- 8 3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by
9 certified mail, the violator and order that person to cease and desist any shipment
10 of alcoholic beverages in violation of subsection 1 or 2. The second violation of
11 subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is
12 a class C felony.
- 13 4. The alcoholic beverage transported in violation of this section and the vehicle used
14 in violation of this section are forfeitable property under chapter 29-31.1.
- 15 5. This section does not apply to a transaction in which an individual twenty-one
16 years of age or older who imports or transports into this state 2.38 gallons [9 liters]
17 or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less
18 of beer per month for personal use and not for resale from a person holding a valid
19 manufacturer's or retailer's license issued by the state of its domicile. Every
20 package of alcoholic beverages shipped directly to an individual in this state must
21 be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR
22 OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an
23 individual twenty-one years of age or older before delivering any alcoholic
24 beverages shipped directly to an individual in this state. A manufacturer or retailer
25 selling or shipping alcoholic beverages under this subsection shall obtain a direct
26 shipping permit from the state tax commissioner and pay an annual fee of fifty
27 dollars within thirty days of making the first shipment. A direct shipper shall pay the
28 wholesaler and retailer taxes to the state tax commissioner on all alcoholic
29 beverages sold to residents in this state at the rates set forth in sections 5-03-07
30 and 57-39.2-03.2. A direct shipper shall file reports with the state tax
31 commissioner showing for each shipment, the quantity sold, the date shipped, and

1 the amount of tax due the state. A direct shipper is subject to section 5-03-06.
2 The state tax commissioner may initiate and maintain an action in a court of
3 competent jurisdiction to enjoin a violation of this subsection and may request
4 award of all costs and attorney's fees incurred by the state incidental to that action.
5 Upon determination by the state tax commissioner that an illegal sale or shipment
6 of alcoholic beverages has been made to a consumer in this state by either a
7 manufacturer or retailer of alcoholic beverages, the state tax commissioner may
8 notify both the bureau of alcohol, tobacco, firearms and explosives of the United
9 States department of the treasury and the licensing authority for the state in which
10 the manufacturer or retailer is domiciled that a state law pertaining to the regulation
11 of alcoholic beverages has been violated and may request those agencies to take
12 appropriate action.

13 **SECTION 2. AMENDMENT.** Section 5-01-17 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **5-01-17. Domestic winery license.**

16 1. The state tax commissioner may issue a domestic winery license to the owner or
17 operator of a winery located within this state to produce wine. A majority of the
18 ingredients by volume, excluding water, of wine produced by a domestic winery,
19 must be grown and produced in this state. Domestic wineries may be granted an
20 exemption from the majority ingredient utilization requirement whenever the state
21 tax commissioner determines, upon the commissioner's own motion or at the
22 request of a domestic winery, that weather conditions, pest infestations, plant
23 disease epidemics, or other natural causes have reduced the quantity or quality of
24 produce grown in this state to an extent that renders compliance with the majority
25 ingredient utilization requirement infeasible. The exemption is effective for one
26 year unless the state tax commissioner issues a new exemption. A domestic
27 winery may purchase, at wholesale or retail, brandy for use of on-premises
28 fortification. A domestic winery license may be issued and renewed for an annual
29 fee of one hundred dollars, which is in lieu of all other license fees required by this
30 title.

- 1 2. Before a domestic winery sells any wine, the licensee must register with the state
2 tax commissioner, without a fee, the labels for each type or brand of wine
3 produced. A domestic winery may sell, on the winery premises, wine produced by
4 that winery at on-sale or off-sale, in retail lots, and not for resale, in total quantities
5 not in excess of ten thousand gallons in a calendar year; glassware; wine literature
6 and accessories; cheese, cheese spreads, and other snack food items. A licensee
7 may dispense free samples of the wines offered for sale. Subject to local
8 ordinance, sales at on-sale and off-sale may be made on Sundays between twelve
9 noon and twelve midnight. The state tax commissioner may issue special events
10 permits for not more than five days per calendar year to a domestic winery allowing
11 the winery, subject to local ordinance, to give free samples of its wine and to sell its
12 wine by the glass or in closed containers, at a designated trade show, convention,
13 festival, or a similar event approved by the state tax commissioner. The domestic
14 winery may sell its wine to a liquor wholesaler licensed in this state and may sell or
15 deliver its wine to persons outside the state pursuant to the laws of the place of the
16 sale or delivery. A domestic winery may not engage in any wholesaling activities.
17 All sales and delivery of wines to any other retail licensed premises in this state
18 may be made only through a wholesale liquor license. A domestic winery may
19 obtain a domestic winery license and a retailer license allowing the on-premises
20 sale of alcoholic beverages at a restaurant owned by the licensee and located on
21 property contiguous to the winery.
- 22 3. A domestic winery shall pay to the state the wholesaler taxes and the sales taxes
23 on all wines sold at retail by the licensee as set forth in sections 5-03-07 and
24 57-39.2-03.2.
- 25 4. A domestic winery shall report quarterly or annually to the state tax commissioner
26 the total quantity of wine sold by type and the amount of taxes due to the state in
27 the manner and on the forms prescribed by the state tax commissioner.
- 28 5. Except as otherwise specified in this section, all provisions of this title govern the
29 production, sale, possession, and consumption of wine produced by a domestic
30 winery.

1 **SECTION 3. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. "Beginning farmer" means a person who qualifies as a beginning farmer under
4 subsection 2 of section 57-38-67.

5 **SECTION 4. AMENDMENT.** Section 10-33-93 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **10-33-93. Merger of corporation conducting activities as a hospital with a**
8 **corporation organized for profit - Retention of property tax status.** Notwithstanding any
9 provision of chapter 10-19.1 and this chapter, a corporation conducting activities as a hospital
10 may merge with a corporation incorporated for profit and form a corporation incorporated under
11 this chapter.

12 1. Notwithstanding chapter 57-02 or any other provision of law, any interest in
13 property of corporations merging under this section retains the same property tax
14 status after the merger as it had in the taxable year before the merger.

15 2. Notwithstanding chapter 57-39.2 or 57-40.2 or any other provision of law, the sale,
16 purchase, or use of any property by a corporation merging under this section
17 retains the same status under the sales and use tax laws after the merger as it
18 would have had before the merger.

19 **SECTION 5. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **11-09.1-05. (Effective through December 31, 2005) Powers.** After the filing with the
22 secretary of state of a charter approved in reasonable conformity with this chapter, the county
23 and its citizens may, if included in the charter and implemented through ordinances:

24 1. Acquire, hold, operate, and dispose of property within or without the county limits,
25 and exercise the right of eminent domain for those purposes.

26 2. Control its finances and fiscal affairs; appropriate money for its purposes, and
27 make payments of its debts and expenses; subject to the limitations of this section
28 levy and collect property taxes, sales and use taxes, motor vehicle fuels and
29 special fuels taxes, motor vehicle registration fees, and special assessments for
30 benefits conferred, for its public and proprietary functions, activities, operations,
31 undertakings, and improvements; contract debts, borrow money, issue bonds,

- 1 warrants, and other evidences of indebtedness; establish charges for any county or
2 other services to the extent authorized by state law, and establish debt and mill
3 levy limitations; provided, that all property in order to be subject to the assessment
4 provisions of this subsection must be assessed in a uniform manner as prescribed
5 by the state board of equalization and the state supervisor of assessments. A
6 charter or ordinance or act of a governing body of a home rule county may not
7 supersede any state law that determines what property or acts are subject to, or
8 exempt from, ad valorem taxes. A charter or ordinance or act of the governing
9 body of a home rule county may not supersede section 11-11-55.1 relating to the
10 sixty percent petition requirement for improvements and of section 40-22-18
11 relating to the barring proceeding for improvement projects.
- 12 3. Provide for county elected and appointed officers and employees, their selection,
13 powers, duties, qualifications, and compensation, and the terms of county
14 appointed officers and employees. However, after adoption of a home rule charter,
15 a county elected office may not be eliminated or combined with another office
16 except upon approval of a majority of the electors of the county voting upon the
17 question at a primary or general election or pursuant to the county officer
18 combination, separation, or redesignation procedures of chapter 11-10.2. A home
19 rule charter may not diminish the term of office for which a current county officer
20 was elected, redesignate that elected office during that term as appointed, or
21 reduce the salary of the office for that term. This subsection does not authorize a
22 county to redesignate the elected offices of sheriff and state's attorney as
23 appointed, except as provided in section 11-10-02.3.
- 24 4. Provide for all matters pertaining to county elections, except as to qualifications of
25 electors.
- 26 5. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and
27 civil and criminal penalties for violation of ordinances, resolutions, and regulations
28 to carry out its governmental and proprietary powers and to provide for public
29 health, safety, morals, and welfare. However, this subsection does not confer any
30 authority to regulate any industry or activity which is regulated by state law or by
31 rules adopted by a state agency.

- 1 6. Lay out or vacate public grounds, and provide through its governing body for the
- 2 construction, use, operation, designation, and regulation of a county road system.
- 3 7. Provide for zoning, planning, and subdivision of public or private property within the
- 4 county limits but outside the zoning authority of any city or organized township.
- 5 8. Exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 6 9. Contract with and receive grants from any other governmental entity or agency,
- 7 with respect to any local, state, or federal program, project, or works.

8 The people of all counties coming within this chapter have the full right of self-government in all
9 matters within the powers enumerated in this chapter. The statutes of this state, so far as
10 applicable, continue to apply to counties, except as superseded by the charters of the counties
11 or by ordinances passed pursuant to the charters.

12 **(Effective after December 31, 2005) Powers.** After the filing with the secretary of
13 state of a charter approved in reasonable conformity with this chapter, the county and its
14 citizens may, if included in the charter and implemented through ordinances:

- 15 1. Acquire, hold, operate, and dispose of property within or without the county limits,
- 16 and exercise the right of eminent domain for those purposes.
- 17 2. Control its finances and fiscal affairs; appropriate money for its purposes, and
- 18 make payments of its debts and expenses; subject to the limitations of this section
- 19 levy and collect property taxes, sales and use taxes, motor vehicle fuels and
- 20 special fuels taxes, motor vehicle registration fees, and special assessments for
- 21 benefits conferred, for its public and proprietary functions, activities, operations,
- 22 undertakings, and improvements; contract debts, borrow money, issue bonds,
- 23 warrants, and other evidences of indebtedness; establish charges for any county or
- 24 other services to the extent authorized by state law, and establish debt and mill
- 25 levy limitations; provided, that all property in order to be subject to the assessment
- 26 provisions of this subsection must be assessed in a uniform manner as prescribed
- 27 by the state board of equalization and the state supervisor of assessments. A
- 28 charter or ordinance or act of a governing body of a home rule county may not
- 29 supersede any state law that determines what property or acts are subject to, or
- 30 exempt from, ad valorem taxes. A charter or ordinance or act of the governing
- 31 body of a home rule county may not supersede section 11-11-55.1 relating to the

- 1 sixty percent petition requirement for improvements and of section 40-22-18
2 relating to the barring proceeding for improvement projects. After December 31,
3 2005, sales and use taxes levied under this chapter:
- 4 a. Must conform in all respects with regard to the taxable or exempt status of
5 items under chapters 57-39.2 and 57-40.2 and may not be imposed at
6 multiple rates with the exception of sales of electricity, piped natural or
7 artificial gas, or other heating fuels delivered by the seller or the retail sale or
8 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
9 homes, or mobile homes.
 - 10 b. May not be newly imposed or changed except to be effective on the first day
11 of a calendar quarterly period after a minimum of ninety days notice to the tax
12 commissioner or, for purchases from printed catalogs, on the first day of a
13 calendar quarter after a minimum of one hundred twenty days notice to the
14 seller.
 - 15 c. May not be limited to apply to less than the full value of the transaction or item
16 as determined for state sales and use tax purposes.
 - 17 d. Must be subject to collection by the tax commissioner under an agreement
18 under section 57-01-02.1.
- 19 3. Provide for county elected and appointed officers and employees, their selection,
20 powers, duties, qualifications, and compensation, and the terms of county
21 appointed officers and employees. However, after adoption of a home rule charter,
22 a county elected office may not be eliminated or combined with another office
23 except upon approval of a majority of the electors of the county voting upon the
24 question at a primary or general election or pursuant to the county officer
25 combination, separation, or redesignation procedures of chapter 11-10.2. A home
26 rule charter may not diminish the term of office for which a current county officer
27 was elected, redesignate that elected office during that term as appointed, or
28 reduce the salary of the office for that term. This subsection does not authorize a
29 county to redesignate the elected offices of sheriff and state's attorney as
30 appointed, except as provided in section 11-10-02.3.

- 1 4. Provide for all matters pertaining to county elections, except as to qualifications of
- 2 electors.
- 3 5. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and
- 4 civil and criminal penalties for violation of ordinances, resolutions, and regulations
- 5 to carry out its governmental and proprietary powers and to provide for public
- 6 health, safety, morals, and welfare. However, this subsection does not confer any
- 7 authority to regulate any industry or activity which is regulated by state law or by
- 8 rules adopted by a state agency.
- 9 6. Lay out or vacate public grounds, and provide through its governing body for the
- 10 construction, use, operation, designation, and regulation of a county road system.
- 11 7. Provide for zoning, planning, and subdivision of public or private property within the
- 12 county limits but outside the zoning authority of any city or organized township.
- 13 8. Exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 14 9. Contract with and receive grants from any other governmental entity or agency,
- 15 with respect to any local, state, or federal program, project, or works.

16 The people of all counties coming within this chapter have the full right of self-government in all
17 matters within the powers enumerated in this chapter. The statutes of this state, so far as
18 applicable, continue to apply to counties, except as superseded by the charters of the counties
19 or by ordinances passed pursuant to the charters.

20 **SECTION 6. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 5. Bonds issued by a commerce authority under this section are declared to be
- 23 issued for an essential public government purpose, and together with interest and
- 24 income on the bonds, are exempt from all individual and corporate taxes imposed
- 25 under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3.

26 **SECTION 7. AMENDMENT.** Subsection 1 of section 12.1-32-09 of the North Dakota
27 Century Code is amended and reenacted as follows:

- 28 1. A court may sentence a convicted offender to an extended sentence as a
- 29 dangerous special offender or a habitual offender in accordance with this section
- 30 upon a finding of any one or more of the following:

- 1 a. The convicted offender is a dangerous, mentally abnormal person whose
2 conduct has been characterized by persistent aggressive behavior and the
3 behavior makes the offender a serious danger to other persons.
- 4 b. The convicted offender is a professional criminal who has substantial income
5 or resources derived from criminal activity.
- 6 c. The convicted offender is a habitual offender. The court may not make such a
7 finding unless the offender is an adult and has previously been convicted in
8 any state or states or by the United States of two felonies of class C or above
9 committed at different times when the offender was an adult. For the
10 purposes of this subdivision, a felony conviction in another state or under the
11 laws of the United States is considered a felony of class C or above if it is
12 punishable by a maximum term of imprisonment of five years or more.
- 13 d. The offender was convicted of an offense that seriously endangered the life of
14 another person and the offender had previously been convicted of a similar
15 offense.
- 16 e. The offender is especially dangerous because the offender used a firearm,
17 dangerous weapon, or destructive device in the commission of the offense or
18 during the flight therefrom.

19 A conviction shown on direct or collateral review or at the hearing to be invalid or
20 for which the offender has been pardoned on the ground of innocence must be
21 disregarded for purposes of subdivision c. In support of findings under
22 subdivision b, it may be shown that the offender has had control of income or
23 property not explained as derived from a source other than criminal activity. For
24 purposes of subdivision b, a substantial source of income means a source of
25 income which for any period of one year or more exceeds the minimum wage,
26 determined on the basis of a forty-hour week and a fifty-week year, without
27 reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of
28 1938, as amended, for an employee engaged in commerce or in the production of
29 goods for commerce, and which for the same period exceeds fifty percent of the
30 offender's declared adjusted gross income under chapter 57-38.

1 **SECTION 8. AMENDMENT.** Section 20.1-13-21 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **20.1-13-21. Evidence of tax payment or exemption.** With an application for a
4 motorboat number and license under section 20.1-13-03 by an applicant in whose name the
5 motorboat has not previously been licensed, the applicant shall present proof of payment of
6 sales or use tax that was due upon acquisition or bringing the motorboat into this state for
7 storage or use in this state or shall present proof of exemption from sales or use taxes. Credit
8 for taxes paid by the applicant upon acquisition of the motorboat in another state must be
9 allowed as provided in section 57-40.2-11 if proof of that payment is presented. To establish
10 that the motorboat was acquired through a casual sale and qualifies for exempt status, the
11 applicant shall present a receipt for the sale signed by the seller and showing the seller's name
12 and address. The department may waive the furnishing of a signed receipt for a casual sale if
13 the applicant shows good cause why a receipt is unavailable and signs a statement showing
14 the name and address of the seller and stating that to the best of the applicant's knowledge the
15 seller is not in the business of selling boats.

16 **SECTION 9. AMENDMENT.** Subsection 3 of section 25-04-16 of the North Dakota
17 Century Code is amended and reenacted as follows:

18 3. Any patient, former patient, parent of a patient or former patient, guardian, or
19 personal representative who seeks relief from the payment of the cost of care and
20 treatment by filing an application for relief of payment shall do so with the
21 understanding that the supervising department may, in its discretion, and to its
22 satisfaction, verify any statement made in such application for relief of payment by
23 a request for information from financial institutions, including commercial banks,
24 and from other sources likely to possess verifying information. Notwithstanding the
25 provisions of section 57-38-57, this verification may include a review of such
26 applicant's state income tax return or any other document or report submitted to or
27 held by any office or department of the state of North Dakota or any of its political
28 subdivisions.

29 **SECTION 10. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **27-17-06. Immediate withdrawal of present active judges from judges retirement**

2 **fund.** From and after July 1, 1973, each judge of the supreme or district court serving on that
3 date and each former judge of the supreme or district court, not receiving judicial retirement
4 salary, may elect to withdraw his previous contributions made pursuant to this chapter, and
5 thereafter not participate in a judicial retirement program provided for by law. This option
6 ceases to be available and may not be exercised after June 30, 1975. If a judge selects this
7 option, he is entitled to receive the combined total of the following sums:

- 8 1. The entire amount of his previous contributions made pursuant to this chapter, to
9 be calculated to the date of election under this section; plus
- 10 2. An amount calculated by applying the vesting schedule set forth in section
11 54-52-11 to an amount equal to sixty percent of the judge's individual contributions
12 as calculated in subsection 1, plus earnings thereon as calculated in subsection 3;
13 plus
- 14 3. An amount calculated by applying the figure .05625 to the periodic annual or partial
15 annual balances in the individual judge's account during his years of service prior
16 to selecting the option provided by this section. The figure applied pursuant to this
17 subsection must be compounded annually.

18 The total amounts received pursuant to this section may not be considered taxable income for
19 the purposes of chapter 57-38, and may be treated as an additional adjustment reducing the
20 amount of taxable income in addition to those provided in section 57-38-01.2. Selection of the
21 option provided by this section must be made in writing to the director of the office of
22 management and budget.

23 **SECTION 11. AMENDMENT.** Section 37-27-06 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **37-27-06. Payments exempt from taxation and from execution - Assignments void**
26 **- Debts to state and political subdivisions not deducted.** Payments under this chapter are
27 exempt from all state and local taxes, including an income tax liability determined under section
28 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge,
29 mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment
30 under this chapter is void and payment to the veteran may not be denied because of any sums
31 owed to the state or any political subdivisions, except as provided in section 37-27-05.

1 **SECTION 12. AMENDMENT.** Subsection 16 of section 40-05.1-06 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 16. To impose registration fees on motor vehicles, or sales and use taxes in addition to
4 any other taxes imposed by law.

5 It is the intention of this chapter to grant and confirm to the people of all cities coming within its
6 provisions the full right of self-government in both local and city matters within the powers
7 enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall
8 continue to apply to home rule cities, except insofar as superseded by the charters of such
9 cities or by ordinance passed pursuant to such charters.

10 **(Effective after December 31, 2005) Powers.** From and after the filing with the
11 secretary of state of a charter framed and approved in reasonable conformity with the
12 provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and
13 implemented through ordinances, have the following powers set out in this chapter:

14 1. To acquire, hold, operate, and dispose of property within or without the corporate
15 limits, and exercise the right of eminent domain for such purposes.

16 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
17 make payment of its debts and expenses; to levy and collect taxes, excises, fees,
18 charges, and special assessments for benefits conferred, for its public and
19 proprietary functions, activities, operations, undertakings, and improvements; to
20 contract debts, borrow money, issue bonds, warrants, and other evidences of
21 indebtedness; to establish charges for any city or other services, and to establish
22 debt and mill levy limitations, provided that all real and personal property in order to
23 be subject to the assessment provisions of this subsection shall be assessed in a
24 uniform manner as prescribed by the state board of equalization and the state
25 supervisor of assessments. The authority to levy taxes under this subsection does
26 not include authority to impose income taxes.

27 3. To fix the fees, number, terms, conditions, duration, and manner of issuing and
28 revoking licenses in the exercise of its governmental police powers.

29 4. To provide for city officers, agencies, and employees, their selection, terms,
30 powers, duties, qualifications, and compensation. To provide for change,

- 1 selection, or creation of its form and structure of government including its
2 governing body, executive officer, and city officers.
- 3 5. To provide for city courts, their jurisdiction and powers over ordinance violations,
4 duties, administration, and the selection, qualifications, and compensation of their
5 officers; however, the right of appeal from judgment of such courts shall not be in
6 any way affected.
- 7 6. To provide for all matters pertaining to city elections, except as to qualifications of
8 electors.
- 9 7. To provide for the adoption, amendment, and repeal of ordinances, resolutions,
10 and regulations to carry out its governmental and proprietary powers and to
11 provide for public health, safety, morals, and welfare, and penalties for a violation
12 thereof.
- 13 8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
14 operation, and regulation thereof.
- 15 9. To define offenses against private persons and property and the public health,
16 safety, morals, and welfare, and provide penalties for violations thereof.
- 17 10. To engage in any utility, business, or enterprise permitted by the constitution or not
18 prohibited by statute or to grant and regulate franchises therefor to a private
19 person, firm, corporation, or limited liability company.
- 20 11. To provide for zoning, planning, and subdivision of public or private property within
21 the city limits; to provide for such zoning, planning, and subdivision of public or
22 private property outside the city limits as may be permitted by state law.
- 23 12. To levy and collect franchise and license taxes for revenue purposes.
- 24 13. To exercise in the conduct of its affairs all powers usually exercised by a
25 corporation.
- 26 14. To fix the boundary limits of said city and the annexation and deannexation of
27 territory adjacent to said city except that such power shall be subject to, and shall
28 conform with the state law made and provided.
- 29 15. To contract with and receive grants from any other governmental entity or agency,
30 with respect to any local, state, or federal program, project, or works.

- 1 16. To impose registration fees on motor vehicles, or sales and use taxes in addition to
2 any other taxes imposed by law. After December 31, 2005, sales and use taxes
3 levied under this chapter:
- 4 a. Must conform in all respects with regard to the taxable or exempt status of
5 items under chapters 57-39.2 and 57-40.2 and may not be imposed at
6 multiple rates with the exception of sales of electricity, piped natural or
7 artificial gas, or other heating fuels delivered by the seller or the retail sale or
8 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
9 homes, or mobile homes.
- 10 b. May not be newly imposed or changed except to be effective on the first day
11 of a calendar quarterly period after a minimum of ninety days notice to the tax
12 commissioner or, for purchases from printed catalogs, on the first day of a
13 calendar quarter after a minimum of one hundred twenty days notice to the
14 seller.
- 15 c. May not be limited to apply to less than the full value of the transaction or item
16 as determined for state sales and use tax purposes.
- 17 d. Must be subject to collection by the tax commissioner under an agreement
18 under section 57-01-02.1.

19 It is the intention of this chapter to grant and confirm to the people of all cities coming within its
20 provisions the full right of self-government in both local and city matters within the powers
21 enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall
22 continue to apply to home rule cities, except insofar as superseded by the charters of such
23 cities or by ordinance passed pursuant to such charters.

24 **SECTION 13. AMENDMENT.** Section 40-57.3-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **40-57.3-01. City lodging tax - Imposition - Amount - Disposition.** The governing
27 body of any city may, by ordinance, impose a city tax, not to exceed two percent, upon the
28 gross receipts of retailers on the leasing or renting of hotel, motel, or tourist court
29 accommodations within the city for periods of less than thirty consecutive calendar days or one
30 month. The tax imposed by this section shall be in addition to the state sales tax on rental
31 accommodations provided in chapter 57-39.2 and any city which imposes the tax upon gross

1 receipts described in this section shall deposit all proceeds in the city visitors' promotion fund.
2 Moneys deposited in the city visitors' promotion fund shall be spent only as provided in this
3 chapter. This chapter applies to all cities and does not limit the authority of a home rule city to
4 levy any taxes authorized by other provisions of law.

5 **SECTION 14. AMENDMENT.** Section 40-57.3-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative**
8 **expenses allowed - Rules.** The taxes imposed under this chapter are due and payable at the
9 same time the taxpayer is required to file a return under chapter 57-39.2 and must be collected
10 and administered by the state tax commissioner in accordance with the relevant provisions of
11 chapter 57-39.2. The amount the tax commissioner remits monthly to each city as taxes
12 collected for that city's visitors' promotion fund and visitors' promotion capital construction fund
13 must be reduced by three percent as an administrative fee necessary to defray the cost of
14 collecting the taxes and the expenses incident to collection. The administrative fee must be
15 deposited in the general fund in the state treasury. The tax commissioner shall adopt rules
16 necessary for the administration of this chapter. The penalties and liabilities provided in
17 sections 57-39.2-18 and 57-39.2-18.1 specifically apply to the filing of returns and
18 administration of the taxes imposed under this chapter.

19 **SECTION 15. AMENDMENT.** Subsection 8 of section 40-63-01 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 8. "Taxpayer" means an individual, corporation, financial institution, or trust subject to
22 the taxes imposed by chapter 57-35.3 or 57-38 and includes a partnership,
23 subchapter S corporation, limited partnership, limited liability company, or any
24 other passthrough entity.

25 **SECTION 16. AMENDMENT.** Section 40-63-04 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **40-63-04. Income tax exemptions.**

28 1. An individual taxpayer who purchases or rehabilitates single-family residential
29 property for the individual's primary place of residence as a zone project is exempt
30 from up to ten thousand dollars of personal income tax liability as determined

- 1 under section 57-38-29 or 57-38-30.3 for five taxable years beginning with the date
2 of occupancy or completion of rehabilitation.
- 3 2. Any taxpayer that purchases, leases, or rehabilitates residential or commercial
4 property for any business or investment purpose as a zone project is exempt from
5 any tax on income derived from the business or investment locations within the
6 zone for five taxable years, beginning with the date of purchase, lease, or
7 completion of rehabilitation.
- 8 3. If the cost of a new business purchase or expansion of an existing business,
9 approved as a zone project, exceeds seventy-five thousand dollars, and the
10 business is located in a city with a population of not more than two thousand five
11 hundred, an individual taxpayer may, in lieu of the exemption provided in
12 subsection 2, elect to take an income tax exemption of up to two thousand dollars
13 of personal income tax liability as determined under section 57-38-29 or
14 57-38-30.3. The election must be made on the taxpayer's zone project application.
15 The election is irrevocable and binding for the duration of the exemptions provided
16 in subsection 2 or 3. If no election is made on the zone project application, the
17 taxpayer is only eligible for the exemption provided in subsection 2.
- 18 4. The exemptions provided by this section do not eliminate any duty to file a return or
19 to report income as required under chapter 57-35.3 or 57-38.

20 **SECTION 17. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **40-63-06. Historic preservation and renovation tax credit.** A credit against state tax
23 liability as determined under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3 is
24 allowed for investments in the historic preservation or renovation of property within the
25 renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to
26 a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in
27 which the preservation or renovation is completed. Any excess credit may be carried forward
28 for a period of up to five taxable years.

29 **SECTION 18. AMENDMENT.** Section 40-63-07 of the North Dakota Century Code is
30 amended and reenacted as follows:

31 **40-63-07. Renaissance fund organization - Exemption from taxation.**

- 1 1. Each city with a designated renaissance zone may establish a renaissance fund
2 organization, if the detailed plan for such an organization is clearly established in
3 the development plan and approved with the plan, or is submitted at a later date to
4 the department of commerce division of community services for approval after the
5 designation of a renaissance zone.
- 6 2. The purpose of a renaissance fund organization is solely to raise funds to be used
7 to make investments in zone projects and to make investments in designated
8 renaissance zone cities. A renaissance fund organization may provide financing to
9 projects undertaken by individuals, partnerships, limited partnerships, limited
10 liability companies, trusts, corporations, nonprofit organizations, and public entities.
11 The financing may include any combination of equity investments, loans,
12 guarantees, and commitments for financing. The amount of financing is not limited
13 by this chapter.
- 14 3. A renaissance fund organization is exempt from any tax imposed by chapter
15 57-35.3 or 57-38. An exemption under this section may be passed through to any
16 shareholder, partner, and owner if the renaissance fund organization is a
17 passthrough entity for tax purposes. A corporation or financial institution entitled to
18 the exemption provided by this subsection shall file required returns and report
19 income to the tax commissioner as required by the provisions of those chapters as
20 if the exemption did not exist. If an employer, this subsection does not exempt a
21 renaissance fund organization from complying with the income tax withholding
22 laws.
- 23 4. A credit against state tax liability as determined under section 57-35.3-03,
24 57-38-29, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund
25 organization. The amount of the credit is fifty percent of the amount invested in the
26 renaissance fund organization during the taxable year. Any amount of credit which
27 exceeds a taxpayer's tax liability for the taxable year may be carried forward for up
28 to five taxable years after the taxable year in which the investment was made.
- 29 5. The total amount of credits allowed under this section may not exceed, in the
30 aggregate, an initial limit of two million five hundred thousand dollars. Upon
31 exhaustion of this initial limit, an additional two million five hundred thousand

- 1 dollars in credits is available for investments in renaissance fund organizations. A
2 renaissance fund organization that has received investments that qualify for these
3 additional credits under this subsection may not use more than fifty percent of such
4 investments for organization investments outside of a renaissance zone.
- 5 6. Income to a renaissance fund organization derived from the sale or refinancing of
6 zone properties financed wholly or in part by the organization may be disbursed as
7 annual dividends equal to the income, minus ten percent, derived from all sources
8 and proportional to the investment. In the event of a loss to the fund resulting in a
9 temporary diminishment of the fund below the original principal amount, no annual
10 dividend may be paid until the fund is restored.
- 11 7. Income to a renaissance fund organization derived from interest or the temporary
12 investment of its funds in certificates of deposit, bonds, treasury bills, or securities
13 may be used for administration.
- 14 8. If an investment in a renaissance fund organization which is the basis for a credit
15 under this section is redeemed by the investor within ten years of the date it is
16 purchased, the credit provided by this section for the investment must be
17 disallowed, and any credit previously claimed and allowed with respect to the
18 investment must be paid to the tax commissioner with the appropriate return of the
19 taxpayer covering the period in which the redemption occurred. When payments
20 are made to the tax commissioner under this section, the amount collected must be
21 handled in the same manner as if no credit had been allowed.
- 22 9. A renaissance fund organization shall secure an annual audit of its financial
23 records, prepared by an independent certified public accounting firm in accordance
24 with generally accepted auditing standards. The audit report must include a
25 statement of the percentage of annual investments received by the organization
26 which have been invested by the organization in investments permitted under this
27 chapter, including the use of investments, distinguishing between organization
28 investments made in renaissance zones and outside renaissance zones. A
29 renaissance fund organization shall file a copy of each audit of its financial records
30 under this subsection with the governing body of the city in which it was
31 established, the department of commerce division of community services, and the

1 tax commissioner. The department of commerce division of community services
2 shall provide an annual report to the budget section of the legislative council
3 showing the conclusions of audit reports filed under this subsection.

4 **SECTION 19. AMENDMENT.** Section 47-21-08.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **47-21-08.1. Administration.** The provisions of chapter 57-39.2, pertaining to the
7 administration of the retail sales tax, including provisions for penalty and interest, not in conflict
8 with the provisions of this chapter, shall govern the administration of the tax levied by this
9 chapter.

10 **SECTION 20. AMENDMENT.** Subsection 1 of section 50-06.3-06 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. Any person liable for the expenses of care and treatment at the state hospital may
13 make application to the department to pay less than the expenses charged. The
14 application must be accompanied by proof of the applicant's inability to pay. Any
15 person who seeks relief from the payment of expenses for services provided by the
16 state hospital shall do so with the understanding that the department may verify
17 any statement made in such application by a request for information from financial
18 institutions, including commercial banks. Notwithstanding the provisions of section
19 57-38-57, this verification may include a review of the applicant's state income tax
20 return or any other document or report submitted to or held by any office or
21 department of the state of North Dakota, or any of its political subdivisions.

22 **SECTION 21. AMENDMENT.** Section 51-04-08 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **51-04-08. Certain excepted sales.** The provisions of this chapter do not apply to the
25 following:

26 1. Sales made to dealers by commercial travelers or selling agents in the usual
27 course of business.
28 2. Sales made by persons soliciting orders of goods, wares, merchandise, or
29 personal property for future delivery, and not from a stock or supply carried by the
30 solicitor or otherwise available for immediate delivery to the purchaser, in which the
31 solicitor does not demand or accept payment of any money or deposit in advance

1 or on delivery without first providing the purchaser with the privilege of examination
2 of the goods, wares, merchandise, or personal property.

3 3. Sales made by a person who has a sales or use tax permit in accordance with
4 chapter 57-39.2 or 57-40.2, pays contributions to job service North Dakota for
5 unemployment compensation in accordance with chapter 52-04, and who has
6 reported to workforce safety and insurance in accordance with chapter 65-04.

7 4. Sales made by a seller at residential premises pursuant to an invitation issued by
8 the owner or legal occupant of such premises.

9 **SECTION 22. AMENDMENT.** Section 52-06-30 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **52-06-30. Assignment of benefits prohibited - Benefits exempt from remedies for**
12 **collection of debt - Exception.**

13 1. No assignment, pledge, or encumbrance of any right to benefits which are or may
14 become due or payable under the North Dakota Unemployment Compensation
15 Law is valid. Such rights to benefits are exempt from levy, execution, attachment,
16 or any other remedy provided for the collection of a debt. Benefits received by any
17 individual, as long as they are not mingled with other funds of the recipient, are
18 exempt from any remedy for the collection of all debts except debts incurred for
19 necessaries furnished to the individual, that person's spouse, or dependents during
20 the time when the individual was unemployed. No waiver of any exemption
21 provided for in this subsection is valid. However, this subsection does not impair
22 the operation of subsection 2 or section 52-06-06.1 or the continuous levy
23 authorized under Public Law No. 105-34, section 1024 [111 Stat. 923-924; 26
24 U.S.C. 6331(h)].

25 2. An individual filing a new claim for unemployment compensation benefits, at the
26 time of filing the claim, must be advised that:
27 a. Unemployment compensation is subject to federal income tax and state
28 income tax;
29 b. Requirements exist pertaining to estimated federal and state tax payments;

- 1 c. The individual may elect to have federal income tax deducted and withheld
2 from the individual's payment of unemployment compensation benefits at the
3 amount specified in the federal Internal Revenue Code;
- 4 d. The individual, having elected to have federal income tax withheld, may also
5 elect to have state income tax deducted and withheld from the individual's
6 payment of unemployment compensation at a rate determined by the tax
7 commissioner pursuant to section 57-38-59; and
- 8 e. The individual is permitted to change a previously elected withholding status.
9 Amounts deducted and withheld from unemployment compensation must
10 remain in the unemployment fund until transferred to the federal and state
11 taxing authority as payment of income tax. The bureau shall follow all
12 procedures specified by the United States department of labor, the federal
13 internal revenue service, and the tax commissioner pertaining to the
14 deducting and withholding of income tax. Amounts must be deducted and
15 withheld under this section only after amounts are deducted and withheld for
16 any overpayments of unemployment compensation, child support obligations,
17 or any other amounts required to be deducted and withheld under this
18 chapter.

19 **SECTION 23. AMENDMENT.** Section 54-09-09 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **54-09-09. Computerized central indexing system - Rules.**

- 22 1. The secretary of state shall maintain a computerized central indexing system that
23 contains the information filed with the office of the secretary of state or with any of
24 the offices of the recorder in this state pursuant to sections 35-13-02, 35-17-04,
25 35-20-16, 35-30-02, 35-31-02, 35-34-04, 35-34-06, 41-09-72, 57-28-29, 57-38-49,
26 57-39.2-13, 57-40.2-16, 57-40.3-07.1, 57-43.1-17.4, 57-43.2-16.3, and 57-51-11.
27 The system must connect each recorder's office to the secretary of state's office
28 through the information technology department. The system must allow access to
29 financing statement information by equipment that conforms to requirements
30 determined by the information technology department. The system must have
31 safeguards to allow access to information that is in the system relating to security

1 interests or liens and to prevent unauthorized alteration or deletion of that
2 information and to allow access to other information in the system as prescribed by
3 the secretary of state.

4 2. Within two working days of receipt of a financing statement, continuation
5 statement, amendment, or termination statement filed pursuant to chapter 41-09 or
6 a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or
7 35-31-02, the recorder or secretary of state shall file the information contained in
8 the statement in the computerized central indexing system. A computer printout of
9 information from the system is prima facie evidence of the existence or
10 nonexistence of the filing of a financing statement or lien. The secretary of state
11 shall prescribe one form that can be used to perfect a security interest in farm
12 products or gain protection under the central notice system, or both.

13 3. The secretary of state may adopt rules necessary to implement this section and
14 sections 54-09-10 and 54-09-11.

15 **SECTION 24. AMENDMENT.** Section 54-17.2-23 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **54-17.2-23. State building authority lease payments - Limitation.** The general fund
18 amount of lease payments for a biennium associated with capital construction projects financed
19 by the industrial commission acting as the state building authority may not exceed the amount
20 equal to a portion of sales, use, and motor vehicle excise tax collections equal to ten percent of
21 an amount, determined by multiplying the quotient of one percent divided by the general sales
22 tax rate that was in effect when the taxes were collected, times the net sales, use, and motor
23 vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3. The computation
24 for the authorized general fund lease payments for a biennium must be based on the projected
25 sales, use, and motor vehicle excise tax collections presented to the legislative assembly at the
26 close of the most recently adjourned regular legislative session. Lease payment amounts for
27 any particular project must be calculated as of the date the related bonds are issued.

28 **SECTION 25. AMENDMENT.** Section 57-01-13 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **57-01-13. (Contingent expiration date - See note) Collection of delinquent sales,**
31 **use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle**

1 **excise, telecommunications carriers, income, and business and corporation privilege**
2 **taxes.**

- 3 1. Notwithstanding the secrecy and confidential information provisions in
4 chapters 57-38, 57-39.2, and 57-40.2, the tax commissioner may, for the purpose
5 of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels,
6 importer for use, aviation fuel, motor vehicle excise, telecommunications carriers,
7 income, or business and corporation privilege taxes due from a taxpayer not
8 residing or domiciled in this state, contract with any collection or credit agency,
9 within or without the state, for the collection of the delinquent sales, use, motor
10 vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,
11 telecommunications carriers, income, or business and corporation privilege taxes,
12 including penalties and interest thereon. For purposes of this section, a delinquent
13 tax is defined as a tax liability that is due and owing for a period longer than six
14 months and for which the taxpayer has been given at least three notices in writing
15 requesting payment. The notices must be sent by first-class mail to the taxpayer at
16 the taxpayer's last-known mailing address. The third notice must be sent with a
17 copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent
18 tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels,
19 special fuels, importer for use, aviation fuel, motor vehicle excise,
20 telecommunications carriers, income, or business and corporation privilege taxes
21 that become due from the same taxpayer may be assigned immediately and
22 without further notice to the taxpayer, so long as the originally assigned liability has
23 not been fully collected.
- 24 2. a. Fees for services, reimbursement, or any other remuneration to a collection or
25 credit agency must be based on the amount of tax, penalty, and interest
26 actually collected. Each contract entered into between the tax commissioner
27 and the collection or credit agency must provide for the payment of fees for
28 the services, reimbursements, or other remuneration not in excess of fifty
29 percent of the amount of delinquent sales, use, motor vehicle fuels, special
30 fuels, importer for use, aviation fuel, motor vehicle excise, income, or

- 1 business and corporation privilege tax, including penalties and interest
2 actually collected.
- 3 b. All funds collected by the collection or credit agency must be remitted to the
4 tax commissioner monthly from the date of collection from a taxpayer. Forms
5 to be used for the remittances must be prescribed by the tax commissioner.
6 The tax commissioner shall transfer the funds to the state treasurer for
7 deposit in the state general fund. An amount equal to the amount of fees for
8 services, reimbursement, or any other remuneration to the collection or credit
9 agency as set forth in the contract authorized by this section is appropriated
10 as a standing and continuing appropriation to the tax commissioner for
11 payment of fees due under the contract.
- 12 c. Before entering into a contract, the tax commissioner shall require a bond
13 from the collection or credit agency not in excess of ten thousand dollars,
14 guaranteeing compliance with the terms of the contract.
- 15 3. A collection or credit agency entering into a contract with the tax commissioner for
16 the collection of delinquent taxes pursuant to this section thereby agrees that it is
17 doing business in this state for the purposes of the North Dakota income tax and
18 business and corporation privilege tax laws.

19 **(Contingent effective date - See note) Collection of delinquent sales, use, motor**
20 **vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,**
21 **telecommunications carriers, income, and business and corporation privilege taxes.**

- 22 1. Notwithstanding the secrecy and confidential information provisions in
23 chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of
24 collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels,
25 importer for use, aviation fuel, motor vehicle excise, telecommunications carriers,
26 income, or business and corporation privilege taxes due from a taxpayer not
27 residing or domiciled in this state, contract with any collection or credit agency,
28 within or without the state, for the collection of the delinquent sales, use, motor
29 vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise,
30 telecommunications carriers, income, or business and corporation privilege taxes,
31 including penalties and interest thereon. For purposes of this section, a delinquent

- 1 tax is defined as a tax liability that is due and owing for a period longer than six
2 months and for which the taxpayer has been given at least three notices in writing
3 requesting payment. The notices must be sent by regular mail to the taxpayer at
4 the taxpayer's last-known mailing address. The third notice must be sent with a
5 copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent
6 tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels,
7 special fuels, importer for use, aviation fuel, motor vehicle excise, income, or
8 business and corporation privilege taxes that become due from the same taxpayer
9 may be assigned immediately and without further notice to the taxpayer, so long as
10 the originally assigned liability has not been fully collected.
- 11 2. a. Fees for services, reimbursement, or any other remuneration to a collection or
12 credit agency must be based on the amount of tax, penalty, and interest
13 actually collected. Each contract entered into between the tax commissioner
14 and the collection or credit agency must provide for the payment of fees for
15 the services, reimbursements, or other remuneration not in excess of fifty
16 percent of the amount of delinquent sales, use, motor vehicle fuels, special
17 fuels, importer for use, aviation fuel, motor vehicle excise, income, or
18 business and corporation privilege tax, including penalties and interest
19 actually collected.
- 20 b. All funds collected, less the fees for collection services, as provided in the
21 contract, must be remitted to the tax commissioner monthly from the date of
22 collection from a taxpayer. Forms to be used for the remittances must be
23 prescribed by the tax commissioner.
- 24 c. Before entering into a contract, the tax commissioner shall require a bond
25 from the collection or credit agency not in excess of ten thousand dollars,
26 guaranteeing compliance with the terms of the contract.
- 27 3. A collection or credit agency entering into a contract with the tax commissioner for
28 the collection of delinquent taxes pursuant to this section thereby agrees that it is
29 doing business in this state for the purposes of the North Dakota income tax and
30 business and corporation privilege tax laws.

1 **SECTION 26. AMENDMENT.** Subsections 15 and 27 of section 57-02-08 of the North
2 Dakota Century Code are amended and reenacted as follows:

- 3 15. a. All farm structures and improvements located on agricultural lands.
- 4 (1) This subsection must be construed to exempt farm buildings and
5 improvements only, and may not be construed to exempt from taxation
6 industrial plants, or structures of any kind not used or intended for use
7 as a part of a farm plant, or as a farm residence.
- 8 (2) Any structure or improvement used primarily in connection with a retail
9 or wholesale business other than farming, any structure or improvement
10 located on platted land within the corporate limits of a city, or any
11 structure or improvement located on railroad operating property subject
12 to assessment under chapter 57-05 is not exempt under this
13 subsection. For purposes of this paragraph, "business other than
14 farming" includes processing to produce a value-added physical or
15 chemical change in an agricultural commodity beyond the ordinary
16 handling of that commodity by a farmer prior to sale.
- 17 (3) The following factors may not be considered in application of the
18 exemption under this subsection:
- 19 (a) Whether the farmer grows or purchases feed for animals raised
20 on the farm.
- 21 (b) Whether animals being raised on the farm are owned by the
22 farmer.
- 23 (c) Whether the farm's replacement animals are produced on the
24 farm.
- 25 (d) Whether the farmer is engaged in contract feeding of animals on
26 the farm.
- 27 b. It is the intent of the legislative assembly that this exemption as applied to a
28 residence must be strictly construed and interpreted to exempt only a
29 residence that is situated on a farm and which is occupied or used by a
30 person who is a farmer and that the exemption may not be applied to property

1 which is occupied or used by a person who is not a farmer. For purposes of
2 this subdivision:

3 (1) "Farm" means a single tract or contiguous tracts of agricultural land
4 containing a minimum of ten acres [4.05 hectares] and for which the
5 farmer, actually farming the land or engaged in the raising of livestock
6 or other similar operations normally associated with farming and
7 ranching, has received annual net income from farming activities which
8 is fifty percent or more of annual net income, including net income of a
9 spouse if married, during any of the three preceding calendar years.

10 (2) "Farmer" means an individual who normally devotes the major portion
11 of time to the activities of producing products of the soil, poultry,
12 livestock, or dairy farming in such products' unmanufactured state and
13 has received annual net income from farming activities which is fifty
14 percent or more of annual net income, including net income of a spouse
15 if married, during any of the three preceding calendar years. "Farmer"
16 includes a "retired farmer" who is retired because of illness or age and
17 who at the time of retirement owned and occupied as a farmer the
18 residence in which the person lives and for which the exemption is
19 claimed. "Farmer" includes a "beginning farmer" who has begun
20 occupancy and operation of a farm within the three preceding calendar
21 years; who normally devotes the major portion of time to the activities of
22 producing products of the soil, poultry, livestock, or dairy farming in
23 such products' unmanufactured state; and who does not have a history
24 of farm income from farm operation for each of the three preceding
25 calendar years.

26 (3) "Net income from farming activities" means taxable income from those
27 activities as computed for income tax purposes pursuant to chapter
28 57-38 adjusted to include the following:

29 (a) The difference between gross sales price less expenses of sale
30 and the amount reported for sales of agricultural products for
31 which the farmer reported a capital gain.

- 1 (b) Interest expenses from farming activities which have been
2 deducted in computing taxable income.
- 3 (c) Depreciation expenses from farming activities which have been
4 deducted in computing taxable income.
- 5 (4) When exemption is claimed under this subdivision for a residence, the
6 assessor may require that the occupant of the residence who it is
7 claimed is a farmer provide to the assessor for the year or years
8 specified by the assessor a written statement in which it is stated that
9 fifty percent or more of the net income of that occupant, and spouse if
10 married and both spouses occupy the residence, was, or was not, net
11 income from farming activities.
- 12 (5) In addition to any of the provisions of this subsection or any other
13 provision of law, a residence situated on agricultural land is not exempt
14 for the year if it is occupied by an individual engaged in farming who
15 had nonfarm income, including that of a spouse if married, of more than
16 forty thousand dollars during each of the three preceding calendar
17 years. This paragraph does not apply to a retired farmer or a beginning
18 farmer as defined in paragraph 2.
- 19 (6) For purposes of this section, "livestock" includes "nontraditional
20 livestock" as defined in section 36-01-00.1.
- 21 (7) A farmer operating a bed and breakfast facility in the farm residence
22 occupied by that farmer is entitled to the exemption under this section
23 for that residence if the farmer and the residence would qualify for
24 exemption under this section except for the use of the residence as a
25 bed and breakfast facility.
- 26 27. Installations, machinery, and equipment of systems in new or existing buildings or
27 structures, designed to provide heating or cooling or to produce electrical or
28 mechanical power, or any combination of these, or to store any of these, by
29 utilization of solar, wind, or geothermal energy; provided, that if the solar, wind, or
30 geothermal energy device is part of a system which uses other means of energy,
31 only that portion of the total system directly attributable to solar, wind, or

1 geothermal energy shall be exempt. Provided, however, that any exemptions
2 granted by this subsection shall be valid for a five-year period following installation
3 of any such system. For the purposes of this subsection, solar or wind energy
4 devices shall have the meaning provided in section 57-38-01.8; geothermal energy
5 device means a system or mechanism or series of mechanisms designed to
6 provide heating or cooling or to produce electrical or mechanical power, or any
7 combination of these, by a method which extracts or converts the energy naturally
8 occurring beneath the earth's surface in rock structures, water, or steam.

9 **SECTION 27. AMENDMENT.** Section 57-32-01.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-32-01.1. Property assessed in lieu of registration fees and sales and use taxes.**

12 The taxes imposed by chapters 57-06, 57-07, 57-08, 57-13, and this chapter on air carrier
13 transportation property are in lieu of the registration fees imposed by section 2-05-11 and are in
14 lieu of sales and use taxes which would otherwise be imposed on the sale, storage, use, or
15 consumption of air carrier transportation property except for the provisions of sections
16 57-39.2-04 and 57-40.2-04.

17 **SECTION 28. AMENDMENT.** Section 57-34-04.5 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-34-04.5. Resale certificates.** A telecommunications carrier who receives a resale
20 certificate certifying that another telecommunications carrier holds a North Dakota sales and
21 use tax permit for sales or use tax purposes under section 57-39.2-14 is relieved from
22 submitting the telecommunications gross receipts tax upon the sale of telecommunications
23 services to be resold by the telecommunications carrier submitting the certificate. When a
24 telecommunications carrier submits a false resale certificate to another telecommunications
25 carrier, the telecommunications carrier that submitted the certificate is liable for the
26 telecommunications gross receipts tax on the sale. A hospital, hotel, motel, or similar place of
27 temporary accommodation selling telecommunications service to its patients or guests is not a
28 telecommunications carrier under this section.

29 **SECTION 29. AMENDMENT.** Subsection 2 of section 57-35.3-01 of the North Dakota
30 Century Code is amended and reenacted as follows:

31 2. "Financial institution" means:

- 1 a. A corporation or other business entity registered under state law as a bank
2 holding company, registered under the Bank Holding Company Act of 1956,
3 as amended [Pub. L. 84-240; 70 Stat. 133; 12 U.S.C. 1841 et seq.], or
4 registered as a savings and loan holding company under the National
5 Housing Act, as amended [Pub. L. 73-847; 48 Stat. 1246; 12 U.S.C. 1701
6 et seq.];
- 7 b. A national bank organized and existing as a national bank association
8 pursuant to the provisions of the National Bank Act [1864 ch. 106, § 5;
9 13 Stat. 100; 12 U.S.C. 21 et seq.];
- 10 c. A savings association or federal savings bank as defined in the Federal
11 Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 873; 12 U.S.C. 1813(b)(1)];
- 12 d. A bank or thrift institution incorporated or organized under the laws of any
13 state;
- 14 e. A trust company organized under the laws of any state, the United States, a
15 dependency or insular possession of the United States, or a foreign country;
- 16 f. A corporation organized under the provisions of Public Law No. 63-6, § 25A
17 [38 Stat. 273; 12 U.S.C. 611 to 631];
- 18 g. An agency or branch of a foreign depository as defined in Public Law
19 No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
- 20 h. A production credit association organized under the Farm Credit Act of 1933
21 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which
22 held by the federal production credit corporation has been retired;
- 23 i. A corporation the voting stock of which is more than fifty percent owned,
24 directly or indirectly, by any person or business entity described in
25 subdivisions a through h other than an insurance company taxable under
26 section 26.1-03-17 or a corporation taxable under chapter 57-38;
- 27 j. A corporation or other business entity that derives more than fifty percent of
28 its total gross income for financial accounting purposes from finance leases.
29 For purposes of this subdivision, a "finance lease" means any lease
30 transaction that is the functional equivalent of an extension of credit and which
31 transfers substantially all of the benefits and risks incident to the ownership of

1 property. The phrase includes any "direct financing lease" or "leverage lease"
2 that meets the criteria of financial accounting standards board statement no.
3 13, "accounting for leases", or any other lease that is accounted for as a
4 financing by a lessor under generally accepted accounting principles. For the
5 classification under this subdivision to apply:

6 (1) The average of the gross income in the current tax year and
7 immediately preceding two tax years must satisfy the more than fifty
8 percent requirement; and

9 (2) Gross income from incidental or occasional transactions must be
10 disregarded; or

11 k. Any other person or business entity, other than an insurance company taxable
12 under section 26.1-03-17, a real estate broker, a securities dealer, or a person
13 or entity taxable under chapter 57-38, which derives more than fifty percent of
14 its gross income from activities that a person described in subdivisions b
15 through h and j is authorized to transact. For the purpose of this subsection,
16 the computation of gross income does not include income from nonrecurring,
17 extraordinary items.

18 The commissioner may exclude any person from the application of subdivision k
19 upon that person proving, by clear and convincing evidence, that the
20 income-producing activity of that person is not in substantial competition with those
21 persons described in subdivisions b through h and j.

22 **SECTION 30. AMENDMENT.** Section 57-35.3-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-35.3-02. Taxable income.**

- 25 1. In determining "taxable income" there must be added to federal taxable income:
- 26 a. The adjustments provided by subdivisions c, d, and g of subsection 1 of
27 section 57-38-01.3;
- 28 b. Interest not subject to federal tax upon obligations of the state of North Dakota
29 and its political subdivisions;
- 30 c. The amount of any charitable contribution deduction taken for federal income
31 tax purposes under section 170 of the Internal Revenue Code;

- 1 d. In the case of a building and loan association or savings and loan association,
2 the amount of any bad debt reserve deduction taken for federal income tax
3 purposes under section 585 of the Internal Revenue Code; and
- 4 e. Dividends paid by a federal reserve bank to the extent not subject to federal
5 tax.
- 6 2. In determining "taxable income" there must be subtracted from federal taxable
7 income:
- 8 a. The adjustments provided by subdivision b of subsection 1 of section
9 57-38-01.3;
- 10 b. Repealed by S.L. 2003, ch. 529, § 3;
- 11 c. In the case of a building and loan association or savings and loan association
12 that uses the bad debt reserve method under section 585 of the Internal
13 Revenue Code to account for bad debts for federal income tax purposes, an
14 amount equal to the deduction for bad debts that would have been allowed
15 under section 166(a) of the Internal Revenue Code if a deduction had not
16 been claimed under section 585 or 593;
- 17 d. The amount of any adjustments taken into account for federal income tax
18 purposes under section 593(g) of the Internal Revenue Code;
- 19 e. The amount of any interest and expenses relating to income not taxable for
20 federal income tax purposes if the income is taxable under sections
21 57-35.3-01 through 57-35.3-12 and the interest and expenses were
22 disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal
23 Revenue Code in computing federal taxable income;
- 24 f. The amount of any wage and salary expenses disallowed as deductions
25 under section 280C(a) of the Internal Revenue Code in computing federal
26 taxable income;
- 27 g. An amount equal to the deduction for charitable contributions that would be
28 allowed for federal income tax purposes under section 170 of the Internal
29 Revenue Code if the percentage limitation of section 170(b)(2) of the Internal
30 Revenue Code was applied in all relevant taxable periods to taxable income,
31 rather than federal taxable income, but computed without regard to this

- 1 subdivision and that portion of subdivision a that refers to subdivision g of
2 subsection 1 of section 57-38-01.3. However, no deduction is allowable for a
3 contribution if and to the extent that a credit is allowed for the contribution
4 under section 57-35.3-05;
- 5 h. The amount of net income not allocated and apportioned to this state under
6 sections 57-35.3-13 through 57-35.3-17, but only to the extent that the
7 amount of net income not allocated and apportioned to this state under those
8 sections is not included in any adjustment made pursuant to the preceding
9 subdivisions; and
- 10 i. The amount of federal income tax liability for the same taxable year for which
11 North Dakota taxable income is being determined, to the extent that the
12 federal taxes are computed upon income that becomes part of North Dakota
13 taxable income. Provided, that no adjustment to federal income taxes, paid or
14 accrued, is required because of allowable deductions to federal taxable
15 income made under the cost recovery provisions of subdivision b of
16 subsection 5 of section 57-38-01. Federal income taxes for prior periods
17 assessed against the taxpayer by reason of audit or other adjustment by the
18 internal revenue service, or voluntary disclosure by the taxpayer, are not
19 deductible except in the period in which income so taxed was reported or
20 reportable or in which an adjustment was required but only after an
21 adjustment is made by or with the office of the state tax commissioner. A
22 refund of federal income tax must be reported and included in North Dakota
23 taxable income in the year in which the tax was originally deducted. Income
24 must be further reduced by any federal alternative minimum tax when a
25 federal credit for a prior year minimum tax is taken. This reduction is limited
26 to any federal alternative minimum tax previously disallowed in computing
27 North Dakota taxable income and may not exceed North Dakota taxable
28 income computed before the North Dakota net operating loss deduction. Any
29 excess may be carried forward to the next taxable year a federal credit for a
30 prior year minimum tax is taken.

- 1 3. A net operating loss for any prior taxable period, attributable to North Dakota
2 sources, must be allowed as a deduction from the sum otherwise calculated under
3 this section to the extent that it exceeds the taxable income for each of the prior
4 taxable years to which the loss may be carried under sections 57-35.3-01 through
5 57-35.3-12 or under prior chapters 57-35, 57-35.1, or 57-35.2, or corporations
6 under chapter 57-38, governing the taxation of the taxpayer. Net operating losses
7 may be carried forward for the same time period as federal net operating losses
8 may be carried forward. If a financial institution uses an apportionment formula in
9 the loss year to determine the amount of income or loss that is attributable to North
10 Dakota sources, the amount of the North Dakota loss so determined is the net
11 operating loss attributable to North Dakota sources for purposes of this subsection.
12 No deduction may be taken for a carryforward when determining the amount of net
13 operating loss that is attributable to North Dakota sources. No net operating loss
14 carryback deduction is allowed.
- 15 4. The commissioner may adopt rules to prevent requiring income that had been
16 previously taxed under sections 57-35.3-01 through 57-35.3-12, or prior law
17 governing the taxation of financial institutions, from being taxed again because of
18 the provisions of sections 57-35.3-01 through 57-35.3-12 and to adopt rules to
19 prevent any income from becoming exempt from taxation because of sections
20 57-35.3-01 through 57-35.3-12 if it would otherwise have been subject to taxation
21 under sections 57-35.3-01 through 57-35.3-12.
- 22 5. If it appears to the commissioner that the segregation of assets shown by any
23 return made under sections 57-35.3-01 through 57-35.3-12 does not properly
24 reflect the taxpayer's activity or business done, or the income earned from the
25 taxpayer's activity or from business done in this state, because of the character of
26 the taxpayer's business and the character and location of its assets, the
27 commissioner may equitably adjust the tax.

28 **SECTION 31. AMENDMENT.** Section 57-35.3-06 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **57-35.3-06. Tax return.** On or before April fifteenth of each year, the taxpayer shall file
31 with the commissioner, on forms or in a manner prescribed by the commissioner, a report in

1 writing under oath showing the amount of taxable income of the financial institution for the
2 preceding calendar year. If required by the commissioner, the return must be accompanied by
3 a true copy of the federal income tax return of the taxpayer or by equivalent information in the
4 form and manner prescribed by the commissioner. A true copy of the federal income tax return
5 must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed
6 the return required by this section if required by the commissioner before the expiration of the
7 applicable period for assessment of additional tax liability under section 57-38-38. The
8 commissioner may prescribe alternative methods for signing, subscribing, or verifying a return
9 filed by electronic means, including telecommunications, that has the same validity and
10 consequence as the actual signature and written declaration for a paper return. The
11 commissioner may grant a reasonable extension of time for filing a return under the standards
12 and terms applicable to other corporations under section 57-38-34.

13 **SECTION 32. AMENDMENT.** Section 57-35.3-11 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **57-35.3-11. Refunds.** Refunds of the tax imposed by sections 57-35.3-01 through
16 57-35.3-12, including related interest, must be paid from the state general fund. An amount
17 equal to the portion of any such refund attributable to tax collections deposited in the financial
18 institution tax distribution fund must be reimbursed to the state general fund from the first
19 available assets of the financial institution tax distribution fund, with interest thereon at the rate
20 prescribed by section 57-38-35.2 from the date of payment of the refund from the state general
21 fund. The amounts necessary to pay these refunds are hereby appropriated to the state
22 treasurer as a standing and continuing appropriation for payment under this section.

23 **SECTION 33. AMENDMENT.** Section 57-35.3-12 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **57-35.3-12. Applicable provisions of chapter 57-38 relating to administration,**
26 **interest, and penalties.** The provisions of section 57-38-33, subsection 1 of section 57-38-34,
27 sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37, 57-38-38, 57-38-39, 57-38-40,
28 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49, 57-38-50, 57-38-51, 57-38-53,
29 57-38-54, 57-38-56, and 57-38-57, insofar as consistent therewith, govern the administration of
30 sections 57-35.3-01 through 57-35.3-12. For this purpose, the term "corporation", as used in
31 the sections listed in this section, includes a financial institution.

1 **SECTION 34. AMENDMENT.** Subsection 1 of section 57-35.3-13 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. Except as otherwise specifically provided, a financial institution whose business
4 activity is taxable both within and without this state shall allocate and apportion its
5 net income as provided in sections 57-35.3-13 through 57-35.3-17. All items of
6 nonbusiness income, meaning income that is not includable in the apportionable
7 income tax base, must be allocated under chapter 57-38.1. A financial institution
8 organized under the laws of a foreign country, the Commonwealth of Puerto Rico,
9 or a territory or possession of the United States the effectively connected income of
10 which, as defined under the Internal Revenue Code, is taxable both within this
11 state and within another state, other than the state in which it is organized, shall
12 allocate and apportion its net income as provided in sections 57-35.3-13 through
13 57-35.3-17.

14 **SECTION 35. AMENDMENT.** Subsection 14 of section 57-35.3-15 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 14. All other receipts. The numerator of the receipts factor includes all other receipts
17 under the rules set forth in chapter 57-38.1, to the extent not inconsistent with this
18 section.

19 **SECTION 36. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 5. "Purchase price" means the total amount paid for the motor vehicle whether
22 received in money or otherwise; provided, however, that when a motor vehicle or
23 other tangible personal property that will be subject to a sales or use tax imposed
24 by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as
25 part payment on a motor vehicle taxable under this chapter, the credit or trade-in
26 value allowed by the person selling the motor vehicle shall be deducted from the
27 total selling price to establish the purchase price of the vehicle being sold and the
28 trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in
29 shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a
30 motor vehicle is purchased by an owner who has had a motor vehicle stolen or
31 totally destroyed, a credit or trade-in credit shall be allowed in an amount not to

1 exceed the total amount the purchaser has been compensated by an insurance
2 company for the loss but not to exceed the total amount of motor vehicle excise tax
3 paid. The purchaser must provide the director of the department of transportation
4 with a notarized statement from the insurance company verifying the fact that the
5 original vehicle was a total loss and stating the amount compensated by the
6 insurance company for the loss. The statement from the insurance company must
7 accompany the purchaser's application for a certificate of title for the replacement
8 vehicle. In instances in which a licensed motor vehicle dealer places into the
9 dealer's service a new vehicle for the purpose of renting, leasing, or dealership
10 utility service, the reasonable value of the vehicle replaced shall be included as
11 trade-in value provided the vehicle replaced has been subject to motor vehicle
12 excise tax under section 57-40.3-02 and if the new vehicle is properly registered
13 and licensed. "Purchase price" when the motor vehicle is acquired by gift or by
14 any other transfer for a nominal or no monetary consideration also includes the
15 average value of similar motor vehicles, established by standards and guides as
16 determined by the director of the department of transportation. "Purchase price"
17 when a motor vehicle is manufactured by a person who registers it under the laws
18 of this state means the manufactured cost of such motor vehicle and manufactured
19 cost means the amount expended for materials, labor, and other properly allocable
20 costs of manufacture except that, in the absence of actual expenditures for the
21 manufacture of a part or all of the motor vehicle, manufactured cost means the
22 reasonable value of the completed motor vehicle.

23 **SECTION 37. AMENDMENT.** Section 57-40.3-04 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **57-40.3-04. Exemptions.** There are specifically exempted from the provisions of this
26 chapter and from computation of the amount of tax imposed by it the following:

- 27 1. Any motor vehicle acquired by, or leased and in the possession of, a resident
28 disabled veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 3901] or who
29 has a one hundred percent service-connected disability as determined by the
30 department of veterans affairs who registers the vehicle with a distinctive license
31 plate issued by the department of transportation under subdivision j of subsection 2

- 1 of section 39-04-18. The owner or lessor of the motor vehicle who qualifies for the
2 exemption under this subsection is entitled to a refund of taxes paid under this
3 chapter on acquisition or leasing of the vehicle if the distinctive license plate was
4 acquired not more than sixty days after acquisition or leasing of the vehicle.
- 5 2. Any motor vehicle owned by or in possession of the federal or state government or
6 a political subdivision thereof.
- 7 3. Motor carrier vehicles in excess of twenty thousand pounds [9071.85 kilograms]
8 gross weight, whether owned or leased, engaged in interstate commerce but only
9 to the extent their fleet miles outside North Dakota bear to their total fleet miles.
10 For the purposes of this subsection, "fleet miles" means those miles reported in
11 accordance with the international registration plan and must coincide with the
12 mileage reporting period required by the plan. For the purposes of this subsection,
13 "motor carrier vehicles" means any vehicles used upon public streets or highways
14 for the purpose of transporting persons or property for commercial purposes.
- 15 4. Any motor vehicle transferred without consideration to or from a person within thirty
16 days prior to that person entering into the armed services of the United States or
17 within thirty days after discharge therefrom or while serving in the armed services
18 of the United States; provided the person certifies to the director of the department
19 of transportation that the transfer is made only by reason of entering into, serving
20 in, or being discharged from the armed services of the United States.
- 21 5. a. A motor vehicle acquired by inheritance from, by bequest of, or operation of a
22 trust created by a decedent who owned it;
- 23 b. The transfer of a motor vehicle that was previously titled or licensed in the
24 name of an individual or in the names of two or more joint tenants and
25 subsequently transferred without monetary consideration to one or more joint
26 tenants, including a transfer into a trust in which one or more of the joint
27 tenants is beneficiary or trustee;
- 28 c. The transfer of a motor vehicle by way of gift between a husband and wife,
29 parent and child, or brothers and sisters, including a transfer into a trust in
30 which the trustor and beneficiary occupy one of these relationships;

- 1 d. The transfer of a motor vehicle without monetary consideration into a trust in
2 which the beneficiary is the person in whose name the motor vehicle was
3 previously titled or licensed;
- 4 e. The transfer of a motor vehicle to reflect a new name of the owner caused by
5 a business reorganization in which the ownership of the reorganized business
6 remains in the same person or persons as prior to the reorganization, but only
7 if the title transfer is completed within one hundred eighty days from the
8 effective date of the reorganization; and
- 9 f. The transfer of a motor vehicle without monetary consideration from a
10 revocable living trust to the spouse, child, or sibling of the trustor.
- 11 6. Motor vehicles transferred between a lessee and lessor; provided, that the lessee
12 has been in continuous possession of such vehicle for a period of one year or
13 longer, and further provided that the lessor has paid either the tax imposed under
14 section 57-40.3-02 at the time of titling or licensing the vehicle in this state or the
15 use tax imposed by chapter 57-40.2.
- 16 7. Any motor vehicle in the possession of and used as a bus exclusively by a
17 nonprofit senior citizens' or handicapped persons' corporation; provided, that such
18 bus may not be used for commercial activities.
- 19 8. Any motor vehicle that does not exceed ten thousand pounds [4535.92 kilograms]
20 gross weight and which is acquired by, or leased and in the possession of, a
21 permanently physically disabled, licensed driver who is restricted to operating only
22 motor vehicles equipped with special controls to compensate for the disability, or
23 by permanently physically disabled individuals who have either surrendered or who
24 have been denied a driver's license because of a permanent physical disability,
25 provided the individuals obtain from the director of the department of transportation
26 or the director's authorized representative a statement that the individual has a
27 restricted driver's license or has either surrendered or has not been issued a
28 driver's license because of a permanent physical disability; a copy of the statement
29 must be attached to the application for registration of the title to the motor vehicle
30 for which the exemption from tax under this chapter is claimed. Any motor vehicle
31 acquired subject to this exemption must be disposed of either by transfer to

- 1 another permanently physically disabled person or by a trade-in on another exempt
2 sale or by a transfer involving a sale subject to sales or use tax before another
3 motor vehicle can be acquired subject to the benefits of this exemption clause.
- 4 9. Any motor vehicle being registered pursuant to chapter 39-04 for the first time by a
5 person other than a manufacturer of motor vehicles, as defined in subsection 35 of
6 section 39-01-01, who assembled the motor vehicle for that person's own use.
- 7 10. Motor vehicles acquired by, or leased and in the possession of, any parochial or
8 private nonprofit school to be used for the transportation of students; provided, that
9 to qualify a school must normally maintain a regular faculty and curriculum and
10 must have a regularly organized body of students in attendance, and provided that
11 the vehicles are not to be used for commercial activities.
- 12 11. Any motor vehicle with a gross vehicle weight of at least a class six, seven, or eight
13 chassis, purchased for installation or assembly of heavy duty equipment by a
14 person engaged in the business of installing or assembling the equipment, which
15 when completed forms an integral part of a vehicle, has limited marketability, and is
16 not normally sold to the general public. This exemption applies only when the
17 manufacturer's statement of origin is reassigned to the installer or assembler by a
18 licensed new motor vehicle dealer on a form prescribed by the tax commissioner.
19 The motor vehicle and installed equipment must be sold as a unit when completed.
20 "Heavy duty equipment" includes fuel delivery tanks, refuse bodies, cranes, aerial
21 bucket devices, bus bodies regardless of gross vehicle weight, and digger derricks.
- 22 12. Motor vehicles acquired through purchase or gift by any nonprofit county and local
23 historical societies that are exempt from federal income taxation under section
24 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
- 25 13. Any motor vehicle acquired by, or leased and in the possession of, a resident who
26 was a prisoner of war and who registers the vehicle with a distinctive license plate
27 issued by the department of transportation under subdivision o of subsection 2 of
28 section 39-04-18. The owner or lessor of the motor vehicle who qualifies for the
29 exemption under this subsection is entitled to a refund of taxes paid under this
30 chapter on acquisition or leasing of the vehicle if the distinctive license plate was
31 acquired not more than sixty days after acquisition or leasing of the vehicle.

- 1 14. Any motor vehicle acquired by a charitable organization to be awarded as a prize
2 in a raffle conducted in accordance with law if upon registration the motor vehicle
3 will be subject to taxes under this chapter or the motor vehicle is registered in
4 another state.

5 **SECTION 38. AMENDMENT.** Section 57-40.3-11 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-40.3-11. Penalties.**

- 8 1. Any person who violates any of the provisions of this chapter is guilty of a class B
9 misdemeanor.
- 10 2. Any person who submits a false or fraudulent motor vehicle purchaser's certificate,
11 or who fails to submit the certificate, is subject to a penalty of five percent of the
12 true amount of the tax which was due or five dollars, whichever is greater, plus one
13 percent of such tax for each month or fraction thereof subsequent to the month in
14 which the motor vehicle purchaser's certificate was due or the false or fraudulent
15 motor vehicle purchaser's certificate was furnished to the director of the
16 department of transportation. Such penalty must be paid to either the tax
17 commissioner or the director of the department of transportation and disposed of
18 pursuant to the provisions of section 57-40.3-10. The tax commissioner, if satisfied
19 that the failure to submit or the delay was excusable, may waive, and if paid,
20 refund all or any part of such penalty and interest. Unpaid penalties may be
21 enforced in the same manner as the tax imposed by this chapter.
- 22 3. Whenever a person, including any motor vehicle dealer, has collected from a
23 person acquiring a motor vehicle, a motor vehicle excise tax in excess of the
24 amount prescribed or due under this chapter, and if the person does not refund the
25 excessive tax collected to the person who remitted it, the person who collected the
26 tax shall pay it to the tax commissioner in the quarterly period in which the
27 excessive collection occurred. The penalty and interest provisions of this section
28 apply beginning at the termination of each reporting period.
- 29 4. If upon audit the commissioner determines that a motor vehicle excise tax has not
30 been paid or an additional tax is due, the commissioner shall give notice of
31 determination of the tax due to the person liable for the tax. The notice of

1 determination of tax due fixes the tax finally and irrevocably unless within fifteen
2 days of the date of the notice the person against whom the tax is assessed applies
3 to the commissioner for a hearing under chapter 28-32 or unless the commissioner
4 reduces the liability relating to assessments on the commissioner's own motion.
5 The provisions of chapter 57-39.2 not in conflict with the provisions of this chapter
6 govern the administration of the tax levied in this chapter.

7 **SECTION 39. AMENDMENT.** Section 57-40.5-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-40.5-03. Exemptions.** There are specifically exempted from the provisions of this
10 chapter and from computation of the amount of tax imposed by it, the following:

- 11 1. Aircraft acquired by disabled veterans as defined by the provisions of Public Law
12 No. 79-663 [38 U.S.C. 1901]. This exemption shall be allowed only with respect to
13 one aircraft owned by any disabled veteran.
- 14 2. Any aircraft owned by or in possession of the federal or state government or any of
15 the political subdivisions, departments, agencies, or institutions thereof.
- 16 3. Aircraft which were previously titled or registered in the names of two or more joint
17 tenants and subsequently transferred without monetary consideration to one or
18 more of the joint tenants; the transfer of aircraft by gift, inheritance, or devise
19 between a husband and wife, parent and child, or brothers and sisters; and the
20 transfer of aircraft to reflect a new name of the owner caused by a business
21 reorganization, if the ownership of the business organization remains in the same
22 person or persons as prior to the reorganization.
- 23 4. Aircraft transferred between a lessee and lessor, if the lessee has been in
24 continuous possession of the aircraft for a period of one year or longer, and if the
25 lessor has paid either the tax imposed under this chapter at the time of registering
26 the aircraft in this state or the use tax imposed by chapter 57-40.2.
- 27 5. Aircraft acquired by any parochial or private nonprofit school. To qualify, a school
28 must normally maintain a regular faculty and curriculum and must have a regularly
29 organized body of students in attendance. The aircraft is not to be used for
30 commercial activities.

1 **SECTION 40. AMENDMENT.** Section 57-59-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-59-02. Optional computation.** Any taxpayer whose income is subject to the
4 apportionment and allocation provisions of chapter 57-38 or 57-38.1 has the option to elect,
5 under the terms and conditions specified in subsection 2 of article III of section 57-59-01, to
6 report and pay any income tax due under the provisions of chapter 57-38 on the basis of the
7 following rates applied to the taxpayer's gross sales in North Dakota rather than on the basis
8 provided in said chapter 57-38:

9 On the first twenty thousand dollars of gross sales in North Dakota, a tax of six-tenths of
10 one percent;

11 On all gross sales in North Dakota above twenty thousand dollars and not in excess of
12 fifty-five thousand dollars, a tax of eight-tenths of one percent; and

13 On all gross sales in North Dakota above fifty-five thousand dollars and not in excess of
14 one hundred thousand dollars, a tax of one percent.

15 **SECTION 41. AMENDMENT.** Section 57-63-10 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **57-63-10. Lien of assessment - Collection - Action authorized.**

- 18 1. Whenever a facility liable to pay an assessment or penalty imposed refuses or
19 neglects to pay the same, the amount, including any interest, penalty, or addition to
20 the assessment, together with the costs that may accrue, is a lien in favor of this
21 state upon all property and rights to property, whether real or personal, belonging
22 to the facility. In the case of property in which a deceased owner, officer, or
23 manager of a facility held an interest as joint tenant or otherwise with right of
24 survivorship at the time of death, the lien continues as a lien against the property in
25 the hands of the survivor or survivors to the extent of the deceased owner's,
26 officer's, or manager's interest, which interest must be determined by dividing the
27 value of the entire property at the time of the officer's or manager's death by the
28 number of joint tenants or persons interested therein.
- 29 2. The lien attaches at the time the assessment becomes due and payable and
30 continues until the liability for the amount is satisfied. For the purposes of this

1 subsection, the words "due" and "due and payable" mean the first instant the
2 assessment becomes due.

3 3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest
4 in, or lien on, any property situated in the state, prior to the commissioner filing in
5 the central indexing system maintained by the secretary of state, a notice of the
6 lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.

7 4. The commissioner shall index in the central indexing system the following data:

8 a. The name of the facility.

9 b. The tax identification number of the facility or social security number of the
10 owner, officer, or manager of the facility.

11 c. The name "State of North Dakota" as claimant.

12 d. The date and time the notice of lien was indexed.

13 e. The amount of the lien.

14 The notice of lien is effective as of eight a.m. the next day following the indexing of
15 the notice. A notice of lien filed by the commissioner with the recorder may be
16 indexed in the central indexing system without changing its original priority as to
17 property in the county where the lien was filed.

18 5. The commissioner is exempt from the payment of the filing fees as otherwise
19 provided by law for the indexing of the notice of lien, or for its satisfaction.

20 6. Upon payment of the assessment as to which the commissioner has indexed
21 notice in the central indexing system, the commissioner shall index a satisfaction of
22 the lien in the central indexing system.

23 7. Upon the request of the commissioner, the attorney general shall bring an action at
24 law or in equity, as the facts may justify, without bond, to enforce payment of any
25 assessments and any penalties, or to foreclose the lien in the manner provided for
26 mortgages on real or personal property. The state's attorney of the county in which
27 the action is pending shall assist the attorney general.

28 8. The remedies of this section are cumulative. Action taken by the commissioner or
29 attorney general may not be construed to be an election on the part of the state or
30 any of its officers to pursue any remedy hereunder to the exclusion of any other
31 remedy provided by law.

1 9. The technical, legal requirements in this section relating to assessment liens on all
2 real and personal property of the officer or manager of the facility to ensure
3 payment of the assessment, including penalties, interest, and other costs, are
4 self-explanatory.

5 **SECTION 42.** Chapter 57-64 of the North Dakota Century Code is created and enacted
6 as follows:

7 **57-64-01. Definitions.** For purposes of this chapter, unless the context otherwise
8 requires:

- 9 1. "Agricultural purpose" means the producing, raising, or growing and harvesting of
10 food or fiber upon agricultural land, including dairy products, livestock, and crops.
11 The services of custom harvesters, chemical applicators, fertilizer spreaders, hay
12 grinders, and cultivators are considered agricultural purpose.
- 13 2. "Business" means any activity engaged in by any person or caused to be engaged
14 in by such person with the object of gain, benefit, or advantage, either direct or
15 indirect.
- 16 3. "Controlled group" means any corporations or other entities eligible to file a
17 consolidated federal income tax return under the Internal Revenue Code as in
18 effect on January 1, 2002, or entitled to only a single surtax exemption for federal
19 corporate income tax purposes under the Internal Revenue Code as in effect on
20 January 1, 2002, and includes a controlled group of corporations as defined at
21 26 U.S.C. § 1563 as in effect on January 1, 2002. A controlled group also consists
22 of any subchapter S corporation, limited liability company, limited liability
23 partnership, general partnership, or limited partnership with at least eight percent
24 common ownership as if the entity was converted to or taxed as a subchapter C
25 corporation under the Internal Revenue Code as in effect on January 1, 2002.
- 26 4. "Delivery charges" means charges by the retailer for preparation and delivery to a
27 location designated by the purchaser of tangible personal property or services
28 including transportation, shipping, postage, handling, crating, and packing.
- 29 5. a. "Gross receipts" means the total amount or consideration, including cash,
30 credit, property, and services, for which tangible personal property or services

- 1 are sold, leased, or rented, valued in money, whether received in money or
2 otherwise, without any deduction for the following:
- 3 (1) The retailer's cost of the property or service sold;
4 (2) The cost of materials used, labor or service cost, interest, losses, all
5 costs of transportation to the retailer, all taxes imposed on the retailer,
6 and any other expense of the retailer;
- 7 (3) Except as provided in chapter 10-46A or 10-46B, charges by the retailer
8 for any services necessary to complete the sale whether or not
9 separately stated, including delivery charges; and
- 10 (4) The value of exempt tangible personal property whether or not
11 separately stated on the invoice, billing, or similar document given to
12 the purchaser where taxable and exempt tangible personal property
13 have been bundled together and sold by the retailer as a single product
14 or piece of merchandise;
- 15 b. "Gross receipts" does not include:
- 16 (1) Discount,s including cash, term, or coupons that are not reimbursed by
17 a third party that are allowed by a retailer and taken by a purchaser on
18 a sale
- 19 (2) Interest, financing, and carrying charges from credit extended on the
20 sale of tangible personal property or services, if the amount is
21 separately stated on the invoice, bill of sale or similar document given
22 to the purchaser;
- 23 (3) Any taxes legally imposed directly on the consumer tat are separately
24 stated on the invoice, bill of sale, or similar document given to the
25 purchaser;
- 26 (4) Any fees or other interest imposed by a retailer for late charges on
27 overdue accounts, no account, or nonsufficient funds checks;
- 28 (5) The sale price of property returned by customers, if the full sale price
29 thereof is refunded either in cash or by credit; and
- 30 (6) If any tangible personal property is taken in trade or in a series of trades
31 as a credit or part payment of a retail sale taxable under this chapter,

1 and the tangible personal property taken in trade is subject to the sales
2 tax imposed by this chapter when sold, the credit or trade-in value
3 allowed by the retailer may not be included as gross receipts.

4 6. "Lease" or rental" means any transfer of possession or control of tangible personal
5 property for a fixed or indeterminate term for consideration. A lease or rental may
6 include future options to purchase or extend. Lease or rental does not include:

7 a. A transfer of possession or control of property under a security agreement or
8 deferred payment plan that requires the transfer of title upon completion of the
9 required payments.

10 b. A transfer or possession or control of property under an agreement that
11 requires the transfer of title upon completion of required payments and
12 payment of an option price does not exceed the greater of one hundred
13 dollars or one percent of the total required payments; or

14 c. Providing tangible personal property along with an operator for a fixed or
15 indeterminate period of time. A condition of this exclusion is that the operator
16 is necessary for the equipment to perform as designed. For the purpose of
17 this subdivision, an operator shall do more than maintain, inspect, or set-up
18 the tangible personal property.

19 7. "Person" means any individual, firm, copartnership, joint adventure, association,
20 limited liability company, corporation, municipal corporation, estate, trust, business
21 trust, receiver, the State of South Dakota and its political subdivisions, or any group
22 or combination acting as a unit;

23 8. "Relief agency" means the state, and county, municipality or district thereof, or any
24 agency engaged in actual relief work;

25 9. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose
26 other than for resale, sublease, or subrent;

27 10. "Retailer" means any person engaged in the business of selling tangible goods,
28 wares, or merchandise at retail, or the furnishing of gas, electricity, water, and
29 communication service, and tickets or admissions to places of amusement and
30 athletic events as provided in this chapter. The term also includes any person
31 subject to the tax imposed by sections 57-64-07 and 57-64-09. The isolated or

1 occasional sale of tangible personal property at retail by a person who does not
2 hold out as engaging in the business of selling such tangible personal property at
3 retail does not constitute such person a retailer;

4 11. "Sale" means any transfer, exchange, or barter, conditional or otherwise, in any
5 manner or by any means whatsoever, for a consideration;

6 12. "Service" means all activities engaged in for other persons for a fee, retainer,
7 commission, or other monetary charge, which activities involve predominantly the
8 performance of a service as distinguished from selling property. In determining
9 what is a service, the intended use, principal objective or ultimate objective of the
10 contracting parties shall not be controlling. For the purposes of this chapter
11 services rendered by an employee for the person's employer are not taxable.

12 13. "Tangible personal property" means personal property that can be seen, weighed,
13 measured, felt, or touched, or that is in any other manner perceptible to the sense.
14 The term includes electricity, water, gas, steam, and prewritten computer software.

15 **57-64-02. Tax on sale of tangible property.** There is hereby imposed a tax upon the
16 privilege of engaging in business as a retailer, a tax of four percent upon the gross receipts of
17 all sales of tangible personal property consisting of goods, wares, or merchandise, except as
18 taxed by chapter 57-65 as otherwise provided in this chapter, sold at retail in this state to
19 consumers or users.

20 **57-64-03. Tax on sales of sectional homes Sectional homes defined.** Sales of
21 sectional homes are subject to sales tax, which shall be based upon the fair market value of the
22 raw materials used to construct each home.

23 For the purpose of this section, "sectional homes" means any home pre-built in whole or
24 in part for the purpose of permanent placement on a foundation. Mobile homes are not
25 sectional homes.

26 **57-64-04. Materials incorporated in construction work - Restriction on application**
27 **of rate increase.** No tax increase may be levied on materials incorporated in construction work
28 pursuant to construction contracts bid or entered into on or before the effective date of the tax
29 increase.

30 **57-65-05. Conditional or installment sales - Actual cash receipts subject to tax.**
31 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales

1 contract, or under other forms of sale wherein the payment of the principal sum is extended
2 over a period longer than sixty days from the date of sale, only the portion of the sale amount
3 that has actually been received in cash by the retailer during each reporting period is subject to
4 the tax imposed by this chapter.

5 **57-64-06. (Effective through December 31, 2005) Tax on sale of farm machinery**
6 **and irrigation equipment.** There is hereby imposed a tax of three percent on the gross
7 receipts from the sale or resale of farm machinery and attachment units other than replacement
8 parts; or irrigation equipment used exclusively for agricultural purposes by licensed North
9 Dakota retailers; provided, however, that whenever any trade-in or exchange of used farm
10 machinery is involved in the transaction, the tax shall only be due and collected on the cash
11 difference.

12 **(Effective after December 31, 2005) Tax on sale of farm machinery and irrigation**
13 **equipment.** There is hereby imposed a tax of four percent on the gross receipts from the sale
14 or resale of farm machinery and attachment units other than replacement parts; or irrigation
15 equipment used exclusively for agricultural purposes by licensed North Dakota retailers.
16 However, any trade-in or exchange of used farm machinery is involved in the transaction, the
17 tax is only due and shall be collected only on the cash difference.

18 **57-64-06.1. All-terrain vehicles as farm machinery.** For purposes of section
19 57-64-06, farm machinery shall include all-terrain vehicles of three or more wheels used
20 exclusively by the purchaser for agricultural purposes on agricultural land. The purchaser shall
21 sign and deliver to the seller a statement that the all-terrain vehicle will be used exclusively for
22 agricultural purposes.

23 **57-64-06.2. Use of farm machinery and attachment units disregarded.** Farm
24 machinery and attachment units, other than replacement parts, and irrigation equipment sold at
25 public auction shall be taxed pursuant to section 57-64-06 without regard to its intended use.

26 **57-64-06.3. (Effective January 1, 2006) Exemption of certain parts or repairs on**
27 **agricultural and irrigation equipment.** There are exempted from the provisions of this
28 chapter and the tax imposed by it, gross receipts from the sale of parts or repairs on machinery
29 or equipment which are clearly identifiable as used primarily for agricultural purposes, including
30 irrigation equipment, if the part replaces a farm machinery or irrigation equipment part assigned

1 a specific or generic part number by the manufacturer of the farm machinery or irrigation
2 equipment.

3 **57-64-07. Tax on receipts from business services.** There is hereby imposed a tax at
4 the same rate as that imposed upon sales of tangible personal property in this state upon the
5 gross receipts of any person from the engaging or continuing in the practice of any business in
6 which a service is rendered. Any service as defined by section _____ shall be
7 taxable, unless the service is specifically exempt from the provisions of this chapter.

8 **57-64-08. Certain purchases considered for resale purposes.** Services purchased
9 by an engineer, architect, or surveyor on behalf of a client in the performance of a contract for
10 such client shall be considered purchases for resale purposes.

11 **57-64-09. (Effective through December 31, 2005) Tax on receipts from specific**
12 **enumerated businesses and services.** Tax on receipts from specific enumerated businesses
13 and services. There is imposed a tax at the rate of three percent upon the gross receipts of any
14 person from engaging in the business of leasing farm machinery or irrigation equipment used
15 for agricultural purposes and four percent upon the gross receipts of any person from engaging
16 or continuing in any of the following business or services in this state: abstracters; accountants;
17 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry
18 cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and
19 pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply;
20 membership or entrance fees for the use of a facility or for the right to purchase tangible
21 personal property or services; photography; photo developing and enlarging; tire recapping;
22 welding and all repair services; cable television; and rentals of tangible personal property
23 except leases of tangible personal property between one telephone company and another
24 telephone company, motor vehicles as defined by section 39-01-01 leased under a single
25 contract for more than twenty-eight days and mobile homes provided, however, that the specific
26 enumeration of businesses and professions made in this section does not, in any way, limit the
27 scope and effect of section 57-64-07.

28 **(Effective January 1, 2006) Tax on receipts from specific enumerated businesses**
29 **and services.** There is imposed a tax at the rate of four percent upon the gross receipts of any
30 person from engaging in the business of leasing farm machinery or irrigation equipment used
31 for agricultural purposes and four percent upon the gross receipts of any person from engaging

1 or continuing in any of the following businesses or services in this state: abstracters;
2 accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car
3 washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;
4 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and
5 towel supply; membership or entrance fees for the use of a facility or for the right to purchase
6 tangible personal property or services; photography; photo developing and enlarging; tire
7 recapping; welding and all repair services; cable television; and rentals of tangible personal
8 property except leases of tangible personal property between one telephone company and
9 another telephone company, motor vehicles as defined by section 39-01-01 leased under a
10 single contract for more than twenty-eight days and mobile homes. However, the specific
11 enumeration of businesses and professions made in this section does not, in any way, limit the
12 scope and effect of section 57-64-07.

13 **57-64-09.1. Services enumerated in standard industrial classification manual**
14 **subject to tax - Other services subject to tax.** The following services enumerated in the
15 standard industrial classification manual, 1987, as prepared by the statistical policy division of
16 the office of management and budget, office of the president, are specifically subject to the tax
17 levied by this chapter: metal mining services (group no. 108); coal mining (major group 12);
18 nonmetallic minerals (except fuels) services (group no. 148); service industries for the printing
19 trade (group no. 279); coating, engraving and allied services (group no. 347); communication,
20 electric and gas services (division E except group nos. 483, 494 and 495); hotels, motels, and
21 tourist courts (group no. 701); rooming and boarding houses (group no. 702); camps and
22 recreational vehicle parks (group no. 703); personal services (major group 72); business
23 services (major group 73); automotive repair, services, and parking (major group 75);
24 miscellaneous repair services (major group 76); amusement and recreation services (major
25 group 79); legal services (major group 81); landscape and horticultural services (group
26 No. 078); engineering, accounting, research, management, and related services (major
27 group 87, except industry no. 8733); title abstract offices (group no. 654); consumer credit
28 reporting agencies, mercantile reporting agencies, and adjustment and collection agencies
29 (group no. 732); real estate agents and managers (group no. 653); funeral service and
30 crematories (group no. 726), except that purchases of goods or services with money advanced
31 as an accommodation are retail purchases and are not includable in gross receipts for funeral

1 services and fees paid or donated for religious ceremonies are not includable in gross receipts
2 for funeral services; loan brokers (industry no. 6163); repair shops and related services, not
3 elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops; and floor
4 laying and other floor work not elsewhere classified (industry no. 1752). In addition, the
5 following services are also specifically subject to the tax levied by this chapter: livestock
6 slaughtering services; dog grooming services; airplane, helicopter, balloon, dirigible and blimp
7 rides for amusement or sightseeing; the collection and disposal of solid waste; and all
8 appraiser's services. The services enumerated in this section may not be construed as a
9 comprehensive list of taxable services but rather as a representative list of services intended to
10 be taxable under this chapter.

11 **57-64-09.2. (Effective through December 31, 2005) Tax on oil and gas field**
12 **services.** There is imposed, at the rate of three percent, an excise tax on the gross receipts of
13 any person engaging in oil and gas field services (group no. 138) as enumerated in the
14 standard industrial classification manual, 1987, as prepared by the statistical policy division of
15 the office of management and budget, office of the president.

16 **(Effective January 1, 2006) Tax on oil and gas field services.** There is imposed, at
17 the rate of four percent, an excise tax on the gross receipts of any person engaging in oil and
18 gas field services (group no. 138) as enumerated in the standard industrial classification
19 manual, 1987, as prepared by the statistical policy division of the office of management and
20 budget, office of the president.

21 **57-64-10. Coin operated washers and dryers - License in lieu of tax - Failure to**
22 **pay fee as misdemeanor - Interest - Collection.** The annual license fee for each coin
23 operated washer and dryer in this state is ten dollars. However, in municipalities having a
24 population of one thousand persons or less, the annual license fee is eight dollars. The license
25 fee is in lieu of any sales or gross receipts taxes from the operation or ownership of coin
26 operated washers and dryers. Any person who fails to pay the fee is quality of a class B
27 misdemeanor. Any person who fails to pay the fee prescribed on or before December thirty-first
28 of the year prior to the year for which the fee is due is subject to an interest charge on the
29 unpaid fee at the rate of two percent per month or part thereof. The interest charge
30 commences immediately after the date the fee becomes due an is payable immediately. The
31 tax commissioner shall adopt rules pursuant to chapter 28-32 concerning:

- 1 1. The procedure for license application;
- 2 2. The collection of the license fee;
- 3 3. The placement of the license or decalcomania; and
- 4 4. The transfer of a license to a new owner.

5 **57-64-10.1. Exemptions for charitable organization devoted exclusively to relief**
6 **of poor, distressed or underprivileged.** Any nonprofit charitable organization which devotes
7 its resources exclusively to the relief of the poor, distressed or under privileged and has been
8 recognized as an exempt organization under section § 501(c)(3) of the Internal Revenue Code
9 is specifically exempted from the license fee provided in section 57-64-10 and any sales, use or
10 gross receipts taxes imposed on the operation or ownership of coin operated washers and
11 dryers placed and used in living accommodations provided by such organization to the poor,
12 distressed or underprivileged.

13 **57-64-11. Rented property used or delivered in state.** The tax imposed upon
14 persons engaging or continuing in the business of renting tangible personal property applies if
15 the rented property is used in this state or is delivered to the lessee or sublessee in this state.

16 **57-64-12. Chemicals purchased for use by lawn and garden services considered**
17 **purchases for resale.** Chemicals purchased for use by lawn and garden services (industry
18 no. 0782) as enumerated in the standard industrial classification manual, 1987, as prepared by
19 the statistical policy division of the office of management and budget, office of the president,
20 and used in such services shall be considered as purchases for resale.

21 **57-64-13. Tax on utility services.** There is hereby imposed a tax of four percent upon
22 the gross receipts from sales, furnishing, or service of gas, electricity, and water, including the
23 gross receipts from such sales by any municipal corporation furnishing gas, and electricity, to
24 the public in its proprietary capacity, except as otherwise provided in this chapter, when sold at
25 retail in this state to consumers or users.

26 **57-64-14. Tax on telecommunication services - Exemptions.** Except as provided in
27 section 57-64-14.1 there is hereby imposed a tax of four percent upon the gross receipts from
28 providing any telecommunication service that originates or terminates in this state and that is
29 billed or charged to a service address in this state, or that both originates and terminates in this
30 state. However, the tax imposed by this section does not apply to:

- 1 1. Any eight hundred or eight hundred type service unless the service both originates
2 and terminates in this state;
- 3 2. Any sale of a telecommunication service to a provider of telecommunications
4 services, including access service, for use in providing any telecommunication
5 service; or
- 6 3. Any sale of interstate telecommunication service provided to a call center that has
7 been certified by the tax commissioner to meet the criterion established in section
8 57-64-14.2 and the call center has provided to the telecommunications service
9 provider an exemption certificate issued by the secretary indicating that it meets
10 the criterion.

11 If a call center uses an exemption certificate to purchase services not meeting the criterion
12 established in section 57-64-14.2, the call center is liable for the applicable tax, penalty, and
13 interest.

14 For the purposes of this section, the term, telecommunication service, is the transmission of
15 signs, signals, writings, images, sounds, messages, data, or other information of any nature by
16 wire, radio, lightwaves, electromagnetic means.

17 **57-64-14.1. Tax on certain mobile telecommunications services.** There is hereby
18 imposed a tax of four percent upon the gross receipts of mobile telecommunications services,
19 as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate in the same
20 state and are billed to a customer with a place of primary use in this state or are deemed to
21 have originated or been received in this state and to be billed or charged to a service address in
22 this state if the customer's place of primary use is located in this state regardless of where the
23 service actually originates or terminates. Notwithstanding any other provision of this chapter
24 and for purposes of the tax imposed by this section, the tax imposed upon mobile
25 telecommunication services shall be administered in accordance with 4 U.S.C. §§ 116-126 as in
26 effect on July 28, 2000.

27 **57-64-14.2. "Call center" defined - Exclusions.** As used in section 57-64-14, the
28 term, call center, means any physical location where telephone calls are placed, or received, for
29 the purpose of making sales, marketing, customer service, or technical support. The term does
30 not include:

1 1. Any location where telephone calls are primarily placed to, or received from, the
2 same taxpayer, or affiliates of the same taxpayer, that owns or operates the
3 location; or

4 2. Any insurance, real estate, or brokerage company.

5 **57-64-14.3. Certain nontaxable portions of bundled telecommunications**

6 **transactions subject to tax.** In the case of a bundled transaction of telecommunications
7 services, if the charges are attributable to services that are taxable and services that are
8 nontaxable, the portion of the price attributable to the nontaxable services shall be subject to
9 tax unless the provider can reasonably identify such portion from its books and records kept in
10 the regular course of business for other purposes.

11 **57-64-15. Tax on room or parking site rentals to transient guests.** There is hereby
12 imposed a tax at the same rate as that imposed upon sales of tangible personal property in this
13 state upon the gross receipts from rentals of rooms or parking sites by lodging establishments
14 or campgrounds received from transient guests. A lodging establishment is any building,
15 structure, property or premise kept, used, maintained, advertised or held out to the public to be
16 a place where sleeping accommodations are furnished to transient guests. A campground is
17 any property or premise kept, used, maintained, advertised or held out to the public to be a
18 place where sites are available for the placing of tents, campers, trailers, mobile homes or other
19 mobile accommodations to transient guests. A transient guest is any person who resides in a
20 lodging establishment or campground less than twenty-eight consecutive days. The provisions
21 of this section do not apply to the casual or occasional rental of a sleeping accommodation or
22 camping site. For the purposes of this section, casual or occasional is the rental of a sleeping
23 accommodation or camping site by any establishment or campground for ten or less days in a
24 calendar year. Any establishment or campground which has a permit or license issued under
25 this chapter, is not offering the rental of sleeping accommodations or camping sites on a casual
26 or occasional basis.

27 **57-64-16. Tax on admissions to amusements and athletic contests or events.**

28 There is imposed a tax of four percent upon the gross receipts from all sales of tickets or
29 admissions to places of amusement and athletic contests or events, except as otherwise
30 provided in this chapter.

1 **57-64-17. Exemption for gross receipts pursuant to contract requiring retailer to**
2 **display products or signage - Exception.** There are hereby exempted from the provisions of
3 this chapter and the tax imposed by it, gross receipts received by a retailer from a
4 manufacturer, wholesaler, or distributor pursuant to a written contract between the retailer and
5 manufacturer, wholesaler, or distributor that requires the retailer to display the manufacturer,
6 wholesaler, or distributor's product or signage in a specified manner or location. Any discount
7 or deferred payment received by a retailer from a distributor, wholesaler, or manufacturer for
8 purchasing a product for sale at retail does not constitute gross receipts subject to the tax
9 imposed by this chapter.

10 **57-64-18. Exemption for lodging house or hotel membership fees.** There are
11 hereby exempted from the provisions of this chapter and the computation of the tax imposed by
12 it, gross receipts from membership fees paid to any lodging house and hotel membership
13 organization operated for the benefit of its members. However, this exemption does not apply
14 to any membership fee that represents payment for tangible personal property and services
15 provided by the membership organization.

16 **57-64-19. Exemption of cigarette sales.** Section 57-64-16 and chapter _____
17 do not apply to gross receipts derived from the sale of cigarettes through vending machines.

18 **57-64-20. Constitutional and statutory exemptions from taxation.** There are
19 hereby specifically exempted from the provisions of this chapter and from the computation of
20 the amount of tax imposed by it, the gross receipts from sales of tangible personal property
21 which this state is prohibited from taxing under the constitution or laws of the United States or
22 under the constitution or laws of the state of North Dakota.

23 **57-64-21. Exemption of property sold for lease.** Gross receipts from the sale of
24 tangible personal property to a person who intends to lease the property to persons in this state
25 and actually does so are exempted from the provisions of this chapter and tax imposed by it.

26 **57-64-22. Exempt sales to states, political subdivisions, charities, and Indian**
27 **tribes.** There are hereby specifically exempted from the provisions of this chapter and from the
28 computation of the amount of tax imposed by it, the gross receipts from sales of tangible
29 personal property and the sale, furnishing or service of electrical energy, natural and artificial
30 gas and communication service to the United States, to the state of North Dakota or to any
31 other state of the United States or the District of Columbia if the other state provides a

1 reciprocal exemption for North Dakota, to political subdivisions of the state of North Dakota or of
2 any other state of the United States or the District of Columbia if the other state provides a
3 reciprocal exemption to North Dakota political subdivisions, to any nonprofit charitable
4 organization which devotes its resources exclusively to the relief of the poor, distressed, or
5 underprivileged, and has been recognized as an exempt organization under § 501(c)(3) of the
6 Internal Revenue Code, or to any Indian tribe.

7 **57-64-23. Exemption of freeport merchandise and stocks of merchandise brought**
8 **as foreign merchandise into foreign trade zone - Stocks of merchandise defined.** There
9 is exempted from the provisions of this chapter and from the computation of the tax imposed by
10 it, freeport merchandise and stocks of merchandise brought as foreign merchandise into a
11 foreign trade zone. For the purposes of this section, stocks of merchandise is personal
12 property which is held primarily for sale and not subject to annual depreciation.

13 **57-64-24. Exemption of sales otherwise taxed.** There are specifically exempted
14 from the provisions of this chapter and from the computation of the amount of tax imposed by it,
15 gross receipts from the sale of gasoline, motor fuel, and special fuel subject to tax under
16 chapters 57-43.1, 57-43.2, or 57-43.3.

17 **57-64-25. Exemption of goods and services furnished to meet warranty obligation**
18 **without charge.** There are hereby specifically exempted from the provisions of this chapter
19 and from the computation of the amount of tax imposed by it, the gross receipts from furnishing
20 goods or services to the purchaser or the purchaser's successor in interest of tangible personal
21 property to fulfill a warranty obligation of the manufacturer to the extent that such goods or
22 services are not charged to such purchaser or the purchaser's successor in interest.

23 **57-64-26. Exemption of gross receipts from sale of motor vehicles exempt from**
24 **excise tax - Exception.** There are specifically exempted from the provisions of this chapter
25 and from the computation of the amount of tax imposed by it, gross receipts from the sale of
26 motor vehicles exempt from the motor vehicle excise tax under section 57-40.3-04, with the
27 exception of farm machinery, which shall be subject to the tax imposed by this chapter.

28 **57-64-27. Services specifically exempt from tax.** The following services enumerated
29 in the standard industrial classification manual, 1987, as prepared by the statistical policy
30 division of the office of management and budget, office of the president are exempt from the
31 provisions of this chapter: health services (major group 80); educational services (major

Fifty-ninth
Legislative Assembly

1 group 82) except schools and educational services not elsewhere classified (industry no. 8299);
2 asocial services (major group 83); agricultural services (major group 07) except veterinarian
3 services (group No. 074) and animal specialty services, except veterinary (industry no. 0752);
4 forestry services (group no. 085); radio and television broadcasting (group no. 483); railroad
5 transportation (major group 40); local and suburban passenger transportation (group no. 411)
6 except limousine services; school buses (group no. 415); farm product warehousing and
7 storage (industry no. 4221); establishments primarily engaged in transportation on rivers and
8 canals (group no. 444); establishments primarily engaged in air transportation, certified carriers
9 (group no. 451); establishments primarily engaged in air transportation, noncertified carriers
10 (group 452) except chartered flights (industry no. 4522) and airplane, helicopter, balloon,
11 dirigible, and blimp rides for amusement or sightseeing; pipe lines, except natural gas (major
12 group 46); arrangement of passenger transportation (group no. 472); arrangement of
13 transportation of freight and cargo (group no. 473); rental of railroad cars (group no. 474); water
14 supply (industry no. 4941); sewerage systems (industry no. 4952); security brokers, dealers and
15 flotation companies (group no. 621); commodity contracts brokers and dealers (group no. 622);
16 credit counseling services provided by individual and family social services (industry no. 8322);
17 construction services (division C) except industry no. 1752 and locksmiths and locksmith shops;
18 consumer credit reporting agencies, mercantile reporting agencies, and adjustment and
19 collection agencies (group no. 731), if the debt was incurred out-of-state and the client does not
20 reside within the state. The following are also specifically exempt from the provisions of this
21 chapter: financial services of institutions subject to tax under chapter 57-35.3 including loan
22 organization fees, late payment charges, nonsufficient fund check charges, stop payment
23 charges, safe deposit box rent, exchange charges, commission on travelers checks, charges
24 for administration of trusts, interest charges, and points charged on loans; commissions earned
25 or service fees paid by an insurance company to an agent or representative for the sale of a
26 policy; services of dealers, agents, and others registered with the securities commissioner
27 under chapter 10-04; the sale of trading stamps; rentals of motor vehicles leased under a single
28 contract for more than twenty-eight days; advertising services; services provided by any
29 corporation to another corporation which is centrally assessed having identical ownership and
30 services provided by any corporation to a wholly owned subsidiary which is centrally assessed;
31 continuing education programs; tutoring; vocational counseling, except rehabilitation

1 counseling; and motion picture rentals to a commercially operated theater primarily engaged in
2 the exhibition of motion pictures.

3 **57-64-28. Exemption of engineering, architectural, and surveying services.** There
4 are specifically exempted from the provisions of this chapter and from the computation of the
5 amount of tax imposed by sections 57-64-07 and 57-64-09, the gross receipts from
6 engineering, architectural, and surveying services (group no. 871, standard industrial
7 classification manual, 1987, as prepared by the statistical policy division of the office of
8 management and budget, office of the president) rendered for a project entirely outside this
9 state.

10 **57-64-29. Certain services provided to rural water system by wholly owned**
11 **cooperative or nonprofit corporation exempt from tax.** There are specifically exempted
12 from the provisions of this chapter and from the computation of the tax imposed by it, gross
13 receipts from management, billing, bookkeeping, administrative, and related services provided
14 to a rural water system by any cooperative or nonprofit corporation which is wholly owned by
15 the water systems receiving such services.

16 **57-64-30. Exemption of certain sales commissions.** Unless otherwise specifically
17 subject to tax, the gross receipts resulting from fees or commissions received for rendering a
18 service which provides for the sale of tangible personal property or services is exempt from the
19 tax imposed by this chapter.

20 **57-64-31. Exemption for credit services by credit bureaus to certain financial**
21 **institutions.** There are specifically exempted from the provisions of this chapter and from the
22 computation of the amount of tax imposed by it, gross receipts from the sale of credit services
23 by credit bureaus to financial institutions that are paying taxes under chapter 57-35.3.

24 **57-64-32. Exemption of receipts used for civic and**
25 **nonprofit associations and purposes.** There are
26 specifically exempted from the provisions of this chapter and
27 from the computation of the amount of tax imposed by it, the
28 gross receipts from the following:

29 1. Sales of tickets for admissions to the grounds and grandstand attractions of state,
30 county, district, regional, and local fairs;

- 1 2. Admissions to nonprofit historic sites and repertory theater performances operated
2 by nonprofit organizations;
- 3 3. Admissions to community operated celebrations and shows sponsored by a
4 chamber of commerce or other similar nonprofit organization if the county or
5 municipality in which the activity takes place officially sponsors the activity and no
6 charge is made to the operators of the celebration or show for the use of county or
7 city facilities or services;
- 8 4. Admissions to events or receipts from activities sponsored and operated by
9 colleges or vocational schools or elementary or high schools or related clubs or
10 supporting organizations approved or supervised by a school or college when the
11 entire net proceeds are spent for educational purposes and any associations of
12 them and receipts from tangible personal property sold at such events. However,
13 receipts from tangible personal property sold at such events or activities are
14 included in the measure of sales tax at the time of purchase by the college or
15 school or related club or supporting organization;
- 16 5. Religious, benevolent, fraternal, youth association, or charitable activities, including
17 any activity conducted by an eligible organization under chapter 53-06.1 or
18 53-06.2, where the entire amount net proceeds is expended for purposes allowed
19 under section 53-06.1-11.1. However, receipts from tangible personal property or
20 services purchased for use in the activity are included in the measure of sales tax;
- 21 6. Sales of tangible personal property when the net receipts therefrom are used
22 primarily for the restoration or maintenance of the governor's mansion and capitol
23 grounds.
- 24 7. Any charge or entry fee made to persons for engaging in participatory events
25 limited to tournaments, contest, and league activities. However, receipts from
26 tangible personal property or services purchased for use in tournaments, contests,
27 and league activities shall be included in the measure of the tax imposed by this
28 chapter;
- 29 8. Admissions to events or receipts from activities sponsored and operated by county
30 or municipal historical societies or centennial committees when the entire net
31 proceeds are spent for centennial celebration purposes. However, receipts from

1 tangible personal property or services purchased for use in the activity are included
2 in the measure of sales tax;

3 9. Religious, benevolent, fraternal, youth association, or charitable activities
4 conducted at county fairs, if the entire amount of such receipts after deducting all
5 costs directly related to the conduct of such activities is expended for religious,
6 benevolent, fraternal, youth association, or charitable purposes, and the receipts
7 are not the result of engaging in business for more than five consecutive days.
8 However, receipts from tangible personal property or services purchased for uses
9 in the activity are included in the measure of sales tax;

10 10. Admissions to circus performances sponsored or operated by religious,
11 benevolent, fraternal, or youth associations, if the entire amount of the receipts
12 after deducting all costs directly related to the conduct of the circus performances
13 is expended for religious, benevolent, fraternal, youth associations, or charitable
14 purposes;

15 11. Admissions to events or receipts from activities sponsored and operated by
16 religious, benevolent, or charitable organizations for a period not to exceed thirty
17 days in any calendar year, if the entire amount of the receipts after deducting all
18 costs directly related to the conduct of the event or activity is expended for the
19 benefit of homeless persons.

20 **57-64-33. Admissions to rodeos and related activities taxable.** Notwithstanding the
21 provisions of section 57-64-32, admissions to rodeos and rodeo related activities and events
22 are subject to the tax imposed by section 57-64-16 and chapter 57-68.

23 **57-64-34. Exemption of membership organizations.** Membership organizations,
24 major group 86, as enumerated in the standard industrial classification manual, 1987, as
25 prepared by the statistical policy division of the office of management and budget, office of the
26 president, are exempt from the tax imposed by this chapter on receipts from sales of services
27 by them and their membership fees. This exemption does not apply to the tax imposed upon
28 the gross receipts of sales of tangible personal property by such organizations. This section
29 does not exempt the gross receipts of a retailer which are the result of sales to organizations in
30 major group 86 or exempt such organizations from payment of use tax on goods and services
31 used in the conduct of their activities.

1 **57-64-35. Exemption of fair market value of personal property or service given**
2 **without charge to exempt organization.** There are specifically exempted from the provisions
3 of this chapter and the computation of the tax imposed by it, the fair market value of any tangible
4 personal property or service given without charge to an institution, organization, or group
5 exempt from the tax imposed by this chapter.

6 **57-64-36. Exemption of lottery tickets.** There are specifically exempted from the
7 provisions of this chapter and from the computation of the tax imposed by it, the gross receipts
8 from the sale of lottery tickets made as part of a lottery operated by this state.

9 **57-64-37. Exemption of gross receipts from library copying charges.** There are
10 specifically exempted from the provisions of this chapter and the computation of the tax
11 imposed by it, gross receipts from library copying charges.

12 **57-64-38. Exemption of sales to educational institutions and hospitals -**
13 **Purchases for members or employees taxable - Motor vehicle registration fee - Lists**
14 **maintained by exempt institutions.** There are specifically exempted from the provisions of
15 this chapter and from the computation of the amount of tax imposed by it, the gross receipts
16 from sales of tangible personal property and the gross receipts from sales, furnishing, or service
17 of electrical energy, natural and artificial gas, water, and communication service to and for use
18 by religious educational institutions, private educational institutions currently recognized as
19 exempt under section 501(c)(3) of the Internal Revenue Code as in effect on January 1, 1983,
20 and nonprofit, charitable hospitals when purchases are made by authorized officials, payment
21 made from the institution funds and title to the property retained in the name of such institution.
22 For the purposes of this section, a private educational institution shall be defined as an
23 institution currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code
24 as in effect on January 1, 1995, maintaining a campus physically located within this state; and
25 accredited by the superintendent of public instruction or the north central association of colleges
26 and schools.

27 This exemption does not extent to sales to or purchases of tangible personal property
28 for the personal use of officials, members, or employees of such institutions or to sales to or
29 purchases of tangible personal property used in the operation of a taxable retail business.

1 The exemption provided in this section does not, in any manner, relieve the institution
2 from the payment of the additional and further license fee imposed on the registration of motor
3 vehicles.

4 All institutions claiming this exemption shall prepare and maintain a list of all purchases
5 on which exemption was claimed, fully itemized, showing name and address of vendors,
6 description of property purchased, date or dates of purchase, purchase price, and brief
7 explanation of use or intended use.

8 **57-64-39. Exemption of gross receipts from sale of nutritional supplements.**

9 There are specifically exempted from the provisions of this chapter and from the computation of
10 the amount of tax imposed by it, gross receipts from the sale of nutritional supplements, as
11 defined by rule adopted by the tax commissioner under chapter 28-32, if dispensed by a
12 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

13 **57-64-40. Ink and newsprint exempt when used to produce shoppers' guides -**

14 **Shoppers' guides defined.** Ink and newsprint when used in the production of shoppers'
15 guides are hereby exempt from the tax imposed under this chapter.

16 For the purposes of this section the term, shoppers' guide, includes for numerous
17 advertisers advertising publications whose advertisements are solicited from the general public
18 and whose publications are for free distribution to the general public and are published regularly
19 at least once a month, consisting of printed sheets containing advertising, bearing a date of
20 issue, and devoted to advertising of general interest.

21 **57-64-41. Exemption of ostomy care supplies.** The gross receipts from furnishing

22 devices and supplies designed or intended for ostomy care and management are specifically
23 exempt from the provisions of this chapter and from the computation of the amount of tax
24 imposed by it. These devices and supplies include collection devices, colostomy irrigation
25 equipment and supplies, skin barriers or skin protectors, and other supplies designed for use of
26 ostomates.

27 **57-64-42. Exemption of raw material, parts, and newsprint for manufacture of**

28 **products to be sold at retail - Packaging and container materials as tax exempt raw**
29 **material.** The use in this state of tangible personal property including containers, labels and
30 shipping case thereof which is intended shall, by means of fabrication, compounding or
31 manufacture become a part of other tangible personal property intended to be sold ultimately at

1 retail within or without the state of North Dakota, is hereby specifically exempted from the tax
2 imposed by this chapter. The term tangible personal property shall be construed to include raw
3 material and newspaper print. Containers, labels, cartons, packing cases, wrapping paper,
4 twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids,
5 boxes, pads, dividers, stockinettes, casings, and similar articles and receptacles used or
6 consumed by manufacturers, processors, or fabricators are raw material and are not subject to
7 sales or use tax.

8 **57-64-43. Packaging and container materials sold to retailers exempt.** There are
9 specifically exempted from the provisions of this chapter, and from the computation of tax
10 imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine,
11 tape, and similar articles sold to retailers, licensed under this chapter if the retailer uses the
12 articles as wrappers or containers to hold other tangible personal property sold by the retailer
13 and subject to sales or use tax and the articles are supplied free by the retailer as a
14 convenience to the customer.

15 **57-64-44. Exemption of hospital meals paid for by public entity.** There are
16 specifically exempted from the provisions of this chapter and the computation of the amount of
17 tax imposed by it, the gross receipts from the sale of meals to inpatients of hospitals if such
18 meals are paid for, by law or by contract, by the United States, this state or a political
19 subdivision, including meals provided to medicare, medicaid, campus, Indian health service, or
20 county poor relief patients.

21 **57-64-45. Exemption of authorized purchases made with food stamps.** There are
22 hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting
23 from authorized purchases made with food stamps under the provision of the Food Stamp Act
24 of 1977 (P.L. 95-113).

25 **57-64-46. Exemption of authorized purchases of food.** There are hereby
26 specifically exempted from the tax imposed by this chapter the gross receipts resulting from
27 authorized purchases of food made under section 17(c) of the Child Nutrition Act of 1966
28 (42 U.S.C. 1786(c)).

29 **57-64-47. Exemption of certain insulin sales.** There are specifically exempted from
30 the provisions of this chapter and from the computation of the amount of tax imposed by it,

1 gross receipts from the sale of insulin, to the extent used by humans, that is not sold by
2 prescription.

3 **57-64-48. Exemption of certain drugs.** There are specifically exempted from the
4 provisions of this chapter and from the computation of the amount of tax imposed by it, gross
5 receipts from the sale of drugs as defined by rule adopted by the tax commissioner under
6 chapter 28-32 to the extent used by humans, if the drugs are prescribed by prescription,
7 dispensed, or administered by a physician, chiropractor, optometrist, dentist, podiatrist, or
8 audiologist.

9 **57-64-49. Exemption of certain durable medical equipment and prosthetic**
10 **devices.** There are specifically exempted from the provisions of this chapter and from the
11 computation of the amount of tax imposed by it, gross receipts from the sale of durable medical
12 equipment, mobility enhancing equipment, and prosthetic devices as defined by rule adopted by
13 the tax commissioner under chapter 28-32 to the extent used by humans, if the durable medical
14 equipment, mobility enhancing equipment, and prosthetic devices are prescribed by
15 prescription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

16 **57-64-50. Exemption of certain medical devices.** There are specifically exempted
17 from the provisions of this chapter and from the computation of the amount of tax imposed by it,
18 gross receipts from sale of any medical device, as that term is defined in this section, to the
19 extent used by humans, if the medical device is prescribed by prescription by a physician,
20 chiropractor, optometrist, dentist, podiatrist, or audiologist. The term, medical device, means
21 any instrument, apparatus, implement, contrivance, or other similar or related article, including a
22 component, part, or accessory, that is prescribed for use on a single patient patient and that is:

- 23 1. Recognized in the official national formulary, or the United States pharmacopoeia,
24 or any supplement to them;
25 2. Intended for use in the diagnosis of disease or other conditions, or in the cure,
26 mitigation, treatment, detection, or prevention of disease, of the human body; or
27 3. Intended to affect the structure or any function of the human body, and that does
28 not achieve any of its primary intended purposes through chemical action within or
29 on the human body and that is not dependent upon being metabolized for the
30 achievement of any of its primary intended purposes.

1 A medical device is not durable medical equipment, mobility enhancing equipment, or a
2 prosthetic device.

3 **57-64-51. Exemption of seed used for agricultural purposes.** There are hereby
4 specifically exempted from the provisions of this chapter and from the computation of the
5 amount of tax imposed by it, gross receipts from the sale of seed legumes, seed grasses, and
6 seed grains, when twenty-five pounds [22.34 kilograms] or more are sold in a single sale to be
7 used exclusively for agricultural purposes.

8 **57-64-52. Exemption of commercial fertilizer used for agricultural purposes.**
9 There are hereby specifically exempted from the provisions of this chapter and from the
10 computation of the amount of tax imposed by it, gross receipts from the sale of commercial
11 fertilizers, either liquid or solid, when five hundred pounds [226.80 kilograms] or more are sold
12 in a single sale to be used exclusively for agricultural purposes.

13 **57-64-53. Exemption of pesticides used for agricultural purposes.** There are
14 hereby specifically exempted from the provisions of this chapter and from the computation of
15 the amount of tax imposed by it, gross receipts from the sale of insecticides, herbicides,
16 pesticides, rodenticides, and fumigants to be used exclusively by the purchaser for agricultural
17 purposes.

18 **57-64-54. Exemption of gross receipts from rental of certain devices used to**
19 **apply agricultural chemicals.** There are specifically exempted from the tax imposed by this
20 chapter, gross receipts from the rental of devices primarily used to apply fertilizers, pesticides,
21 and herbicides and insecticides for agricultural purposes, if sales tax or use tax was paid upon
22 the original purchase of the device.

23 **57-64-55. Exemption of gross receipts from rental of agricultural devices owned**
24 **by conservation district.** There are specifically exempted from the provisions of this chapter
25 and from the computation of the tax imposed by it, gross receipts from the rental of devices
26 used primarily for agricultural purposes if such devices are owned by a soil conservation district
27 organized pursuant to chapter 4-22.

28 **57-64-56. Exemptions of sales livestock, poultry, ostriches, emus, or rheas other**
29 **than ultimate retail sale.** No gross receipts from sales of livestock or live poultry, ostriches,
30 emus, or rheas, if such sales are a part of a series of transactions with an intended final use or
31 consumption is taxable.

1 **57-64-57. Exemption of gross receipts from sale of live gamebirds by producer to**
2 **certain nonprofit organizations.** There are specifically exempted from the provisions of this
3 chapter and the computation of the tax imposed by it, the gross receipts from the sale of live
4 gamebirds sold by the producer to nonprofit organizations which release such birds or to
5 commercial hunting operators who charge fees to hunt such birds.

6 **57-64-58. Exemption of gross receipts from sales of certain animals.** There are
7 hereby specifically exempted from the provisions of this chapter and from the computation of
8 the amount of tax imposed by it, gross receipts from the sale of live cattle, buffalo, sheep,
9 goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals, used or to
10 be used as breeding or production stock, and horses and other animals within the family
11 equidae. The term, poultry, does not include any fowl other than domestic fowl kept and raised
12 for the market or the production of eggs for human consumption.

13 **57-64-59. Exemption of gross receipts from sale of feed for certain animals.**
14 There are hereby specifically exempted from the provisions of this chapter and from the
15 computation of the amount of tax imposed by it, gross receipts from the sale of feed for cattle,
16 buffalo, sheep, goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing
17 animals, is such feed is used by farmers or ranchers who are regularly engaged in the business
18 of raising and feeding such animals, or producing milk for sale for human consumption, and
19 horses and other animals within the family equidae. The term, poultry, does not include any
20 fowl other than domestic fowl kept and raised for the market or the production of eggs for
21 human consumption.

22 **57-64-60. Exemption for sale of certain live nontraditional livestock.** There are
23 hereby specifically exempted from the provisions of this chapter and from the computation of
24 the amount of tax imposed by it, gross receipts from the sale of any live nontraditional livestock
25 regulated by the board of animal health under chapter 36-01, if the animal is to be used by a
26 farmer or rancher who is regularly engaged in the health breeding and raising of such animals.

27 **57-64-61. Exemption for sale of feed for certain nontraditional livestock.** There
28 are hereby specifically exempted from the provisions of this chapter and from the computation
29 of the amount of tax imposed by it, gross receipts from the sale of feed for any nontraditional
30 livestock regulated by the board of animal health under chapter 36-01, if the feed is to be used
31 by a farmer or rancher who is regularly engaged in the breeding and raising of such animals.

1 **57-64-62. Exemption of fuel used for agricultural or railroad purposes.** Motor fuel,
2 including kerosene, tractor fuel, liquefied petroleum gas, natural and artificial gas, diesel fuels,
3 and distillate, when used for agricultural or railroad purposes, is exempt from excise taxes
4 imposed under this chapter.

5 For the purposes of this section, agricultural purpose includes hay grinding but does not
6 include the lighting or heating of any farm residence.

7 For the purposes of this section, railroad purposes includes only locomotives or track
8 motor cars being operated on railroad tracks in road service in this state.

9 **57-64-63. Power charges for irrigation pumps exempt.** There are hereby
10 specifically exempted from the provisions of this chapter and from the amount of tax imposed
11 by it, gross receipts from the sale of electricity used to power irrigation pumps and the gross
12 receipts from the horsepower charge on electric motors powering irrigation pumps whenever
13 the purchaser has made the purchase exclusively for agricultural purposes.

14 **57-64-64. Exemption of bulk water for domestic use.** There are specifically
15 exempted from the provisions of this chapter and from the computation of tax imposed by it, the
16 gross receipts from the sales of bulk water which are delivered for domestic use.

17 **57-64-65. Exemptions applied to taxable services.** The exemptions from sales tax
18 relative to sales of tangible personal property shall apply to services included in sections
19 57-64-07 and 57-64-09.

20 **57-64-66. Exemption of payments between members of controlled group.**
21 Payments made by one member of the controlled group to another member of a controlled
22 group which represent an allocation, reimbursement or charge for services provided by or
23 rendered by the members of the controlled group are specifically exempted from the provisions
24 of this chapter and the computation of the tax imposed by it.

25 **57-64-67. Exemption of payments between members of controlled group -**
26 **Reimbursement for third-party services to group.** Payments made by one member of a
27 controlled group to another member of a controlled group which represent an allocation,
28 reimbursement or charge for third party services rendered to the controlled group and upon
29 which a sales or use tax has been paid may not be considered as gross receipts under this
30 chapter.

1 **57-64-68. Exemption of gross receipts from sale or rendering of services -**
2 **Related corporation.** There are specifically exempted the provisions of this chapter and the
3 computation of the tax imposed by it, gross receipts from the sale of services rendered by a
4 related corporation for use by a financial institution or on any service rendered by a financial
5 institution for use by a related corporation means a corporation associated with another as its
6 parent or subsidiary or in a brother-sister relation, and includes a corporation which together
7 with the financial institution is part of a controlled group o corporations as defined in 26 U.S.C.
8 § 1563 as in effect on January 1, 1989, except that the eighty percent ownership requirements
9 set forth in 26 U.S.C. § 1563(a)(2)(A) for a brother-sister controlled group are reduced to
10 fifty-one percent.

11 **57-64-69. Exemption of gross receipts from sale of certain replacement parts.**
12 There are exempted from the provisions of this chapter and from the computation of the tax
13 imposed by it, the gross receipts from the sale of replacement parts that are sold to retailers
14 and which will be installed in tangible personal property that will ultimately be for resale.

15 **57-64-70. Exemption of natural gas transportation services by pipeline.** The
16 provision of natural gas transportation services by a pipeline is exempted from the provisions of
17 this chapter and from the computation of the tax imposed by this chapter.

18 **57-64-71. Exemption for the sale of credit card processing services.** There are
19 specifically exempted from the provisions of this chapter and from the computation of the
20 amount of tax imposed by it, gross receipts from the sale of credit card processing services to
21 retailers.

22 **57-64-72. Gross receipts from charge of interest exempted - Pawnbrokers not**
23 **eligible for exemption.** They are exempted from the provisions of this chapter and from the
24 computation of the amount of tax imposed by it, the gross receipts from the charge of interest
25 as defined in section 47-14-04. This exemption does not apply to the gross receipts from
26 interest paid any pawnbroker from the tax imposed by this chapter. For the purposes of this
27 section, a pawnbroker means any person who is engaged in the business of lending money and
28 who accepts the possession of tangible personal property as security for the loan.

29 **57-64-73. Fee or commission not subject to tax.** Any fee or commission received by
30 a retailer for arranging or assisting in the arrangement of a loan for a customer to pay for

1 tangible personal property sold by such retailer does not constitute gross receipts subject to the
2 tax imposed by this chapter.

3 **57-64-74. Exemption for gross receipts from certain rodeo services.** There are
4 exempted from the provisions of this chapter and from the computation of the amount of tax
5 imposed by it, gross receipts resulting from services performed for rodeos by promoters, stock
6 contractors, stock handlers, announcers, judges, and clowns.

7 **57-64-75. Exemption for gross receipts from international sale of agricultural and**
8 **industrial equipment.** There are hereby exempted from the provisions of this chapter and the
9 computation of the tax imposed by it, gross receipts resulting from the sale of agricultural and
10 industrial production equipment in international commerce if, under the terms of the sales
11 agreement, physical delivery of the goods takes place in this state. However, the exemption
12 only applies if written evidence of the contract of sale is retained, and such contract indicates
13 that the goods are to be shipped in international commerce to a point outside the United States
14 not to be returned to a point within the United States.

15 **57-64-76. Mailing service -Gross receipts.** There are hereby exempted from the
16 provisions of this chapter and the computation of the tax imposed by it, the gross receipts
17 received by a mailing service for the cost of United States postage paid by such mailing service
18 if the cost of postage is listed by the mailing service as a separate line item on the customer's
19 bill and the cost of the postage is not greater than the cost of the postage to the mailing service.

20 For the purposes of this section, a mailing service is any business that uses the United
21 States postal service to deliver items for another customer of the mail service, in which said
22 mailing service has no financial interest.

23 **57-64-77. Materials used for floor laying as purchases for resale.** Carpet, floor
24 covering, tacks, glue, and other materials purchased for use for floor laying and other floor work
25 not elsewhere classified (industry no. 1752) as enumerated in the standard industrial
26 classification manual of 1987, as prepared by the statistical policy division of the office of
27 management and budget, office of the president, and used for such work are purchases for
28 resale.

29 **57-64-78. Materials purchased by locksmiths are purchases for resale.** Locks,
30 lock parts, other materials purchased for use by locksmiths as classified in repair shops and
31 related services, not elsewhere classified (industry no. 7699) as enumerated in the standard

1 industrial classification manual of 1987, as prepared by the statistical policy division of the office
2 of management and budget, office of the president, and used for such work are purchases for
3 resale.

4 **57-64-79. Computation of tax to third decimal place.** In computing the tax to be
5 remitted under this chapter as the result of any transaction, the tax amount shall be carried to
6 the third decimal place. Amounts of tax less than one-half of one cent shall be disregarded and
7 amounts of tax of one-half cent or more shall be considered an additional cent.

8 **57-64-80. Schedule for collection of tax from consumer.** The schedules for
9 collection of the tax imposed by this chapter and sales taxes imposed by cities or counties shall
10 be established in rule by the tax commissioner under chapter 28-32. The schedules
11 established by rule shall spread the tax proportionately on fractions of dollars.

12 **57-64-81. Tax additional to other occupation and privilege taxes.** The taxes
13 imposed under this chapter shall be in addition to all other occupation or privilege taxes
14 imposed by the state or by any political subdivision of this state, unless otherwise specifically
15 exempted by this chapter.

16 **57-64-82. Addition of tax to price of product or service.** Retailers may add the tax
17 imposed by this chapter to the price of their product or service as provided by law. If no
18 provision is made, the average equivalent of the tax may be added. Any person or retailer
19 subject to taxation under this chapter may add the tax under this chapter, or the average
20 equivalent thereof, to the price or charge.

21 **57-64-83. Application for retailer permit - Contents and execution - Application**
22 **for statewide permit - Exceptions.** Each retailer or person engaging in a business in this
23 state whose receipts are subject to sales tax shall file with the tax commissioner, an application
24 for a permit. Each application shall be made on a form prescribed by the tax commissioner and
25 shall require the name under which the applicant transacts or intends to transact business, the
26 location of each business, and other information as the tax commissioner may require. The
27 applicant shall have a permit for each place of business, unless the tax commissioner grants a
28 request for a statewide permit. A statewide permit may be granted if the applicant
29 demonstrates the ability to comply with the filing, auditing, and record-keeping requirements
30 specified in rules promulgated under section 57-64-101 for each location specified in the
31 application.

1 Any seller registering under the streamlined sales tax agreement shall be registered in
2 this state, provided this state has entered into the agreement. Any seller who is registered
3 under such agreement may cancel its registration at any time, but is liable for remitting any
4 sales taxes previously collected.

5 **57-64-84. Issuance of retailer permit - Limited to person and place designated -**
6 **Display in place of business - Effective until canceled or revoked.** The tax commissioner
7 shall grant and issue to each applicant a permit for each place of business within the state,
8 unless a statewide permit is granted. If a statewide permit is granted, the tax commissioner
9 shall issue a copy of the statewide permit for each place of business within the state. A permit
10 is not assignable and shall be valid only for the person in whose name it is issued and for the
11 transaction of business at the place designated therein. The permit shall at all times be
12 conspicuously displayed at the place for which issued. Each permit is valid and effective
13 without further payment of fees until canceled or revoked.

14 **57-64-85. Refusal of permit to delinquent taxpayer - Bond to secure payment of**
15 **tax.** The tax commissioner may refuse to issue a permit to any person who is delinquent in
16 payment of occupation taxes levied by the state. The tax commissioner may also require an
17 applicant to furnish a bond to the state, or other adequate security, as security for payment of
18 any sales tax that may become due, or require a bond or security as a condition precedent to
19 remaining in business as a retailer.

20 **57-64-86. Return and remittance - Extension of time - Delinquency.** Any person
21 who is the holder of a sales tax permit or is a retailer whose receipts are subject to sales tax in
22 this state during the periods specified by this section shall make a return and remittance to the
23 tax commissioner on forms prescribed and furnished by the tax commissioner in the following
24 manner:

- 25 1. Any person whose tax liability is one thousand dollars or more annually, shall file
26 the return and remit the tax on or before the twentieth day of the month following
27 each monthly period;
- 28 2. Any person whose tax liability is less than one thousand dollars annual, shall file
29 the return and remit the tax on or before the last day of the month following each
30 two-month period; and

1 3. Any person whose tax liability is one thousand dollars or more annually and who
2 remits the tax by electronic transfer to the state, shall file the return by electronic
3 means on or before the twenty-third day of the month following each monthly
4 period and remit the tax on or before the second to the last day of the month
5 following each month period.

6 The tax commissioner may grant an extension of not more than five days for filing a
7 return and remittance. However, the tax commissioner may grant an extension for remitting the
8 tax to a qualified business as provided in sections 57-64-126, through 57-64-134 for six months.

9 Unless an extension is granted, penalty or interest under section 57-64-87 shall be paid
10 if a return or remittance is not made on time.

11 **57-64-87. Penalty for failure for file return - Penalty reduced or eliminated -**

12 **Interest charged for late payment - Interest tolled during appeal - Maximum interest rate**
13 **for mistake of law.** Any person required to file returns or reports under this chapter, who fails

14 to file a return or report which includes all taxable transactions within thirty days following the
15 month the return or report is due is subject to an additional amount, assessed as a penalty,
16 equal to ten percent of the tax or ten dollars whichever is greater. However, for reasonable
17 cause shown, the tax commissioner may reduce or eliminate such penalty. Any person subject

18 to tax under this chapter who fails to pay the tax within the time prescribed is subject to an
19 interest charge for each month or part thereof for which the payment is late, which interest shall
20 be one and one-quarter percent or five dollars whichever is greater for the first month, and one

21 and one-quarter percent per month thereafter. If the failure to pay tax was with the intent to
22 intentionally avoid or delay the payment of tax, the person who fails to pay the tax within the

23 time prescribed is subject to an interest charge for each month or part thereof for which the
24 payment is late, which interest shall be one and one-half percent or five dollars, whichever is

25 greater. Interest is tolled during any appeal taken by the department or during any period the
26 hearing examiner extends the time in which to submit a proposed decision or during any period

27 the secretary fails to rule within thirty days after receiving the proposed decision. Penalty and
28 interest are considered the same as tax for the purposes of collection and enforcement

29 including liens, distress warrants, and criminal violations. Any payment received for taxes,

30 penalty, or interest is applied first to tax, beginning with the oldest delinquency, then to interest
31 and then to penalty.

1 The secretary may, upon application of the taxpayer, establish a maximum interest rate
2 of thirty percent upon delinquent taxes if the tax commissioner determines that the delinquent
3 payment was caused by a mistake of law and was not caused by an intent to evade the tax.

4 **57-64-88. Change of reporting periods.** The tax commissioner may require or allow
5 some returns and remittances to be filed on a monthly, bimonthly, semiannual, or annual basis
6 and the return and remittance is due the last day of the month following the reporting period.
7 For persons issued a temporary or seasonal sales tax permit, the returns and remittances may
8 be required at a time determined by the tax commissioner.

9 **57-64-89. Deduction allowed for sales refunds.** Refunds made by a retailer during
10 the reporting period shall be allowed as a deduction in case the retailer included the receipts,
11 for which a refund is made, in the net taxable sales or has previously paid the sales tax.

12 **57-64-90. Deduction allowed attorneys and accountants for amounts spent on**
13 **behalf of clients.** In determining the amount of tax due under this chapter, attorneys and
14 accountants licensed may deduct from gross receipts amounts which represent charges to
15 clients for tangible personal property or services purchased by the attorney or accountant on
16 behalf of a client. However, the sale of the property or service to the attorney or accountant is
17 not a sale for resale if this deduction is taken. This deduction may only be taken if the amount
18 to be deducted represents an expense specifically incurred for a particular client and the
19 amount is itemized and separately billed as a reimbursable expense by the attorney or
20 accountant.

21 **57-64-91. Bad debts - Deduction from amount upon which tax is calculated - Time**
22 **for deduction.** For purposes of this chapter, a bad debt is any portion of the purchase price of
23 a transaction that a seller has reported as taxable and for which the seller or any party related
24 to the seller within the meaning of section 267 or 707 of the Internal Revenue Code (related
25 party), as of January 1, 2003, or any disregarded entity for federal income tax purposes that is
26 owned by the seller or a related party, legally claims as a bad debt deduction for federal income
27 tax purposes. In computing the amount of tax due, a seller may deduct bad debts from the total
28 amount upon which the tax is calculated for any return. Any deduction taken or refund paid
29 which is attributed to bad debts may not include interest. Bad debts include worthless checks,
30 worthless credit card payments, and uncollectible credit accounts. Bad debts do not include
31 financing charges or interest, sales or use taxes charged on the purchase price, uncollectible

1 amounts on property that remain in the possession of the seller until the full purchase price is
2 paid, expenses incurred in attempting to collect any debt, debts sold, or assigned to unrelated
3 third parties for collection, and repossessed property. No bad debt deduction may be claimed
4 by any person that has purchased accounts receivable for collection unless the person is a
5 successor that has acquired the entire business of the seller that incurred the bad debt, the
6 person is a related party, or the person is a disregarded entity for federal income tax purposes
7 that is owned by the seller or a related party.

8 Bad debts shall be deducted within twelve months following the month in which the bad
9 debt has been charged off for federal income tax purposes. If a deduction is taken for a bad
10 debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so
11 collected shall be paid and reported on the next return due after the collection.

12 A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount
13 of taxable sales within the twelve-month period defined by that bad debt. A refund under this
14 section may not include interest.

15 If a seller's filing responsibilities have been assumed by a certified service provider, the
16 service provider may claim, on behalf of the seller, any bad debt allowance provided by this
17 section. The service provider shall credit or refund the full amount of any bad debt allowance or
18 refund received to the seller.

19 **57-64-92. Cash basis reporting and payment.** Notwithstanding other provisions of
20 this chapter, the tax commissioner shall allow retailers to report and pay sales tax measured by
21 gross receipts upon a cash basis if:

- 22 1. The retailer has not changed the retailer's basis in the previous calendar year;
- 23 2. The retailer's records are kept in a manner which may be audited to determine
24 whether sales tax is paid upon all taxable sales;
- 25 3. The retailer has made a written request to the tax commissioner for authority to pay
26 tax on the cash basis; and
- 27 4. Authority to pay tax on the cash basis applies only to sales made after the authority
28 is granted.

29 **57-64-93. Accrual basis reporting and payment.** If the tax commissioner has
30 granted a retailer the authority to report and pay sales tax on the cash basis and a retailer
31 requests in writing for the authority to report and pay sales tax upon the accrual basis, the tax

1 commissioner may grant such authority if assessment and collection of taxes are not
2 jeopardized.

3 **57-64-94. Receipts not issued for taxes remitted.** The tax commissioner is not
4 required to issue receipts for sales tax remitted to the office of the tax commissioner.

5 **57-64-95. Revocation of retailer's license for failure to file return or pay tax -**
6 **Continuation in business a misdemeanor.** Every person who is the holder of a sales tax
7 license and who has failed to file a return, or who has filed a return and has failed to pay the tax
8 due the state under this law on or before the fifteenth of the second month following the quarter,
9 or any other reporting period authorized, shall no longer continue as a retailer and his sales tax
10 license is hereby revoked and canceled. Any person who shall continue in a taxable business
11 after his license has been revoked or canceled, as herein provided, is guilty of a class A
12 misdemeanor.

13 **57-64-96. Appeals from decisions of tax commissioner.** Appeals from decisions of
14 the tax commissioner in contested cases may be taken in accordance with chapter 28-32.

15 **57-64-97. Reinstatement of revoked retailer's license - Fee.** The license of a retailer
16 which has been canceled or revoked shall not be reinstated by the tax commissioner until all
17 the sales tax due the state and a ten dollar reinstatement fee has been paid.

18 **57-64-98. Jeopardy assessment of sales tax - Lien and distress warrant - Bond to**
19 **pay tax.** If the tax commissioner believes that the assessment or collection of taxes will be
20 jeopardized by delay, the tax commissioner may immediately make an assessment of the
21 estimated tax and penalty, and demand payment thereof from the taxpayer. If such payment is
22 not made, a lien may be filed and a distress warrant issued. The tax commissioner shall be
23 permitted to accept a bond from the taxpayer to satisfy collection until the amount of tax legally
24 due shall be determined and paid.

25 **57-64-99. Endorsement and return of uncollectible warrant - Liability of officer for**
26 **failure to issue or execute warrant.** When the sheriff is unable to find property of the
27 taxpayer which may be seized and sold, the sheriff shall, within thirty days after receipt of the
28 warrant, endorse upon the case of the warrant the word "uncollectible" and return the warrant to
29 the county treasurer. Failure or refusal of the county treasurer to issue a distress warrant when
30 requested to do so, or of the sheriff to attempt to execute the same, shall make the officer
31 failing to perform that officer's duty personally liable for the delinquent tax, and said tax may be

1 recovered in an action brought against that officer and that officer's sureties by the tax
2 commissioner.

3 **57-64-100. Records preserved by persons subject to tax - Inspection by**
4 **department.** Every person subject to tax under this chapter shall keep records and books of all
5 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other
6 pertinent papers and documents. Such books and records and other papers and documents
7 shall, at all times during business hours of the day, be subject to inspection by the tax
8 commissioner or the tax commissioner's duly authorized agents and employees to determine
9 the amount of tax due. Such books and records shall be preserved for a period of three years
10 unless the tax commissioner, in writing, authorized their destruction or disposal at an earlier
11 date.

12 **57-64-101. Rules.** The tax commissioner may adopt rules under chapter 28-32
13 concerning:

- 14 1. Licensing, including bonding and filing license applications;
- 15 2. The filing of returns and payment of the tax;
- 16 3. Determining the application of the tax and exemptions;
- 17 4. Taxpayer record-keeping requirements; and
- 18 5. Determining auditing methods.

19 **57-64-102. Violations as criminal offenses - Classification.** Any person who:

- 20 1. Makes any false or fraudulent return in attempting to defeat or evade the tax
21 imposed by this chapter is guilty of a class A misdemeanor.
- 22 2. Fails to pay tax due under this chapter within thirty days from the date the tax
23 becomes due is guilty of a class A misdemeanor;
- 24 3. Fails to keep the records and books required by this chapter or refuses to exhibit
25 these records to the tax commissioner or the tax commissioner's agents for the
26 purpose of examination is guilty of a class A misdemeanor;
- 27 4. Fails to file a return required by this chapter within thirty days from the date the
28 return is due is guilty of a class A misdemeanor;
- 29 5. Engages in business as a retailer under this chapter without obtaining a sales tax
30 license is guilty of a class A misdemeanor;

- 1 6. Engages in business as a retailer under this chapter after his sales tax license has
2 been revoked by the secretary of revenue and regulation is guilty of a class A
3 misdemeanor;
- 4 7. Willfully violates any rule of the tax commissioner for the administration and
5 enforcement of the provisions of this chapter is guilty of a class A misdemeanor;
- 6 8. Violates either subsection 2 or subsection 4 two or more times in any twelve-month
7 period is guilty of a class C felony;
- 8 9. Engages in business as a retailer under this chapter without obtaining a sales tax
9 license after having been notified in writing by the tax commissioner that the
10 person is a retailer subject to the provisions of the sales and use tax laws is guilty
11 of a class A misdemeanor. It is not a violation of this subdivision if the person
12 engaging in business as a retailer files an application for a sales tax license and
13 meets all lawful prerequisites for obtaining such license within three days from
14 receipt of written notice from the tax commissioner.

15 For purposes of this section "person" includes corporate officers having control,
16 supervision of or charged with the responsibility for making tax returns or payments pursuant to
17 this chapter.

18 **57-64-103. Allocation to state general fund and political subdivisions.** All taxes
19 and license fees collected by the tax commissioner pursuant to this chapter, shall immediately
20 be turned over to the state treasurer and credited to the state general fund, except a portion of
21 sales, use, and motor vehicle excise tax collections, equal to forty percent of an amount
22 determined by multiplying the quotient of one percent divided by the general sales tax rate, that
23 was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise
24 tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state
25 treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state
26 treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be
27 deposited in the state aid distribution fund as determined under this section. Revenues
28 deposited in the state aid distribution fund are provided as a standing and continuing
29 appropriation and must be allocated as follows:

- 30 1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties
31 in the first month after each quarterly period as provided in this subsection.

- 1 a. Sixty-four percent of the amount must be allocated among the seventeen
2 counties with the greatest population, in the following manner:
3 (1) Thirty-two percent of the amount must be allocated equally among the
4 counties; and
5 (2) The remaining amount must be allocated based upon the proportion
6 each such county's population bears to the total population of all such
7 counties.
- 8 b. Thirty-six percent of the amount must be allocated among all counties,
9 excluding the seventeen counties with the greatest population, in the following
10 manner:
11 (1) Forty percent of the amount must be allocated equally among the
12 counties; and
13 (2) The remaining amount must be allocated based upon the proportion
14 each such county's population bears to the total population of all such
15 counties.
- 16 A county shall deposit all revenues received under this subsection in the county
17 general fund. Each county shall reserve a portion of its allocation under this
18 subsection for further distribution to, or expenditure on behalf of, townships, rural
19 fire protection districts, rural ambulance districts, soil conservation districts, county
20 recreation service districts, county hospital districts, the Garrison diversion
21 conservancy district, the southwest water authority, and other taxing districts within
22 the county, excluding school districts, cities, and taxing districts within cities. The
23 share of the county allocation under this subsection to be distributed to a township
24 must be equal to the percentage of the county share of state aid distribution fund
25 allocations that township received during calendar year 1996. The governing
26 boards of the county and township may agree to a different distribution.
- 27 2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the
28 first month after each quarterly period as provided in this subsection.
29 a. Nineteen and four-tenths percent of the amount must be allocated among
30 cities with a population of eighty thousand or more, based upon the proportion
31 each city's population bears to the total population of all such cities.

- 1 b. Thirty-four and five-tenths percent of the amount must be allocated among
2 cities with a population of twenty thousand or more but fewer than eighty
3 thousand, based upon the proportion each such city's population bears to the
4 total population of all such cities.
- 5 c. Sixteen percent of the amount must be allocated among cities with a
6 population of ten thousand or more but fewer than twenty thousand, based
7 upon the proportion each such city's population bears to the total population
8 of all such cities.
- 9 d. Four and nine-tenths percent of the amount must be allocated among cities
10 with a population of five thousand or more but fewer than ten thousand, based
11 upon the proportion each such city's population bears to the total population
12 of all such cities.
- 13 e. Thirteen and one-tenth percent of the amount must be allocated among cities
14 with a population of one thousand or more but fewer than five thousand,
15 based upon the proportion each such city's population bears to the total
16 population of all such cities.
- 17 f. Six and one-tenth percent of the amount must be allocated among cities with
18 a population of five hundred or more but fewer than one thousand, based
19 upon the proportion each such city 's population bears to the total population
20 of all such cities.
- 21 g. Three and four-tenths percent of the amount must be allocated among cities
22 with a population of two hundred or more but fewer than five hundred, based
23 upon the proportion each such city's population bears to the total population
24 of all such cities.
- 25 h. Two and six-tenths percent of the amount must be allocated among cities with
26 a population of fewer than two hundred, based upon the proportion each such
27 city's population bears to the total population of all such cities.
- 28 A city shall deposit all revenues received under this subsection in the city general
29 fund. Each city shall reserve a portion of its allocation under this subsection for
30 further distribution to, or expenditure on behalf or, park districts and other taxing
31 districts within the city, excluding school districts. The share of the city allocation

1 under this subsection to be distributed to a park district must be equal to the
2 percentage of the of the city share of state aid distribution fund allocations that park
3 district received during calendar year 1996, up to a maximum of thirty percent. The
4 governing boards of the city and park district may agree to a different distribution.

5 **57-64-104. Personal liability of officers of corporation failing to file returns or pay**
6 **tax - Security in lieu of liability - Bonded municipal officials exempt.** IF a corporation
7 subject to tax under this chapter fails for any reason to file the required returns or to pay the tax
8 due, any of its officers having control, or supervision of, or charged with the responsibility for
9 making such returns and payments shall be personally liable for such failure. The dissolution of
10 a corporation shall not discharge an officer's liability for a prior failure of the corporation to make
11 a return or remit the tax due. The sum due for such a liability may be assessed and collected
12 as provided by law.

13 If the corporate officers elect not to be personally liable for the failure to file the required
14 returns or to pay the tax due, the corporation shall provide the tax commissioner with a surety
15 bond or certificate of deposit as security for payment of any tax that may become due. The
16 bond or certificate of deposit provided for in this section shall be in an amount equal to the
17 estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This
18 section does not apply to elected or appointed officials of a municipality if they are bonded.

19 **57-64-105. Exemption certificate - Responsibilities of seller taking certificate -**
20 **Responsibilities of purchaser - Violation as misdemeanor - Retention of certificate -**
21 **Rules and forms.** A seller, who possesses an exemption certificate from a purchaser of
22 tangible personal property or services which indicates the items or services being purchased
23 are exempt, may rely on the exemption certificate and not charge sales tax to the provider of
24 the exemption certificate until the provider of the exemption certificate gives notice that the
25 items or services being purchased are not longer exempt by filing a new exemption certificate
26 with the seller.

27 The exemption certificate shall be signed by the purchaser, provide the purchaser's
28 name, address, and valid state tax license number, if applicable, and shall describe the types of
29 tangible personal property and services being purchased exempt by the purchaser. However,
30 any person filing an electronic exemption certificate is not required to sign the exemption
31 certificate.

1 The purchaser claiming the protection of an exemption certificate is responsible for
2 assuring that the goods and services delivered thereafter are of a type covered by the
3 exemption certificate. If there are items covered under the exemption certificate which are not
4 being purchased exempt, it is the responsibility of the purchaser when ordering goods from a
5 seller to indicate if any of the items purchased are not exempt, and the appropriate sales tax
6 shall be charged on the portion of the sale that is not exempt. A seller of property or services
7 which are generally described under the exemption certificate is not responsible for the
8 collection of the tax unless otherwise directed by the purchaser.

9 If the purchaser later determines there is any tax due and owing, the purchaser shall
10 remit the tax owed by the purchaser to the state. If the purchaser makes an exempt purchase
11 and later determines that the goods or services purchased are not exempt, the purchaser shall
12 report the transaction and pay the use tax on the next filing of the purchaser's return.

13 Any purchaser who knowingly and intentionally lists on an exemption certificate
14 personal property or services which the purchaser knows, at the time the exemption certificate
15 is filed with the seller, are not exempt, or provides an invalid exemption certificate with the intent
16 to evade payment of the tax, and fails to timely report the same with the tax commissioner is
17 guilty of a class A misdemeanor. The tax commissioner may assess a penalty of up to fifty
18 percent of the tax owed, in addition to the tax owed. No interest may be charged on the
19 penalty.

20 The seller shall retain the exemption certificate for a period of three years from the date
21 it is filed by the purchaser and provide the exemption certificate to the tax commissioner upon
22 request.

23 The tax commissioner may adopt rules under chapter 28-32 to adopt forms for
24 exemption certificates.

25 **54-64-106. Tangible property transportation gross receipts tax imposed -**
26 **Transportation to be within state.**

27 There is imposed a tax of four percent on the gross receipts
28 from the transportation of tangible personal property. The tax
29 imposed by this section shall apply to any transportation of
30 tangible personal property if both the origin and destination of
31 the tangible personal property are within this state.

1 **57-64-107. Passenger transportation gross receipts tax imposed - Transportation**
2 **to be within state.** There is imposed a tax of four percent on the gross receipts from the
3 transportation of passengers. The tax imposed by this section shall apply to any transportation
4 of passenger boards and exits the mode of transportation within this state.

5 **57-64-108. Inapplicability of tax.** The tax imposed by sections 57-64-106 through
6 57-64-115 does not apply to any transportation service which the state is prohibited from taxing
7 by federal law or the United State Constitution.

8 **57-64-109. Agricultural products transportation by producer exempt.** The
9 transportation of agricultural products by the agricultural producer thereof is exempt from the
10 tax imposed by sections 57-64-106 through 57-64-115 if the producer transports such products
11 in a mode of transportation which is owned, leased, or rented by the producer. However, if an
12 agricultural producer transports another person's products for hire, such transportation is
13 subject to the tax imposed by sections 57-64-106 through 57-64-115.

14 **57-64-110. Transportation services sold for resale.** Transportation services may
15 only be sold for resale under the following circumstances:

- 16 1. A transportation company may sell its services for resale to another transportation
17 company; or
- 18 2. A retailer that regularly delivers a majority of the tangible personal property which it
19 sells to its customers by truck or other mode of transportation owned, leased, or
20 rented by such retailer may purchase for resale the services of a transportation
21 company for the delivery of such retailer's tangible personal property.

22 **57-64-111. Definition of terms.** As used in sections 57-64-112 through 57-64-114:

- 23 1. "Cargo vessel" means a single transport truck as defined in subdivision
24 10-47B-3(47);
- 25 2. :"Fuel" means gasoline, ethanol, methanol, liquefied petroleum gas, petroleum
26 distillates, lubricating oils and greases, glycol-based antifreezes, fuels used for
27 off-highway racing, solvents such as petroleum naphtha, mineral spirits, or
28 stoddard solvents, and any other petroleum product delivered to a terminal by
29 pipeline, truck, or rail, any other motor vehicle fuel as defined in section 57-43.1-01
30 and special fuel as defined in section 57-43.2-01.

1 3. "Fuel terminal transportation" means the transportation of fuel from a terminal to a
2 location in this state at which the fuel is unloaded. Fuel terminal transportation
3 does not include the transportation of fuel from a location other than a terminal;

4 4. "Terminal" means as defined in section 57-43.2-01.

5 5. "Trip" means the distance in road miles traveled by a cargo vessel from the fuel
6 terminal at which it was loaded with fuel to the most distant location in this state at
7 which the fuel is unloaded, excluding miles not traveled within this state.

8 **57-64-112. Tax of fuel terminal transportation services.** In lieu of the tax imposed
9 by sections 57-64-106 and _____ on the transportation of fuel, a transportation
10 company may elect to be taxed on the fuel terminal transportation services under sections
11 57-64-111 through 57-64-114.

12 **57-64-113. Tax on gross receipts of transportation company engaged in fuel**
13 **terminal transportation - Calculation of imputed gross receipts.** There is imposed a tax on
14 the imputed gross receipts of any transportation company engaged in fuel terminal
15 transportation who elects to be taxed under this section. The tax imposed by this section shall
16 be on the imputed gross receipts as provided in this section. The imputed gross receipts from
17 fuel terminal transportation shall be calculated on the basis of the number of cargo vessels and
18 distance traveled on each trip as follows:

<u>Length of Trip</u>	<u>Number of Cargo Vessels</u>	<u>Imputed Gross</u>
	<u>per Trip Transportation</u>	<u>Receipts from</u>
<u>(in miles)</u>	<u>1</u>	<u>\$64.00</u>
<u>50 or Less</u>	<u>1</u>	<u>\$88.00</u>
<u>More than 50, but less than 100</u>	<u>1</u>	<u>\$120.00</u>
<u>More than 50, but less than 100</u>	<u>2 or more</u>	<u>\$165.00</u>
<u>100 or more, but less than 150</u>	<u>1</u>	<u>\$176.00</u>
<u>100 or more, but less than 150</u>	<u>2 or more</u>	<u>\$242.00</u>
<u>150 or more, but less than 200</u>	<u>1</u>	<u>\$224.00</u>
<u>150 or more, but less than 200</u>	<u>2 or more</u>	<u>\$308.00</u>
<u>200 or more</u>	<u>1</u>	<u>\$280.00</u>
<u>200 or more</u>	<u>2 or more</u>	<u>\$385.00</u>

1 **57-64-114. Exemption of tax on subsequent transportation of fuel.** For the fuel
2 terminal transportation subject to tax under sections 57-64-11 through 57-64-113 all
3 subsequent transportation of that fuel is exempt from the tax imposed under this chapter.

4 **57-64-115. Effect of special reporting election.** The provisions of section 57-64-82
5 also apply to any taxes imposed by sections 57-64-111 through 57-64-113 on transportation
6 services regardless of any special reporting election the taxpayer may have made.

7 **57-64-116. Temporary vendor to maintain inventory records.** A temporary vendor
8 shall maintain, for a minimum of three years, inventory records, including a beginning inventory
9 of merchandise. The vendor shall provide such records for immediate inspection and review to
10 any agent or representative of the tax commissioner upon request. Failure to comply with this
11 section is a class A misdemeanor.

12 **57-64-117. Temporary vendor to maintain sales receipts - Requests for**
13 **inspection.** A temporary vendor shall maintain daily sales receipts, such as cash register
14 tapes, hand written receipts, credit card receipts, or other receipts, for a minimum of three
15 years. The vendor shall provide such receipts for immediate inspection and review to any
16 agent or representative of the tax commissioner upon request. Failure to comply with this
17 section is a class A misdemeanor.

18 **57-64-118. Temporary vendor to furnish list of supplies.** A temporary vendor shall
19 maintain for a minimum of three years, a complete list of suppliers, including names and
20 addresses. The vendor shall provide for immediate inspection and review of such list to any
21 agent or representative of the tax commissioner upon request. Failure to comply with this
22 section is a class A misdemeanor.

23 **57-64-119. Review and audit of temporary vendors.** A temporary vendor operating
24 in this state may be subjected to reviews and audits without notice.

25 **57-64-120. Failure to maintain records - Revocation of temporary license.** The
26 secretary shall revoke the temporary license of any person that fails to comply with the
27 provisions of sections 57-64-116 through 57-64-120.

28 **57-64-121. Allowable deductions for auctioneers.** In determining the amount of tax
29 due under this chapter, auctioneers may deduct from gross receipts amounts which represent
30 direct expense charges for clients for tangible personal property or services purchased by the
31 auctioneer on behalf of a client. However, the sale of the property or service to the auctioneer

1 is not a sale for resale if this deduction is taken. This deduction may only be taken if the
2 amount to be deducted represents an expense specifically incurred for a particular client and
3 the amount is itemized and paid from the client's auction proceeds by the auctioneer or closing
4 agent. The deduction shall be disallowed if the auctioneer receives any profit or remuneration
5 directly or indirectly from the client's expense.

6 **57-64-122. Auction clerk to file return and remit sales tax - Responsibilities of**
7 **auctioneer - Records.** All auction sales and consignment sales of tangible personal property
8 and services are sales at retail. The auction clerk shall file the return and remit the tax imposed
9 by this chapter on the gross receipts from each auction after applying the deductions provided
10 by section 57-64-121. However, the auctioneer is responsible for the payment of the tax
11 imposed by this chapter if the auction clerk is an employee of the auctioneer or if the auction
12 clerk does not have a permit as required by this chapter. In addition to any other information
13 required to be kept by this chapter, each auction clerk shall keep records tat identify the owner
14 of the property sold at auction and the auctioneer who conducts the sale of such property.

15 **57-64-123. Tax on gross receipts of professional employer organization -**
16 **Deduction available.** The gross receipts of a professional employer organization are
17 specifically subject to the tax imposed by this chapter. However, a professional employer
18 organization may deduct from its taxable gross receipts its actual disbursements, including
19 appropriate reserves, for the wages, salaries, payroll taxes, payroll deductions, workers'
20 compensation costs, insurance premiums, welfare benefits, retirement benefits, and other
21 employee benefits of its co-employees.

22 **57-64-124. Professional employer organization defined.** For the purposes of
23 section 57-64-123, the term, professional employer organization, means a firm which:

- 24 1. Enters into a contractual agreement with a client company to create a
25 co-employment relationship for the provision of payroll, benefits, and other human
26 resources functions;
- 27 2. Covers at least seventy-five percent of the client company's full-time of full-time
28 equivalent employees domiciled in North Dakota;and
- 29 3. Maintains separate books and records of account for each client company.

30 **57-64-125. Temporary help services not professional employer organization.** The
31 provisions of sections 57-64-123 and 57-64-124 do not apply to the providing of temporary help

1 services or to any other arrangement whereby a firm temporarily assigns employees of the firm
2 to support or supplement a client company's regular work force in special situations such as
3 employee absences, temporary skill shortages, seasonal workloads, and special assignments,
4 or projects.

5 **57-64-126. Definitions.** As used in section 57-64 - 86 and sections 57-64-126 through
6 57-64-134:

- 7 1. "Business" means a business that has purchased and is installing tangible
8 personal property in the form of equipment or machinery for direct use in a
9 manufacturing, fabricating, or processing business, which is subject to sales or use
10 tax pursuant to this chapter or chapter 57-69.
- 11 2. "Department" means the office of the tax commissioner;
- 12 3. "Project" means the purchase and installation of equipment or machinery;
- 13 4. "Project cost" means the amount paid in money for a project;

14 **57-64-127. Extension for remitting sales and use tax on manufacturing**
15 **equipment.** Any manufacturing, fabricating, or processing business may apply for and obtain
16 an extension for remitting the sales and use tax imposed and due under the provisions of this
17 chapter or chapter 57-69 for equipment or machinery that will be for direct use in a
18 manufacturing, fabricating, or processing business. The extension shall end after six months.

19 **57-64-128. Requirements for extension.** The extension pertains only to equipment
20 and machinery purchased and installed after the effective date of this Act. No extension may
21 be made unless:

- 22 1. The project cost exceeds twenty thousand dollars; and
- 23 2. The business applying for the extension obtains a permit from the tax
24 commissioner as set forth in section 57-64-130.

25 **57-64-129. Extension applies to full costs and installation fees.** The amount of the
26 tax extension shall apply to one hundred percent of the equipment and machinery costs and
27 installation fees.

28 **57-64-130. Application for extension permit - Permit nontransferable.** Any
29 business desiring an extension pursuant to section 57-64-86 and sections 57-64-126 through
30 57-64-134 shall apply for a permit from the tax commissioner at least thirty days prior to
31 commencement of the project. The application for a permit shall be submitted on a form

1 prescribed by the tax commissioner. A separate application shall be made and submitted for
2 each project. Upon approval of the application the tax commissioner shall issue a permit
3 entitling the applicant to an extension as provided by section 57-64-86 and sections 57-64-126
4 through 57-64-134. The permit or extension is not assignable or transferable.

5 **57-64-131. Tax Commissioner to prescribe form and documentation**
6 **requirements.** Any extension shall be submitted on forms prescribed by the tax commissioner
7 and shall be supported by such documentation as the tax commissioner may require. The tax
8 commissioner may deny any extension if the business has failed to provide information or
9 documentation requested or considered necessary by the tax commissioner to determine the
10 validity of the extension.

11 **57-64-132. Fraudulent claim - Tax due constitutes lien in favor of state.** If any
12 extension has been fraudulently presented or supported as to any item in the claim, or if the
13 business fails to meet all the conditions of section 57-64-86 and section 57-64-126 through
14 57-64-134 then the business may be rejected in its entirety and any tax due from the business
15 shall constitute a debt to the state and a lien in favor of the state upon all property and rights to
16 property whether real or personal belonging to the business and may be recovered in an action
17 of debt.

18 **57-64-133. Right to hearing or denial of extension request.** Any business
19 aggrieved by the denial in whole or in part of a extension requested under section 57-64-86 and
20 section 57-64-126 through 57-64-134 may within thirty days after service of the notice of a
21 denial by the tax commissioner, demand and is entitled to a hearing, upon notice, before the tax
22 commissioner. The hearing shall be conducted pursuant to chapter 28-32.

23 **57-64-134. Rules.** The tax commissioner may adopt rules, under chapter 28-32,
24 concerning the procedures for filing extensions and the requirements necessary to qualify for an
25 extension.

26 **57-64-135. Sourcing and sales and services.** For purposes of the tax imposed by
27 this chapter, a retailer shall source sales of tangible personal property and services to the
28 location where the tangible personal property or service is received. The tax commissioner
29 shall adopt rules, pursuant to chapter 28-32, defining the location of receipt. The rules adopted
30 pursuant to this section may provide an alternative method of sourcing telecommunication
31 services.

1 **57-64-136. Registration and tax collection does not create nexus for other taxes.**
2 Registration under the agreement and collection of tax imposed under this chapter or chapter
3 57-69 does not in and of itself create nexus for other taxes or fees imposed by this state.

4 **SECTION 43.** Chapter 57-65 of the North Dakota Century Code is created and enacted
5 as follows:

6 **57-65-01. Definitions.** Terms as used in this chapter, unless the context otherwise
7 clearly requires:

- 8 1. "Commissioner" means the tax commissioner.
- 9 2. "Department" means the office of the tax commissioner.
- 10 3. "Disabled" means a person receiving or having qualified to receive monetary
11 payments pursuant to title II, X, or XVI of the Social Security Act, as amended, and
12 in effect on January 1, 1974, for all or part of the year for which a refund is claimed;
- 13 4. "Household" means the association of persons who live in the same dwelling,
14 share its furnishings, facilities, and accommodations, but not including bona fide
15 lessees, tenants, or roomers and boarders on contract;
- 16 5. "Household income" means all income received by all persons of a household
17 while members of the household;
- 18 6. "Income" means the sum of adjusted gross income as defined in the United States
19 Internal Revenue Code, as amended, and in effect on January 1, 2003, and all
20 nontaxable income, including the amount of capital gains excluded from adjusted
21 gross income, alimony, support money, nontaxable strike benefits, cash public
22 assistance and relief, not including relief granted under this chapter, the gross
23 amount of any pension or annuity, including Railroad Retirement Act benefits and
24 veterans' disability pensions, all payments received under the federal social
25 security and state unemployment insurance laws, nontaxable interest received
26 from the federal government or any of its instrumentalities, workers' compensation,
27 and the gross amount of loss of time insurance, but not including gifts from
28 nongovernmental sources, food stamps, or surplus foods, or other relief in kind
29 provided by a public agency, less real estate taxes payable or ten percent of rent
30 paid on the applicant's principal residence for the year in which application is

1 made. However, the reduction in the individual's income may not exceed four
2 hundred dollars;

3 7. "Single-family dwelling" means a house, condominium, apartment, or
4 manufactured home as defined in section 41-09-02 which is assessed and taxed
5 as a separate unit including the platted lot upon which the structure is situated or
6 one acre, whichever is less, and the garage, whether attached or unattached;

7 8. "Tax year" or "taxable year" means the calendar year or the fiscal year ending
8 during a calendar year, used for computing household income under this chapter.
9 A claimant's tax year is the same period as is covered by the claimant's federal
10 income tax return.

11 **57-65-02. Reduction in income allowed for taxes paid - Determination of amount.**

12 The amount of the reduction in income allowed for taxes paid pursuant to subsection 6 of
13 section 57-65-01 shall be equal to the real property taxes paid on the principal residence of the
14 claimant. If the residence is a single-family dwelling, then the amount of the reduction shall
15 equal the taxes paid on the residence structure, the platted lot upon which the structure is
16 located or one acre, whichever is less, and the garage, whether attached or unattached. If the
17 residence is not a single-family dwelling, then the reduction shall be equal to the amount of the
18 tax paid on or allocated to the structure and the platted lot upon which the structure is situated
19 or one acre whichever is less, used as a residence by the claimant including the garage,
20 whether attached or unattached.

21 **57-65-03. Refund of sales and service tax to elderly and disabled persons.** Any
22 person sixty five years of age or older prior to January first in the year for which a claim for
23 refund is made, and any disabled person, and resident of this state for that entire calendar year,
24 shall be reimbursed and repaid as a refund for retail sales and service taxes paid, within sixty
25 days after the deadline, as prescribed in section 57-65-09, for the filing of a claim with the
26 commissioner, according to the schedules, in section 57-65-06 through 57-65-08.

27 **57-65-04. Right to file lost on death - Filing by guardian or attorney.** The right to
28 file a claim under this chapter is personal to the claimant, and does not survive the claimant's
29 death, but such right may be exercised on behalf of a claimant by the claimant's guardian or
30 attorney-in-fact.

1 **57-65-05. Relief limited to one claimant per household - Commissioner to resolve**
2 **disputes.** Only one claimant per household per year is entitled to relief under this chapter.
3 When two or more individuals of a household are able to meet the qualifications for a claimant,
4 they may determine among them as to who shall be the claimant. If they are unable to agree,
5 the matter shall be referred to the commissioner and the commissioner's decision is final.

6 **57-65-06. Refund amounts for single-member households.** The amount of any
7 claim made under this chapter by a claimant from a household consisting solely of one
8 individual shall be determined as follows:

- 9 1. If the claimant's income is three thousand five hundred dollars or less, a sum of
10 two hundred fifty-eight dollars;
- 11 2. If the claimant's income is three thousand five hundred one dollars and not more
12 than nine thousand seven hundred fifty dollars, a sum of forty-six dollars plus three
13 and four-tenths percent of the difference between nine thousand seven hundred
14 fifty dollars and the income of the claimant;
- 15 3. If the claimant's income is more than nine thousand seven hundred fifty dollars, no
16 refund.

17 **57-65-07. Refund schedule for multiple-member households.** The amount of any
18 claim made pursuant to this chapter by a claimant from a household consisting of more than
19 one individual shall be determined as follows:

- 20 1. If household income is six thousand two hundred fifty dollars or less, the sum of
21 five hundred eighty-one dollars;
- 22 2. If household income is six thousand two hundred fifty-one dollars and not more
23 than twelve thousand seven hundred fifty dollars, a sum of seventy-four dollars
24 plus seven and eight-tenths percent of the difference between twelve thousand
25 seven hundred fifty dollars and total household income;
- 26 3. If household income is more than twelve thousand seven hundred fifty dollars, no
27 refund.

28 **57-65-08. Commissioner to prepare table.** The commissioner shall prepare a table
29 under which claims shall be determined. The amount of the claim as shown in the table for
30 each bracket shall be computer only to the nearest dollar.

1 **57-65-09. Deadline for claims - Forms and assistance from county treasurers -**
2 **Extension of deadline.** Claims for refund under section 57-65-03 shall be made annually on
3 or before July first upon forms prescribed by the commissioner. Forms shall be made available
4 to county treasurers who shall, upon request of a claimant, assist the claimant in completing the
5 application and shall forward the same to the department. In case of sickness, absence, or
6 other disability of the claimant, or if other good cause exists, the commissioner may extend for a
7 period not to exceed six months the time for filing a claim.

8 **57-65-10. Claim computed by department at election of claimant.** The claimant is
9 not required to record on the claim the amount claimed. The claim allowable to persons making
10 this election shall be computed by the department.

11 **57-65-11. Documentary evidence with claim.** Claims for refund shall include such
12 documentary evidence as the commissioner deems necessary to assure validity of the claim.

13 **57-65-12. Commissioner to determine disability claims.** The commissioner shall
14 make the final determination as to whether a claimant seeking refund as a disabled person is
15 qualified.

16 **57-65-13. Death of claimant - Disposition of claim.** If a claimant dies after having
17 filed a timely claim, the amount thereof shall be disbursed to another member of the household
18 as determined by the commissioner. If the claimant was the only member of the household, the
19 claim may be paid to the claimant's personal representative, but if none is appointed and
20 qualified within two years of the filing of the claim, the amount of the claim shall escheat to the
21 state.

22 **57-65-14. Proration of funds insufficient to pay all claims.** In the event that funds
23 appropriated are not sufficient to pay all claims authorized by this chapter, funds so
24 appropriated shall be prorated to such claimants as have timely filed.

25 **57-65-15. Denial of claim - Hearing before commissioner - Appeals.** Any person
26 aggrieved by the denial in whole or in part of relief claimed under this chapter, may within thirty
27 days after receiving notice of such denial by the commissioner, demand and shall be entitled to
28 a hearing, upon notice, before the commissioner on the question. The procedures therein shall
29 be conducted and appeals allowed and perfected pursuant to chapter 28-32.

30 **57-65-16. Fraudulent claims - Recovery of excess payment - Filing as petty**
31 **offense.** If it is determined that a claim is excessive and was filed with fraudulent intent, the

1 claim shall be disallowed in full, and , if the claim has been paid, the department may initiate
2 appropriate legal actions to recover the amount paid. Fraudulently filing an excessive claim is
3 an infraction.

4 **57-65-17. Rules.** The commissioner shall adopt rules under chapter 28-32 concerning:

- 5 1. The procedure for filing a refund claim;
- 6 2. The requirements necessary to qualify for a refund; and
- 7 3. The definition of income.

8 **SECTION 44.** Chapter 57-66 of the North Dakota Century Code is created and enacted
9 as follows:

10 **57-66-01. Definitions.** As used in this chapter, unless the context or subject matter
11 otherwise requires:

- 12 1. "Commission" means the state tax commission.
- 13 2. "Department" means the office of the state tax commissioner.
- 14 3. "New agricultural processing facility" means a new building or structure, the
15 construction of which is subject to contractors' excise tax pursuant to chapter 57-70
16 or 57-71. A new agricultural processing facility is any new building or structure
17 constructed for the initial or subsequent processing of any form of agricultural
18 commodity, product, or by-product. A new agricultural processing facility does not
19 include any building or structure constructed for raising or feeding of livestock or
20 the expansion of an existing agricultural processing facility.
- 21 4. "Person" means any individual, firm, copartnership, joint venture, association,
22 limited liability company, corporation, estate, trust, business trust, receiver, or any
23 group or combination acting as a unit.
- 24 5. "Project" means the construction of a new agricultural processing facility at a single
25 site.
- 26 6. "Project cost" means the amount paid in money, credits, property, or other money's
27 worth for a project.

28 **57-66-02. Refund for contractor's excise taxes and sales or use taxes.** Any
29 person may apply for and obtain a refund or credit for contractors' excise taxes imposed and
30 paid under the provisions of chapter 57-70 for the construction of a new agricultural processing

1 facility and for sales or use taxes imposed and paid by such person under the provisions of
2 chapters 57-64 and 57-69 for the purchase or use of agricultural processing equipment.

3 **57-66-03. Requirements for refunds.** The refund pertains only to project costs
4 incurred and paid after June 30, 2005, and within thirty-six months of the approval of the
5 application required by section 57-66-05. No refund may be made unless:

- 6 1. The project cost exceeds the sum of four million five hundred thousand dollars; and
- 7 2. The person applying for the refund obtains a permit from the commission as set
8 forth in section 57-66-05.

9 **57-66-04. Calculation of refund.** If the project cost exceeds four million five hundred
10 thousand dollars, the refund shall be one hundred percent of the taxes attributed to the project
11 cost.

12 **57-66-05. Application for permit - approval.** Any person desiring to claim a refund
13 pursuant to section 57-66-02 shall apply for a permit from the commissioner at least thirty days
14 prior to commencement of the project. The application for a permit shall be submitted on a form
15 prescribed by the commissioner. A separate application shall be made and submitted for each
16 project. Upon approval of the application, the commissioner shall issue a permit entitling the
17 applicant to submit refund claims as provided by sections 57-77-06 and 57-66-07. Such permit
18 or refund claims are not assignable or transferable.

19 **57-66-06. Claim for refund - Documentation.** Any claim for refund shall be submitted
20 on forms prescribed by the commissioner and shall be supported by such documentation as the
21 commissioner may require. The commissioner may deny any claim where the claimant has
22 failed to provide information or documentation requested or considered necessary by the
23 commissioner to determine the validity of the claim.

24 **57-66-07. Time limit to submit claim - Payment - Portion withheld - No interest.**
25 Any person issued a permit pursuant to this chapter shall submit a return to the department on
26 or before the last day of the month following each quarterly period. The commissioner shall
27 determine the amount of the tax refund.. Ninety percent of the amount of refund shall be paid
28 to the claimant in accordance with §10-59-22 and 10-59-23, and ten percent shall be withheld by
29 the department. No interest shall be paid on the refund amount.

30 **57-66-08. Payment of withheld portion of refund.** The amounts withheld by the
31 department in accordance with section 57-66-07 shall be retained until the project has been

1 completed and the claimant has met all the conditions of this chapter, at which time all sums
2 retained shall be paid to claimant.

3 **57-66-09. Rejection of fraudulent claim.** If any claim has been fraudulently
4 presented or supported as to any item in the claim, or if the claimant fails to meet all the
5 conditions of this chapter, then such claim may be rejected in its entirety and all sums
6 previously refunded to the claimant shall constitute a debt to the state and a lien in favor of the
7 state upon all property and rights to property whether real or personal belonging to the claimant
8 and may be recovered in an action of debt.

9 **57-66-10. Hearing upon denial of refund.** Any person aggrieved by the denial in
10 whole or in part of a refund claimed under this chapter, may within thirty days after service of
11 the notice of such denial by the commissioner, demand and is entitled to a hearing, upon
12 notice, before the commissioner. The hearing shall be conducted pursuant to chapter 28-32.

13 **57-66-11. Rules.** The commissioner shall adopt rules, pursuant to chapter 28-32,
14 concerning the procedures for filing refund claims and the requirements necessary to qualify for
15 a refund.

16 **SECTION 45** Chapter 57-67 of the North Dakota Century Code is created and enacted
17 as follows:

18 **57-67-01. Definitions.** As used in this chapter, unless the context or subject matter
19 otherwise requires:

- 20 1. "Campground" means any property or premise kept, used, maintained, advertised,
21 or held out to the public to be a place where sites are available for placing of tents,
22 campers, trailers, mobile homes, or other mobile accommodations to transient
23 guests. Campgrounds include city, county, and state-owned campgrounds, as well
24 as concessionairs or contractors who manage or operate publicly owned
25 campgrounds. "Campground" includes campgrounds, camping cabins, camping
26 resorts, commercial picnic grounds, organizational camps, park units, recreational
27 vehicle parks, trailer parks, and youth camps.
- 28 2. "Lodging establishment" means any building, structure property, or premise kept,
29 used, maintained, advertised, or held out to the public to be a place where sleeping
30 accommodations are furnished to transient guests. "Lodging establishment"
31 includes bed and breakfast inns, boarding houses, bungalows cabins,

- 1 condominiums, cottages, dude ranches, guest houses, guest ranches, hostels,
2 hotels, inn,s lodges, motels, resorts, tourist homes, timeshare rentals, vacation
3 home rentals, and villas.
- 4 3. "Recreational equipment rental" includes all items rented for twenty-eight days or
5 less whose primary purpose is recreational use. Rental, under such
6 circumstances, of the following constitute recreational equipment rentals: all-terrain
7 vehicles, beach chairs, bicycles, bumper boats, bumper cards, campers, camping
8 trailers, firearms, fishing equipment, flotation devices, go carts, golf clubs, hunting
9 dogs, hunting equipment, mopeds, motor coaches, motorcycles, pack animals,
10 recreational courts and equipment, recreational gold mining equipment,
11 recreational vehicles, recreational water equipment, rock climbing gear, roller
12 blades, saddle horses, skis, snowboards, snowmobiles, snowmobile trailers,
13 snowshoes, watercraft, and water craft trailers.
- 14 4. "Recreational service" means any business establishment that provides leisure or
15 recreational experiences. The following constitute recreational services: aerial
16 sightseeing tours, amusement rides, bath houses, carriage rides, climbing guides,
17 day camps, fishing guides, fishing ponds, golf driving ranges,
- 18 5. "Spectator event" means any organized activity meant for entertainment or
19 education and open to the public. The following constitute spectator events: air
20 shows, auto races, auto shows, balloon shows, boat races, car rallies, carnivals,
21 cruises, concerts, dance festivals, draft horse contests, ethnic festivals, exhibitions,
22 expositions, fairs, greyhound races, horse races, horse shows, monster truck
23 shows, motorcycle expositions, motorcycle races, music festivals, rodeos, sporting
24 events, stage performances, threshing bees, tractor pull contests, and water-skiing
25 shows. A spectator event includes any business which is conducted on the site of
26 another spectator event.
- 27 6. "Visitor attraction" means any business establishment that offers recreation,
28 entertainment, or interpretation of natural or cultural history. The following
29 constitute visitor attractions: aerial tramways, amusement parks, animal exhibits,
30 animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting
31 cages, botanical gardens, bumper boats, bumper cars, bungee jumps, carnival

1 rides, chuck wagon suppers, commercial playgrounds, go-cart raceways, gold
2 mines, golf driving ranges, historic sites, human mazes, hunting preserves,
3 miniature golf courses, playhouses, racetracks, recreational gold mining, reptile
4 exhibits, restorations, scenic railroads, shooting preserves, show caves, ski areas,
5 spectator events, water slides, wave pools, wax figure exhibits, and zoological
6 gardens. A visitor attraction includes any business which is being conducted on
7 the site of another visitor attraction.

8 7. "Visitor intensive business" means any antique shop, book store, candy store, flea
9 market, gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather
10 goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop, and tee
11 shirt shop if fifty percent or more of annual total receipts are derived from the sale
12 of tangible personal property, during the months of June, July, August, and
13 September. No postsecondary, college, or university book store is, however,
14 included.

15 **57-67-02. Seasonal tax on certain visitor-intensive businesses.** There is hereby
16 imposed a tax on one percent on the gross receipts from any lodging establishment,
17 campground, motor vehicle rental, visitor attraction, recreational equipment rental, recreational
18 service, spectator event, and visitor-intensive business. The tax imposed by this section on the
19 gross receipts of any visitor-intensive business shall apply to the gross receipts received by
20 such business during the months of June, July, August, and September. The tax imposed by
21 this section is in addition to any other tax imposed by chapters 57-64 and 57-69. Tangible
22 personal property, services, and admissions are subject to the tax imposed by this section only
23 if subject to tax by chapters 57-64 or 57-69.

24 **57-67-03. Seasonal tax revenue to be deposited in state general fund.** The
25 revenue from the tax imposed by this chapter shall be deposited in the state general fund.

26 **57-67-04. Application of seasonal tax on lodging establishment.** The tax imposed
27 by this chapter on any lodging establishment applies only to the gross receipts from the rental
28 of rooms by a lodging establishment.

29 **57-67-05. Application of seasonal tax on campgrounds.** The tax imposed by this
30 chapter on any campground applies to the gross receipts from the rental of campground space.

1 **57-67-06. Application of seasonal tax on visitor attractions.** The tax imposed by
2 this chapter applies to the gross receipts from admission to a visitor attraction and from the sale
3 of tangible personal property, services, parking, or transportation at a visitor attraction.

4 **57-67-07. Application of seasonal tax on spectator events.** The tax imposed by this
5 chapter applies to the gross receipts from admission to a spectator event and from the sale of
6 tangible personal property, services, parking, or transportation at a spectator event.

7 **57-67-08. Nonprofit organizations exempt.** Gross receipts from the rental of rooms
8 or sites at a lodging establishment or campground owned by nonprofit religious, educational, or
9 youth organization are exempt from the tax imposed by this chapter if rented to a member of
10 such organization.

11 **57-67-09. Receipts from nonprofit shooting range exempt.** Gross receipts from the
12 operation of a shooting range owned by any nonprofit organization are exempt from the tax
13 imposed by this chapter.

14 **57-67-10. Administration of seasonal tax.** The tax imposed by this chapter shall be
15 collected and administered by the tax commissioner.

16 **57-67-11. Filing return and remittance of seasonal tax.** Any person who is subject
17 to the tax under this chapter, shall make a return and remittance to the tax commissioner on
18 forms prescribed and furnished by the tax commissioner in the following manner:

- 19 1. Any person, whose tax liability under this chapter is one thousand dollars or more
20 annually, shall file the return and remit the tax on or before the twentieth day of the
21 month following each month period;
- 22 2. Any person, whose tax liability under this chapter is less than one thousand dollars
23 annually, shall file the return and remit the tax on or before the last day of the
24 month following each two-month period; and
- 25 3. Any person, whose tax liability under this chapter is one thousand dollars or more
26 annually and who remits the tax by electronic transfer to the state, shall file the
27 return by electronic means on or before the twenty-third day of the month following
28 each monthly period and remit the tax on or before the second to the last day of
29 the month following each monthly period.

1 The tax commissioner may grant an extension of not more than five days for filing a
2 return and remittance. Unless an extension is granted, penalty or interest under section
3 57-64-87 shall be paid if a return or remittance is not made on time.

4 **57-67-12. Tax commissioner authorized to change reporting period.** The tax
5 commissioner may require or allow some returns and remittances to be filed on a monthly,
6 bimonthly, semiannual, or annual basis and the return and remittance is due the last day of the
7 month following the reporting period. For persons issued a temporary or seasonal sales tax
8 permit pursuant to chapter 57-64, the returns and remittances may be required at a time
9 determined by the tax commissioner. Section 57-64-87 applies to returns and payments under
10 this section.

11 **57-67-13. Application of other laws.** The definitions, administrative, collection, and
12 enforcement provisions of chapters 57-64 and 57-68 apply to the tax imposed by this chapter
13 where applicable.

14 **57-67-14. Rules.** The tax commissioner may adopt rules pursuant to chapter 28-32.

- 15 1. Licensing, including bonding and filing license applications;
- 16 2. The filing of returns and payment of the tax;
- 17 3. Determining the application of the tax and exemptions;
- 18 4. Taxpayer record-keeping requirements; and
- 19 5. Determining auditing methods.

20 **57-67-15. Prohibited acts - Penalties.** Any person who:

- 21 1. Makes any false or fraudulent return in attempting to defeat or evade the tax
22 imposed by this chapter is guilty of a class A misdemeanor.
- 23 2. Fails to pay tax due under this chapter within thirty days from the date the tax
24 becomes due is guilty of a class A misdemeanor;
- 25 3. Fails to keep the records and books required by this chapter or refuses to exhibit
26 these records to the tax commissioner or the tax commissioner's agents for the
27 purpose of examination is guilty of a class A misdemeanor;
- 28 4. Fails to file a return required by this chapter within thirty days from the date the
29 return is due is guilty of a class A misdemeanor;
- 30 5. Willfully violates any rule of the tax commissioner for the administration and
31 enforcement of the provisions of this chapter is guilty of a class A misdemeanor; or

1 6. Violates this chapter two or more times in any twelve-month period is guilty of a
2 class C felony.

3 **SECTION 46.** Chapter 57-68 of the North Dakota Century Code is created and enacted
4 as follows:

5 **57-68-01. Definition of terms.** As used in this chapter, unless the context or subject
6 matter otherwise requires:

- 7 1. "Business" means any activity engaged in by any person or caused to be engaged
8 in by such person with the object of gain, benefit or advantage either direct or
9 indirect.
- 10 2. "Commissioner" means the tax commissioner or any duly authorized and
11 appointed assistant, deputy, or agent of the commissioner charged with the
12 administration or enforcement of this chapter.
- 13 3. "Delivery charges" means charges by the retailer for preparation and delivery to a
14 location designated by the purchaser of tangible personal property or services
15 including transportation, shipping, postage, handling, crating, and packing.
- 16 4. "Fair market value" means the price at which a willing seller and willing buyer will
17 trade. Fair market value shall be determined at the time of purchase. If a public
18 corporation is supplying tangible personal property that will be used in the
19 performance of a contract, fair market value is the purchase price or fair market
20 value, whichever is greater.
- 21 5. "Included in the measure of tax" means the tangible personal property or the
22 service was purchased from a retailer licensed under chapter 57-64 and that
23 retailer has included the tax in the amount received from the sale.
- 24 6. "In this state" or "in the state" means within the exterior limits of the North Dakota
25 and includes all territory within such limits owned by or ceded to the United States
26 of America.
- 27 7. "Lease" or "rental" means any transfer of possession or control of tangible personal
28 property for a fixed or indeterminate term for consideration. A lease or rental may
29 include future options to purchase or extend. Lease or rental does not include:

- 1 a. A transfer of possession or control of property under a security agreement or
2 deferred payment plan that requires the transfer of title upon completion of the
3 required payments;
- 4 b. A transfer of possession or control of property under an agreement that
5 requires the transfer of title upon completion of required payments and
6 payment of an option price does not exceed the greater of one hundred
7 dollars or one percent of the total required payments; or
- 8 c. Providing tangible personal property along with an operator for a fixed or
9 indeterminate period of time. A condition of this exclusion is that the operator
10 is necessary for the equipment to perform as designed. For the purpose of
11 this subdivision, an operator shall do more than maintain, inspect, or set-up
12 the tangible personal property.
- 13 8. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in
14 any manner or by any means whatsoever, for a consideration. A transaction,
15 whereby the possession of property is transferred but the seller retains the title as
16 security for the payment of the price, is a purchase.
- 17 9. "Purchase price" has the same meaning as gross receipts defined in section
18 57-64-01.
- 19 10. "Retailer" means any person performing services in this state or engaged in the
20 business of selling tangible personal property for use, storage, or other
21 consumption within the meaning of this chapter. However, if in the opinion of the
22 tax commissioner, it is necessary for the efficient administration of this chapter to
23 regard any sales person, representative, trucker, peddler, or canvasser as an
24 agent of the dealer, distributor, supervisor, employer, or person under whom they
25 operate or from whom they obtain the tangible personal property sold by them
26 irrespective of whether they are making sales on their own behalf or on behalf of
27 such dealer, distributor, supervisor, employer, or person, the tax commissioner
28 may so regard them and may regard the dealer, distributor, supervisor, employer,
29 or person as a retailer for purposes of this chapter.
- 30 11. "Retailer maintaining a place of business in the state" means any retailer having or
31 maintaining within this state, directly or by a subsidiary, an office, distribution

1 house, sales house, warehouse, or other place of business, or any agents
2 operating within the state under the authority of the retailer or its subsidiary,
3 irrespective of whether such place of business or agent is located in this state
4 permanently or temporarily or whether such retailer or subsidiary is admitted to do
5 business within this state pursuant to the laws of the state granting the rights of
6 foreign corporations to do business in this state.

7 12. "Storage" means any keeping or retention in this state for use or other
8 consumption in this state for any purpose except sale in the regular course of
9 business.

10 13. "Tangible personal property" means personal property that can be seen, weighed,
11 measured, felt, or touched, or that is in any other manner perceptible to the senses
12 if furnished or delivered to consumers or users within this state. The term includes
13 electricity, water, gas, steam, and prewritten computer software.

14 14. "Use" means the exercise of right or power over tangible personal property
15 incidental to the ownership of that property, except that it does not include the sale
16 of that property in the regular course of business. Use also includes the use of the
17 types of services, the gross receipts from the sale of which are to be included in
18 the measure of the tax imposed by chapter 57-64 and the delivery or causing
19 delivery into this state of tangible personal property intended to advertise products
20 or services or promote or facilitate sales to North Dakota residents.

21 **57-68-02. Tax on tangible personal property purchased for use in state - Rate**
22 **based on purchase price.** An excise tax is hereby imposed on the privilege of the use,
23 storage, and consumption in this state of tangible personal property purchased for use in this
24 state at the same rate of percent of the purchase price of said property as is imposed pursuant
25 to chapter 57-64.

26 **57-68-03. Tax imposed on use of services - Exemptions - Related corporation**
27 **defined.** For the privilege of using services in North Dakota, there is imposed on the person
28 using the service an excise tax equal to four percent of the value of the services at the time they
29 are rendered. However, this tax may not be imposed on any service rendered by a related
30 corporation as defined in section 57-64-68 for use by a financial institution or on any service
31 rendered by a financial institution for use by a related corporation. For the purposes of this

1 section, the term related corporation includes a corporation which together with the financial
2 institution is part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in
3 effect on January 1, 1989, except that the eighty percent ownership requirements set forth in
4 26 U.S.C. § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent.
5 For the purpose of this chapter, services rendered by an employee for the use of the person's
6 employer are not taxable.

7 **57-68-04. Tax on use of rented property.** An excise tax is imposed upon the
8 privilege of the use of rented tangible personal property in this state at the rate of four percent
9 of the rental payments upon the property.

10 **57-68-05. Exemption of use of property leased.** The use, storage, or consumption
11 of tangible personal property
12 actually leased to persons in this state is exempted from the
13 provisions of this chapter and the tax imposed by it.

14 **57-68-06. Certain purchases considered for resale purposes.** Services purchased
15 by an engineer, architect, or surveyor on behalf of a client in the performance of a contract for
16 such client shall be considered purchases for resale purposes.

17 **57-68-07. Chemicals purchased for use by lawn and garden services considered**
18 **purchases for resale.** Chemicals purchased for use by lawn and garden service (industry
19 no. 0782) as enumerated in the standard industrial classification manual, 1987, as prepared by
20 the statistical policy division of the office of management and budget, office of the president,
21 and used in such services shall be considered as purchases for resale.

22 **57-68-08. Materials purchased for floor laying service considered purchase for**
23 **resale.** Carpet, floor covering, tacks, glue, and other materials purchased for use by floor
24 laying and other floor work not elsewhere classified (industry no. 1752) as enumerated in the
25 standard industrial classification manual of 1987, as prepared by the statistical policy division of
26 the office of management and budget, office of the president, and used for such work are
27 purchases for resale.

28 **57-68-09. Exemption for gross receipts pursuant to contract requiring retailer to**
29 **display products or signage - Exception.** There are hereby exempted from the provisions of
30 this chapter and the tax imposed by it, gross receipts received by a retailer from a
31 manufacturer, wholesaler, or distributor pursuant to a written contract between the retailer and

1 manufacturer, wholesaler, or distributor that requires the retailer to display the manufacturer,
2 wholesaler, or distributor's product or signage in a specified manner or location. Any discount
3 or deferred payment received by a retailer from a distributor, wholesaler, or manufacturer for
4 purchasing a product for sale at retail does not constitute gross receipts subject to the tax
5 imposed by this chapter.

6 **57-68-10. Tax on tangible personal property not purchased for use in state - Rate**
7 **based on fair market value - Property more than seven years old.** An excise tax is
8 imposed on the privilege of the use, storage or consumption in this state of tangible personal
9 property not originally purchased for use in this state, but thereafter used, stored or consumed
10 in this state, at the same rate of percent of the fair market value of the property at the time it is
11 brought into this state as is imposed by section 57-64-02. The use, storage, or consumption of
12 tangible personal property more than seven years old at the time it is brought into the state by
13 the person who purchased such property for use in another state is exempt from the tax
14 imposed herein. The commissioner may adopt rules under chapter 28-32 relating to the
15 determination of the age and value of the tangible personal property brought into this state.

16 **57-68-11. Tax imposed on person using property.** The tax under section 57-68-10
17 is also imposed upon every person using, storing, or otherwise consuming such property within
18 this state until such tax has been paid directly to a retailer or the commissioner as hereinafter
19 provided.

20 **57-68-12. Contractors and subcontractors taxed on property used in performance**
21 **of contract - Fabrication costs excluded.** If a contractor or subcontractor, as defined in
22 chapters 57-69 and 57-70, uses tangible personal property in the performance of that person's
23 contract or to fulfill contract or subcontract obligations, whether the title to the property is in the
24 name of the contractor, subcontractor, contractee, subcontractee, or any other person, whether
25 the title holder of the property would be subject to pay the sales or use tax, the contractor or
26 subcontractor shall pay a tax at the rate prescribed by section 57-64-02, measured by the
27 purchase price or fair market value of the property, whichever is greater, unless the property
28 has been previously subjected to a sales or use tax, in this state and the tax due thereon has
29 been paid. However, if the contractor or subcontractor fabricates tangible personal property for
30 use in the performance of that person's contract, fair market value excludes the value of the
31 contractor's of subcontractor's fabrication costs.

1 **57-68-13. Sectional homes not vehicles -Contractors taxed on materials used in**
2 **construction - Sectional homes defined.** If a sectional home is permanently affixed to real
3 property, it is not a vehicle subject to registration, and shall be classified as real property. A
4 contractor who erects such a home shall hold a sales tax or use tax license and pay use tax
5 based upon the fair market value of the raw materials used to construct and erect the home.

6 For the purpose of this section, sectional home means any home pre-built in part or in
7 whole for the purpose of permanent placement on a foundation. A mobile home is not a
8 sectional home.

9 **57-68-14. Materials incorporated in construction work - Restriction on application**
10 **of rate increase.** No tax increase may be levied on materials incorporated in construction work
11 pursuant to construction contracts bid or entered into on or before the effective date of the tax
12 increase.

13 **57-68-15. Value of molds and dies.** The value of molds and dies produced in
14 connection with the fabrication or manufacture of other tangible personal property is limited to
15 the cost of materials incorporated in the molds or dies to the extent the cost of such materials
16 have not previously been subjected to sales or use tax.

17 **57-68-16. Exemption of materials becoming part of out-of-state signage or**
18 **advertising.** Notwithstanding the provisions of section 57-68-12, the use in this state of
19 tangible personal property that becomes an integral and component part of a final product
20 manufactured by a business classified in signs and advertising specialties, (industry no. 3993)
21 in the standard industrial classification manual, 1987, as prepared by the statistical policy
22 division of the office of management and budget, office of the President, that is installed by
23 such manufacturer outside of this state is exempt from the tax imposed by this chapter.

24 **57-68-17. Exemption of property and services subject to sales tax.** The use in this
25 state of tangible personal property or services, the gross receipts from the sale of which are to
26 be included in the measure of the tax imposed by chapter 57-64 is hereby specifically exempted
27 from the tax imposed by this chapter.

28 **57-68-18. Credit for sales or use tax paid to another state - Reciprocity required.**
29 The amount of any use tax imposed with respect to tangible personal property or services shall
30 be reduced by the amount any sales or use tax previously paid by the taxpayer with respect to
31 the property on account of liability to another state or its political subdivisions. Provided,

1 however, no credit shall be given under this section where taxes paid on tangible personal
2 property or services in another state or its political subdivisions of that state does not
3 reciprocally grant a credit for taxes paid on similar tangible personal property.

4 **57-68-19. Exemption for credit services by credit bureaus to certain financial**
5 **institutions.** There are specifically exempted from the provisions of this chapter and from the
6 computation of the amount of tax imposed by it, the use of credit services provided by credit
7 bureaus to financial institutions that are paying taxes pursuant to chapter 57-35.3.

8 **57-68-20. Constitutional exemptions from tax - Property of public agencies.**
9 Tangible personal property, the storage, use, or other consumption of which this state is
10 prohibited from taxing under the Constitution of laws of the United States of America or under
11 the Constitution of this state, or tangible personal property sold to the United States, the State
12 of North Dakota, or any public or municipal corporation of the state which is for the use,
13 storage, or consumption of such public corporations is hereby specifically exempt from the tax
14 imposed by this chapter.

15 **57-68-21. Exemption of property brought in for personal use of nonresident.** The
16 use in this state of all articles of tangible personal property brought into the state by a
17 nonresident individual thereof for personal use or enjoyment while within the state, is hereby
18 specifically exempted from the tax imposed by this chapter.

19 **57-68-22. Exemption of raw material, parts, and newsprint for manufacture of**
20 **products to be sold at retail.** The use in this state of tangible personal property including
21 containers, labels, and shipping case thereof which is intended shall, by means of fabrication,
22 compounding, or manufacture become a part of other tangible personal property intended to be
23 sold ultimately at retail within or without this state is specifically exempted from the tax imposed
24 by this chapter. The term tangible personal property includes, raw material and newspaper
25 print. Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles,
26 shipping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers,
27 stockinettes, casings, and similar articles and receptacles used or consumed by manufacturers,
28 processors, or fabricators are raw material.

29 **57-68-23. Ink and newsprint used to produce shoppers' guides exempt -**
30 **Shoppers' guides defined.** Ink and newsprint when used in the production of shoppers'
31 guides are hereby exempt from the tax imposed under this chapter.

1 For the purposes of this section, "shoppers' guide" includes advertising publications
2 whose advertisements are solicited from the general public and whose publications are for free
3 distribution to the general public and are published regularly at least once a month, consisting
4 of printed sheets containing advertising, bearing a date of issue, and devoted to advertising of
5 general interest.

6 **57-68-24. Brokers' and agents' services exempt from tax.** The tax imposed by this
7 chapter shall not apply to services of brokers and agents registered with the securities
8 commissioner under chapter 10-04.

9 **57-68-25. Packaging and container materials sold to retailers exempt.** There are
10 specifically exempted from the provisions of this chapter, and from the computation of tax
11 imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine,
12 tape, and similar articles sold to retailers licensed under this chapter if the retailer uses the
13 articles as wrappers or containers to hold other tangible personal property sold by the retailer
14 and subject to sales or use tax and the articles are supplied free by the retailer as a
15 convenience to the customer.

16 **57-68-26. Exemption of certain sales commissions.** Unless otherwise specifically
17 subject to tax, the gross receipts resulting from fees or commissions received for rendering a
18 service which provides for the sale of tangible personal property or services is exempt from the
19 tax imposed by this chapter.

20 **57-68-27. Exemption of gross receipts from sale of certain replacement parts.**
21 There are exempted from the provisions of this chapter and from the computation of the tax
22 imposed by it, the gross receipts from the sale of replacement parts that are sold to retailers
23 and which will be installed in tangible personal property that will ultimately be for resale.

24 **57-68-28. Exemption of motor vehicles exempt from excise tax - Exception.** The
25 use in this state of motor vehicles exempt from the motor vehicle excise tax under section
26 57-40.3-04 is specifically exempted from the tax imposed by this chapter, with the exception of
27 farm machinery, which shall be subject to the tax imposed by this chapter.

28 **57-68-29. Exemption of commodities otherwise taxed.** The use in this state of
29 gasoline, motor fuel, and special fuel subject to tax under chapter 57-43.1, 57-43.2, or 57-43.3
30 is specifically exempted from the tax imposed by this chapter.

1 **57-68-30. Exemption of property of educational institutions and hospitals - Use of**
2 **property by individuals taxable - Registration of motor vehicles - Quarterly report by**
3 **exempt institution.** The gross receipts from sales of tangible personal property and the gross
4 receipts from sales, furnishing or service of electrical energy, natural and artificial gas, water
5 and communication service to and for use by religious educational institutions and private
6 educational institutions currently recognized as exempt under section 501(c)(3) of the Internal
7 Revenue Code as in effect on January 1, 1983, and nonprofit, charitable hospitals when
8 purchases are made by authorized officials, payment made from the institution's funds and title
9 to the property retained in the name of the institutions, are specifically exempted from the tax
10 imposed by this chapter. For purposes of this section, a private educational institution shall be
11 defined as an institution currently recognized as exempt under section 501(c)(3) of the Internal
12 Revenue Code as in effect on January 1, 1995, maintaining a campus physically located within
13 this state; and accredited by the north central association of colleges and schools.

14 This exemption does not extend to sales to or purchases of tangible personal property
15 for the personal use of officials, members, or employees of such institutions or to sales to or
16 purchases of tangible personal property used in the operation of a taxable retail business. The
17 exemption provided in this section does not, in any manner, relieve the institution from the
18 payment of the additional and further license fee imposed on the registration of motor vehicles.
19 All institutions claiming this exemption shall, at the end of each quarter of each calendar year,
20 file with the commissioner a list of all purchases on which exemption was claimed, fully
21 itemized, showing name and address of vendors, description of property purchased, purchase
22 price, and brief explanation of use or intended use.

23 **57-68-31. Exemption of insulin for human use.** The use in this state of insulin, to the
24 extent used by humans, that is not sold by prescription is specifically exempt from the tax
25 imposed by this chapter.

26 **57-68-32. Exemption of authorized purchases made with food stamps.** There are
27 hereby specifically exempted from the tax imposed by this chapter the gross receipts resulting
28 from authorized purchases made with food stamps under the provision of the Food Stamp Act
29 of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 2001.

30 **57-68-33. Exemption of authorized purchases of food.** There are hereby
31 specifically exempted from the tax imposed by this chapter the gross receipts resulting from

1 authorized purchases of food made under section 17(c) of the Child Nutrition Act of 1966
2 (42 U.S.C. § 1786(c)).

3 **57-68-34. Exemption of fair market value of personal property or service given**
4 **without charge to exempt organization.** There are specifically exempted from the provisions
5 of this chapter and the computation of the tax imposed by it, the fair market value of any
6 tangible personal property or service given without charge to an institution, organization, or
7 group exempt from the tax imposed by this chapter.

8 **57-68-35. Exemption of prescribed drugs used by humans.** The use in this state of
9 drugs as defined by rule adopted by the commissioner under chapter 28-32 to the extent used
10 by humans, if the drugs are prescribed by prescription, dispensed, or administered by a
11 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist, is specifically exempt from
12 the tax imposed by this chapter.

13 **57-68-36. Exemption of prescribed medical equipment or prosthetic devices used**
14 **by humans.** The use in this state of durable medical equipment, mobility enhancing
15 equipment, and prosthetic devices as defined by rule adopted by the commissioner under
16 chapter 28-32 to the extent used by humans, if the durable medical equipment, mobility
17 enhancing equipment, and prosthetic devices are prescribed by prescription by a physician,
18 chiropractor, optometrist, dentist, podiatrist, or audiologist, is specifically exempt from the tax
19 imposed by this chapter.

20 **57-68-37. Exemption of prescribed medical devices used by humans.** There are
21 specifically exempted from the provisions of this chapter and from the computation of the
22 amount of tax imposed by it, the use of any medical device, as that term is defined in this
23 section, to the extent used by humans, if the medical device is prescribed by prescription by a
24 physician, chiropractor, optometrist, dentist, podiatrist, or audiologist. The term, medical
25 device, means any instrument, apparatus, implement, contrivance, or other similar or related
26 article, including a component, part, or accessory, that is prescribed for use on a single patient
27 and that is:

- 28 1. Recognized in the official national formulary, or the United States pharmacopoeia,
29 or any supplement to them;
- 30 2. Intended for use in diagnosis of disease or other conditions, or in the cure,
31 mitigation, treatment, detection, or prevention of disease, of the human body; or

1 3. Intended to affect the structure of any function of the human body, and that does
2 not achieve any of it's primary intended purposes through chemical action within or
3 on the human body and that is not dependent upon being metabolized for the
4 achievement of any of its primary intended purposes.

5 A medical device is not durable medical equipment, mobility enhancing equipment, or a
6 prosthetic device.

7 **57-68-38. Exemption of livestock, poultry, ostriches, emus, or rheas used in**
8 **producing taxable final product.** Gross receipts from sales of livestock or live poultry,
9 ostriches, emus, or rheas, if such sales are part of a series of transactions incident to producing
10 a finished product intended to be offered for an ultimate retail sale, are not taxable under this
11 chapter, except that an ultimate retail sale interrupting the series of transactions with an
12 intended final use or consumption is taxable.

13 **57-68-39. Exemption of gross receipts from sale of live gamebirds by producer to**
14 **certain nonprofit organizations.** There are specifically exempted from the provisions of this
15 chapter and the computation of the tax imposed by it, gross receipts from the sale of live
16 gamebirds sold by the producer to nonprofit organizations which release such birds or to
17 commercial hunting operators who charge fees to hunt such birds.

18 **57-68-40. Exemption of gross receipts from sales of certain animals.** There are
19 hereby specifically exempted from the provisions of this chapter and from the computation of
20 the amount of tax imposed by it, gross receipts from the sale of live cattle, buffalo, sheep,
21 goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals, used or to
22 be used as breeding or production stock, and horses and other animals within the family
23 equidae. The term, poultry, does not include any fowl other than domestic fowl kept and raised
24 for the market or the production of eggs for human consumption.

25 **57-68-41. Exemption of gross receipts from sale of feed for certain animals.** There
26 are hereby specifically exempted from the provisions of this chapter and from the computation
27 of the amount of tax imposed by it, gross receipts from the sale of feed for cattle, sheep, goats,
28 swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals, if such feed is
29 used by farmers or ranchers who are regularly engaged in the business of raising and feeding
30 such animals, or producing milk for sale for human consumption, and horses and other animals

1 within the family equidae. The term, poultry, does not include any fowl other than domestic fowl
2 kept and raised for the market or the production of eggs for human consumption.

3 **57-68-42. Exemption for sale of certain live nontraditional livestock.** There are
4 hereby specifically exempted from the provisions of this chapter and from the computation of
5 the amount of tax imposed by it, gross receipts from the sale of any live nontraditional livestock
6 regulated by the board of animal health under chapter 36-01, if the animal is to be used by a
7 farmer or rancher who is regularly engaged in the breeding and raising of such animals.

8 **57-68-43. Exemption for sale of feed for certain live nontraditional livestock.**
9 There are hereby specifically exempted from the provisions of this chapter and from the
10 computation of the amount of tax imposed by it, gross receipts from the sale of feed for any live
11 nontraditional livestock regulated by the board of animal health under chapter 36-01, if the feed
12 is to be used by a farmer or rancher who is regularly engaged in the breeding and raising of
13 such animals.

14 **57-68-44. Exemption of motor fuel used for agricultural purposes.** Motor fuel,
15 including kerosene, tractor fuel, natural and artificial gas, liquefied petroleum gas, and distillate,
16 when used for agricultural purposes, is exempt from excise taxes imposed under this chapter.

17 For the purposes of this section, agricultural purposes includes hay grinding but does
18 not include the lighting or heating of any farm residence.

19 **57-68-45. Power for irrigation pumps exempt from tax.** There are hereby
20 specifically exempted for the provisions of this chapter and from the amount imposed by it,
21 gross receipts from the sale of electricity used to power irrigation pumps and the gross receipts
22 from the horsepower charge on electric motors powering irrigation pumps whenever the
23 purchaser has made the purchase exclusively for agricultural purposes.

24 **57-68-46. Exemption of goods and services furnished to meet warranty**
25 **obligation, services enumerated in standard industrial classification manual and power**
26 **changes for irrigation pumps exempt.** The use in this state of the types of services
27 specifically exempt, under section 57-64-25, 57-64-27, or 57-64-63, from the tax imposed by
28 chapter 57-64 is exempt from the tax imposed by this chapter.

29 **57-68-47. Exemption of freeport merchandise and stocks of merchandise brought**
30 **as foreign merchandise into foreign trade zone - Stocks of merchandise defined.** There
31 is exempted from the provisions of this chapter and from the computation of the tax imposed by

1 it, freeport merchandise and stocks of merchandise brought as foreign merchandise into a
2 foreign trade zone. For the purposes of this section, "stocks of merchandise" means personal
3 property held primarily for sale and not subject to annual depreciation.

4 **57-68-48. Exemption of pesticides used for agricultural purposes.** The use in this
5 state of insecticides, herbicides, pesticides, rodenticides, and fumigants to be used exclusively
6 for agricultural purposes is specifically exempted from the tax imposed by this chapter.

7 **57-68-49. (Effective January 1,2006) Exemption of use of certain parts or repairs**
8 **on agricultural or irrigation equipment.** There are exempted from the provisions of this
9 chapter and the tax imposed by it, the use of parts or repairs on machinery or equipment which
10 are clearly identifiable as used primarily for agricultural purposes, including irrigation equipment,
11 if the part replaces a farm machinery or irrigation equipment part assigned a specific or generic
12 part number by the manufacturer of the farm machinery or irrigation equipment.

13 **57-68-50. Delivery in state as prima facie evidence of sale for use in state.** For the
14 purpose of the proper administration of this chapter and to prevent the evasion of the tax,
15 evidence that tangible personal property was sold by any person for delivery in this state shall
16 be prima facie evidence that such tangible personal property was sold for use in this state.

17 **57-68-51. Use of service in state prima facie evidence of taxability.** For the
18 purposes of proper administration of this chapter and to prevent evasion of tax, evidence that a
19 service is used in this state shall be prima facie evidence that the service is subject to tax.

20 **57-68-52. Money paid as evidence of value of service - Reasonable value govern.**
21 In determining the amount of tax due on the use of a service it is presumed, in the absence of
22 preponderant evidence of another value, that the value means the total amount of money or the
23 reasonable value of other consideration paid for the service exclusive of any type of time-price
24 differential. However, in an exchange in which the amount paid does not represent the value of
25 the service purchased, the tax shall be imposed on the reasonable value of the service
26 purchased.

27 **57-68-53. List of sales property or services to residents - Cost.** Any person selling
28 property or services to residents of this state, where the property is delivered to this state or the
29 beneficial use of the service occurs in this state, shall provide a list of such sales to the
30 commissioner. The list shall include the names and addresses of the purchasers and the

1 amount of the sale. The commissioner shall pay to any person furnishing a list under this
2 section an amount equal to the reasonable cost of reproducing the list.

3 **57-68-54. Collection of tax by retailer maintaining place of business in state -**

4 **Receipt given to purchaser - Agents and placed of business listed with commissioner.**

5 Any retailer maintaining a place of business in this state, and making sales of tangible personal
6 property or services for storage, use, or other consumption in this state, not exempted under
7 this chapter, shall, at the time of making such sale, whether within or without the state, collect
8 the tax imposed by this chapter from the purchaser, and give to the purchaser a receipt therefor
9 in the manner and form prescribed by the commissioner, if the commissioner shall, by rule
10 adopted under chapter 28-52, require such receipt. Such retailer shall list with the
11 commissioner the name and address of all of the retailer's agents operating in this state, and
12 the location of any and all of the retailer's distribution or sales houses or offices or other places
13 of business in this state.

14 **57-68-55. Semiannual report of sales by retailer maintaining place of business in**

15 **state - Contents.** Every retailer maintaining a place of business in this state and making sales
16 of tangible personal property for storage, use, or other consumption in this state, shall, twice
17 annually furnish the commissioner with a list, covering the six-month period just preceding the
18 submission of such list, which shall contain the names and addresses of all persons within the
19 state who have made purchases of tangible personal property from said retailer for use,
20 storage, or consumption, and which list shall contain the total amount of the purchase price of
21 all such personal property so purchased during said period by such persons. Said list required
22 to be submitted as above stated need not contain any information on the sale of tangible
23 personal property when exempt under this chapter.

24 **57-68-56. Permit for collection of tax by retailer not maintaining place of business**

25 **in state - Security for collection and payment - Cancellation of permit.** The commissioner

26 may, upon application, authorize the collection of the tax imposed by this chapter by any retailer
27 not maintaining a place of business within this state, who, to the satisfaction of the
28 commissioner furnishes adequate security to ensure collection and payment of the tax. Such
29 retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject
30 to such requirements as the commissioner may prescribe by rule adopted under chapter 28-32.

31 If so authorized, the retailer shall collect the tax upon all tangible personal property sold to the

1 retailer's knowledge for use, storage, or other consumption within this state, in the same
2 manner and subject to the same requirements as a retailer maintaining a place of business
3 within this state. Such authority and permit may be canceled when, at any time, the
4 commissioner considers the security inadequate, or that such tax can more effectively be
5 collected from the person using such property in this state.

6 **57-68-57. Collection and remittance of tax by retailer.** The tax upon the use,
7 storage, or other consumption of all tangible personal property which is sold by a retailer
8 maintaining a place of business in this state, or by such other retailer as the commissioner shall
9 authorize pursuant to section 57-68-57, shall be collected by such retailer and remitted to the
10 commissioner pursuant to sections 57-68-59 through 57-68-66.

11 **57-68-58. Surety bond filed by retailer.** To ensure the collection of the tax levied
12 under this chapter, the commissioner may authorize any person subject to such tax, and any
13 retailer required or authorized to collect such tax pursuant to sections 57-68-54 through
14 57-68-56 to file with the commissioner a bond issued by a surety company authorized to
15 transact business in this state and approved by the commissioner, in such amount as the
16 commissioner may fix, to secure the payment of any tax or penalties due or which may become
17 due from such person.

18 **57-68-59. Securities deposited by retailer in lieu of bond.** In lieu of a bond, under
19 section 57-68-58 securities approved by the commissioner, in such amount as the
20 commissioner may prescribe, may be deposited with the commissioner, which securities shall
21 be kept in the custody of the commissioner and may be sold by the commissioner at public or
22 private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to
23 recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts
24 due under this chapter shall be returned to the person who deposited the securities.

25 **57-68-60. Tax collected as debt of retailer.** The tax required to be collected by any
26 retailer pursuant to sections 57-68-54 through 57-68-56 and any tax collected by any retailer
27 pursuant to said sections, shall constitute a debt owed by the retailer to this state.

28 **57-68-61. Payment of tax collected by retailer.** Every retailer required or authorized,
29 pursuant to sections 57-68-54 through 57-68-56, to collect the tax herein imposed, shall pay to
30 the commissioner the amount of such tax as provided in sections 57-64-85 and 57-64-87.

1 **57-68-62. Report by retailer collecting tax - Filing - Contents - Payment.** At the
2 time specified in section 57-68-61, the retailer shall file with the commissioner a return for the
3 preceding reporting period in such form as may be prescribed by the commissioner showing the
4 sales price of any or all tangible personal property or services sold by the retailer during such
5 preceding reporting period, the use, storage or consumption of which is subject to the tax
6 imposed by this chapter, and such other information as the commissioner may deem necessary
7 for the proper administration of this chapter. Returns shall be accompanied by a remittance of
8 the amount of such tax for the period covered by the return.

9 **57-68-63. Retailers' returns and payments on other than a quarterly basis -**
10 **Extension of time.** The commissioner, if necessary to ensure payment to the state of the
11 amount of such tax, may require returns and payments of such amounts to be made other than
12 by the quarter. The commissioner may, upon request and a proper showing of the necessity
13 therefor, grant an extension of not more than five days for making any return and payment.

14 **57-68-64. Execution of retailers' returns.** Returns shall be signed and certified to be
15 correct by the retailer or the retailer's duly authorized agent.

16 **57-68-65. Amounts of tax paid on conditional sales or installment contract**
17 **receipts.** If tangible personal property is sold under a conditional sales contract, or under any
18 other form of sale wherein the payment of the principal sum, or a part thereof, is extended over
19 a period longer than sixty days from the date of the sale thereof, the retailer may collect and
20 remit for each month that portion of the tax equal to the rate of tax as provided for in this
21 chapter of that portion of the purchase price actually received during such month.

22 **57-68-66. Direct payment of tax by user.** The tax upon the use, storage, or
23 consumption of all tangible personal property not paid under section 57-68-57 shall be paid to
24 the commissioner directly by any person using such property within this state, under section
25 57-68-67.

26 **57-68-67. Liability of user for tax - Returns and payments.** Any person who uses,
27 stores, or otherwise consumes any property or services subject to tax hereunder upon which
28 the tax herein imposed has not been paid, either to a retailer or direct to the commissioner as
29 herein provided, is liable therefor, and shall on or before the time specified in sections 57-64-85
30 and 57-64-87 pay the tax herein imposed upon all such property used by that person during the
31 preceding month in such manner and accompanied by such returns as the commissioner shall

1 prescribe. Sections 57-68-61 through 57-68-65, with reference to such returns and payments,
2 are applicable to the returns and payments herein required.

3 **57-68-68. Credit for sales or use tax paid to another state - Reciprocal grand of**
4 **credit required.** The amount of use tax imposed with respect to tangible personal property in
5 the form of equipment brought into this state on a permanent basis for direct use in a
6 manufacturing, fabricating, or processing business shall be reduced by the amount of any sales
7 or use tax previously paid by the taxpayer with respect to the property on account of liability to
8 another state or its political subdivisions to the extent that such tax equals or exceeds the rate
9 of the tax in this state. If the sales or use tax of the other state is less than the tax of this state,
10 the taxpayer shall be subject to the payment of the balance to this state. No credit shall be
11 given under this section for taxed paid on tangible personal property subject to the credit of this
12 section in another state or its political subdivisions if that state does not reciprocally grant a
13 credit for taxes paid on similar tangible personal property in this state.

14 **57-68-69. Rules.** The commissioner may adopt rules under chapter 28-32 concerning:

- 15 1. Licensing, including bonding and filing license applications;
- 16 2. The filing of returns and payment of tax;
- 17 3. Determining the application of the tax and exemptions;
- 18 4. Taxpayer record-keeping requirements; and
- 19 5. Determining auditing methods.

20 **57-68-70. False or fraudulent return in attempt to evade tax as misdemeanor.** Any
21 person required to make, render, sign, or certify any return or supplementary return who makes
22 any false or fraudulent return in attempt to defeat or evade the tax imposed by this chapter is
23 guilty of a class A misdemeanor.

24 **57-68-71. Failure to file return as misdemeanor.** Any retailer or other person failing
25 or refusing to furnish any return by this chapter is required to be made or failing or refusing to
26 furnish a supplemental return or other data required by the commissioner is guilty of a class A
27 misdemeanor.

28 **57-68-72. Administration and enforcement - Sales tax procedural and collection**
29 **provisions applicable.** The commissioner shall enforce and administer this chapter in the
30 same manner and subject to all of the provisions contained in chapter 57-64. Sections

1 57-64-81, 57-64-88, 57-64-90, 57-64-97, 57-64-98, and 57-64-99 are by reference incorporated
2 as part of this chapter.

3 **57-68-73. Rules for administration - Uniformity of application.** The commissioner
4 may adopt rules under chapter 28-32 for the administration and enforcement of this chapter and
5 for adding such tax, or the average equivalent thereof, providing this method applies uniformly
6 to retailers within the same general classification for the purpose of enabling such retailers to
7 add and collect, as far as practical, the amount of such tax.

8 **57-68-74. Determination of tax by commissioner in absence of correct return -**
9 **Sales tax provisions applicable.** If any return required by this chapter is not filed, or if any
10 return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to
11 file a corrected or sufficient return within ten days after the same is required by notice from the
12 commissioner, the commissioner shall have the same power to determine the amount due as is
13 vested in the commissioner by sections 57-64-85 and 57-64-87.

14 **57-68-75. Certificate as prima facie evidence of failure to file return or pay tax.**
15 The certificate of the commissioner to the effect that a tax or amount required to be paid by this
16 chapter has not been paid, that a return has not been filed, or that information has not been
17 supplied pursuant to the provisions of this chapter shall be prima facie evidence thereof.

18 **57-68-76. Records maintained by retailers and users - Examination and**
19 **investigations by commissioner - Access to records.** Every retailer required or authorized
20 to collect taxes imposed by this chapter and every person using, storing, or otherwise
21 consuming in this state tangible personal property shall keep such records, receipts, invoices,
22 and other pertinent papers as the commissioner requires, in such form as the commissioner
23 requires. The commissioner and any of the commissioners duly authorized agents are hereby
24 authorized to examine the books, papers, records, and equipment of any person either selling
25 tangible personal property or liable for the tax imposed by this chapter and investigate the
26 character of the business of any such person in order to verify the accuracy of any return made,
27 or if such return was made by such person, to ascertain and determine the amount due under
28 this chapter. Any such books, papers, and records shall be made available within this state for
29 such examination upon reasonable notice when ordered by the commissioner.

30 **57-68-77. Revocation of retailer's sales tax permit on failure to comply -**
31 **Revocation of corporate authority to do business.** If any retailer maintaining a place of

1 business in this state, who is authorized to collect the tax under section 57-68-56 fails to comply
2 with any of the provisions of this chapter, the commissioner may, upon notice and hearing as
3 hereinafter provided, by order revoke the permit, if any, issued to such retailer under section
4 57-64-83, or if such retailer is a corporation authorized to do business in this state, may certify
5 to the secretary of state a copy of an order finding that such retailer has failed to comply with
6 certain specified provisions, orders, or rules. The secretary of state shall, upon receipt of such
7 certified copy, revoke the permit authorizing said corporation to do business in this state, and
8 shall issue a new permit only when such corporation has obtained from the commissioner an
9 order finding that said corporation has complied with its obligations under this chapter.

10 **57-68-78. Notice and hearing on revocation of permit or authority to do business.**

11 No order authorized in section 57-68-77 shall be made until the retailer is given an opportunity
12 to be heard and show cause why such order should not be made, and shall be given ten days'
13 notice of the time, place, and purpose of such hearing. Such notice shall be served in the
14 manner provided for service of summons in civil actions.

15 **57-68-79. Restoration of revoked sales tax permit.** The commissioner may restore
16 revoked licenses.

17 **57-68-80. Liens.** Section 57-40.3-07.1, providing for creation, notice, recording, and
18 enforcement of liens, applies to and is available for collection of the tax imposed by this chapter
19 and chapter 57-64.

20 **57-68-81. Personal liability of officers of corporation failing to file returns or pay**
21 **tax - Security in lieu of liability - Bonded municipal officials exempt.** If a corporation
22 subject to tax under this chapter fails for any reason to file the required returns or to pay the tax
23 due, any of its officers having control, or supervision of, or charged with the responsibility for
24 making such returns and payments shall be personally liable for such failure. The dissolution of
25 a corporation shall not discharge an officer's liability for a prior failure of the corporation to make
26 a return or remit the tax due. The sum due for such a liability may be assessed and collected
27 as provided by law.

28 If the corporate officers elect not to be personally liable for the failure to file the required
29 returns or to pay the tax due, the corporation shall provide the commissioner with a surety bond
30 or certificate of deposit as security for payment of any tax that may become due. The bond or
31 certificate of deposit provided for in this section shall be in an amount equal to the estimated

1 annual gross receipts multiplied by the applicable sales or excise tax rate. This section does
2 not apply to elected or appointed officials if they are bonded.

3 **57-68-82. Revenue credited to general fund.** All revenue arising under the operation
4 of this chapter shall immediately be turned over to the state treasurer and credited to the
5 general fund.

6 **57-68-83. Floor laying service subject to tax.** The service enumerated in the
7 standard industrial classification manual of 1987 as prepared by the statistical policy division of
8 the office of management of budget, office of the president, as industry no. 1752 floor laying
9 and other floor work, not elsewhere classified, is subject to the tax levied by this chapter.

10 **57-68-84. Exemption of natural gas transportation services by pipeline.** The
11 provision of natural gas transportation services by a pipeline is exempt from the provisions of
12 this chapter and from the computation of the tax imposed by this chapter.

13 **57-68-85. Exemption for the use of credit card processing services.** There are
14 specifically exempted from the provisions of this chapter and from the computation of the
15 amount of tax imposed by it, the use of credit card processing services by retailers.

16 **57-68-86. Tangible property transportation gross receipts tax imposed -**
17 **Transportation to be within state.** There is imposed a tax of four percent on the privilege of
18 the use of any transportation of tangible personal property. The tax imposed by this section
19 shall apply to any transportation of tangible personal property if both the origin and destination
20 of the tangible personal property are within this state.

21 **57-68-87. Passenger transportation tax imposed - Transportation to be within**
22 **state.** There is imposed a tax of four percent on the privilege of the use of any transportation of
23 passengers. The tax imposed by this section shall apply to any transportation of passengers if
24 the passenger boards and exits the mode of transportation within this state.

25 **57-68-88. Inapplicability of tax.** The tax imposed by sections 57-68-86 through
26 57-68-89 does not apply to any transportation service which the state is prohibited from taxing
27 by federal law or the United States Constitution.

28 **57-68-89. Agricultural products transportation by producer exempt from tax -**
29 **Exemptions.** The transportation of agricultural products by the agricultural producer thereof is
30 exempt from the tax imposed by sections 57-68-86 through 57-68-88 if the producer transports
31 such products in a mode of transportation which is owned, leased, or rented by the producer.

1 However, if an agricultural producer transports another person's products for hire, such
2 transportation is subject to the tax imposed by sections 57-68-86 through 57-68-88.

3 **57-68-90. Gross receipts from charge of interest exempted.** There are exempted
4 from the provisions of this chapter and from the corporation of the amount of tax imposed by it,
5 the gross receipts from the charge of interest.

6 **57-68-91. Exemption for use of certain rodeo services.** There are exempted from
7 the provisions of this chapter and from the computation of the amount of tax imposed by it, the
8 use of services provided by promoters, stock contractors, stock handlers, announcers, judges,
9 and clowns.

10 **57-68-92. Exemption of repair shops, locksmiths, locksmith shops, and lock**
11 **parts.** The following services enumerated in the standard industrial classification manual of
12 1987 as prepared by the statistical policy division of the office of management and budget,
13 office of the president, are subject to the tax levied by this chapter; repair shops and related
14 services, not elsewhere classified (industry no. 7699) but only locksmiths, locksmith shops, and
15 lock parts made to individual order.

16 **57-68-93. Exemptions.** There are hereby exempted from the provisions of this chapter
17 and the computation of the tax imposed by it, the use of United States postage.

18 **57-68-94. Auction clerk to file return and remit sales tax -Responsibilities of**
19 **auctioneer - Records.** All auction sales and consignment sales of tangible personal property
20 and services are sales at retail. The auction clerk shall file the return and remit the tax imposed
21 by this chapter on the gross receipts from each auction after applying the deductions provided
22 by section 57-64-121. However, the auctioneer is responsible for the payment of the tax
23 imposed by this chapter if the auction clerk is an employee of the auctioneer or if the auction
24 clerk does not have a permit as required by this chapter. In addition to any other information
25 required to be kept by this chapter, each auction clerk shall keep records that identify the owner
26 of the property sold at auction and the auctioneer who conducts the sale of such property.

27 **57-68-95. Department authorized to issue direct payment permits to certain**
28 **retailers - Application procedure - Direct payment permit defined - Liability for sales tax**
29 **on sale to permit holder - Rules.** The commissioner may authorize a retailer to use a direct
30 payment permit if the retailer purchases goods or services subject to the tax imposed by
31 chapter 57-64. Applicants for a direct payment permit shall apply in writing to the

1 commissioner. A retailer may appeal the denial of a direct payment permit or contest a
2 revocation of a direct payment permit pursuant to chapter 28-32. For purposes of this section,
3 the term "direct payment permit" means a permit issued by the department that allows a holder
4 of the permit to accrue and pay the taxes imposed by chapter 57-64 directly to the department.
5 A retailer that makes a sale to a direct payment permit holder has no liability for sales tax on
6 such sale if the retailer has written evidence of the sale. Such written evidence shall clearly
7 indicate the name of the buyer, the product of service purchased, and the amount of the
8 purchase. The commissioner may adopt rules under chapter 28-32 concerning the
9 administration and use of a direct payment permit.

10 **57-68-96. Exemption for lodging house or hotel membership fees.** There are
11 hereby exempted from the provisions of this chapter and the computation of the tax imposed by
12 it, gross receipts from membership fees paid to any lodging house and hotel membership
13 organization operated for the benefit of its members. However, this exemption does not apply
14 to any membership fee that represents payment for tangible personal property and services
15 provided by the membership organization.

16 **57-68-97. Tax on use of certain mobile telecommunications services.** There is
17 hereby imposed a tax of four percent upon the privilege of the use of mobile
18 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that
19 originate and terminate in the same state and are billed to a customer with a place of primary
20 use in this state. Notwithstanding any other provision of this chapter and for purposes of the tax
21 imposed by this section, the tax imposed upon mobile telecommunication services shall be
22 administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

23 **SECTION 47.** Chapter 57-69 of the North Dakota Century Code is created and enacted
24 as follows:

25 **57-69-01. Tax imposed on prime contractor's receipts from realty improvement**
26 **contracts - Rate of tax.** There is imposed an excise tax upon the gross receipts of all prime
27 contractors engaged in realty improvement contracts, at the rate of two percent.

28 **57-69-02. Application to contracts, sales, and change orders.** This chapter applies
29 to:

- 30 1. All realty improvement contracts;
- 31 2. Receipts from sales of real property under section 57-69-15.

1 Change orders or other amendments to realty improvement contracts or purchase
2 contracts entered into prior to July 1, 2005, are not subject to taxes under this chapter.

3 **57-69-03. Contracts subject to alternative tax.** The tax imposed upon contractors
4 performing realty improvement contracts for those persons subject to tax under chapter 57-05,
5 57-06, 57-32, 57-33, 57-33.1, 57-34, 57-60, or 57-61 or any political subdivision are not to be
6 subject to this chapter and said contracts shall be subject to the contractors' excise tax imposed
7 by chapter 57-70.

8 **57-69-04. Tax measured by gross receipts upon accrual basis.** The tax
9 commissioner shall allow contractors to report and pay contractor's excise tax measured by
10 gross receipts upon an accrual basis if:

- 11 1. The contractor has not changed the contractor's basis in the previous calendar
12 year;
- 13 2. The contractor's records are kept in a manner which may be audited to determine
14 whether contractor's excise tax and use tax are paid for all realty improvement
15 contracts;
- 16 3. The contractor has made a written request to the commissioner for authority to pay
17 tax on the accrual basis; and
- 18 4. Authority to pay tax on the accrual basis applies only to realty improvement
19 contracts commencing after the authority is granted.

20 **57-69-05. Payment of tax on cash basis.** If the tax commissioner has granted a
21 contractor the authority to report and pay contractor's excise tax on the accrual basis and the
22 contractor requests in writing for the authority to report and pay the tax on the cash basis, the
23 tax commissioner may grant such authority if assessment and collection of taxes are not
24 jeopardized.

25 **57-69-06. Taxes on receipts of worthless accounts.** Taxes paid on gross receipts
26 represented by accounts found to be worthless and actually charged off for federal income tax
27 purposes, may be credited upon a subsequent payment of the tax. If such accounts are
28 thereafter collected by the contractor, the tax shall be paid upon the amount so collected.

29 **57-69-07. Contractor's excise tax - When due.** Any person who is the holder of a
30 contractor's excise tax license or is a contractor whose receipts are subject to contractor's
31 excise tax in this state during the periods specified by this section shall make a return and

1 remittance to the tax commissioner on forms prescribed and furnished by the tax commissioner
2 in the following manner:

3 1. Any person whose tax liability is one thousand dollars or more annually shall file
4 the return and remit the tax on or before the twentieth day of the month following
5 each monthly period;

6 2. Any person whose tax liability is less than one thousand dollars annually shall file
7 the return and remit the tax on or before the last day of the month following each
8 two-month period;

9 3. Any person whose tax liability is one thousand dollars or more annually and who
10 remits the tax by electronic transfer to the state shall file the return by electronic
11 means on or before the twenty-third day of the month following each monthly
12 period and remit the tax on or before the second to the last day of the month
13 following each monthly period.

14 The tax commissioner may grant an extension of not more than five days for filing a
15 return and remittance. Unless an extension is granted, the person with the tax liability shall pay
16 the penalty or interest as provided by section 57-64-87 if a return or remittance is not made on
17 time.

18 **57-69-08. Excise tax license - Return and remittance - When due.** The tax
19 commissioner may require or allow a return and remittance to be filed on a monthly, bimonthly,
20 semiannual, or annual basis. The return and remittance is due the last day of the month
21 following the reporting period. For any person issued a temporary or seasonal contractor's
22 excise tax license, the return and remittance may be required at a time determined by the tax
23 commissioner. Section 57-64-87 applies to any return and remittance under this section.

24 **57-69-09. Prime contractors and subcontractors subject to tax.** Prime contractors
25 and subcontractors subject to the tax imposed by this chapter include those enumerated in
26 construction (division c) of the standard industrial classification manual of 1987 as prepared by
27 the statistical policy division of the office of management and budget, office of the President.

28 **57-69-10. Subcontractors - Definition - Certificate issued by prime contractor -**
29 **Tax liability - Misuse of certificate - Government entities not to issue certificates.** For the
30 purpose of this chapter, a subcontractor is a person contracting with a prime contractor to
31 perform all or part of a realty improvement the prime contractor has contracted to perform. For

1 highway construction projects, a subcontractor includes any person contracting with a prime
2 contractor to perform services as part of the project including traffic control, striping, flagging,
3 operation of pilot cars, signing, landscaping, seeding, sodding, mulching, and erosion control.
4 A prime contractor shall issue a certificate to a subcontractor showing the prime contractor's
5 valid contractors' excise tax license number. The form shall be prescribed by the tax
6 commissioner. Any subcontractor who fails to retain a certificate and a record of project
7 designations is considered a prime contractor and is subject to tax under this chapter. Any
8 person not a prime contractor who provides a certificate is liable for tax equal to the amount of
9 tax the person accepting the certificate would have been liable for if the certificate had not been
10 issued. The tax is due at the time the person accepting the certificate would have been
11 required to pay the tax. In addition to any tax or interest due, persons who are not prime
12 contractors providing certificates are liable for a penalty of ten percent of the tax. The United
13 States, the state of North Dakota, or any political subdivision in this state may not issue a
14 certificate.

15 **57-69-11. Prime contractor - Definition.** For the purpose of this chapter, a prime
16 contractor is a person entering into a realty improvement contract or a contract for construction
17 services as enumerated in division c of the standard industrial classification manual, 1987, as
18 prepared by the statistical policy division of the office of management and budget, office of the
19 President, with the United States and its instrumentalities, the state of North Dakota and its
20 subdivisions, or any other state or public corporation, or person. If a contractor engages in
21 services not specifically listed in division c of the standard industrial classification manual, 1987,
22 then the services must entail the construction, building, installation, or repair of a fixture to realty
23 before the gross receipts are subject to the tax imposed by this chapter. Operative builders,
24 industry number 1531, as enumerated in the standard industrial classification manual, 1987, as
25 prepared by the statistical policy division of the office of management and budget, office of the
26 President, are prime contractors regardless of whether they perform construction work
27 themselves or contract with other contractors. A person who is not primarily in the business of
28 making realty improvements and regularly employs persons for the purpose of repairing,
29 maintaining, or making realty improvements for that person's own use and who repairs,
30 maintains, or makes a realty improvement for that person's own use with that person's regular
31 employees is not a prime contractor and is not liable for the tax herein.

1 **57-69-12. Total contract price as basis of tax - Purchased materials.** The tax
2 imposed by this chapter applies to the total contract price, including all labor and materials.
3 Materials include those purchased by the contractor and those purchased by the person who let
4 the contract or that person's designee.

5 **57-69-13. Gross receipts defined - Items not deductible.** For the purpose of this
6 chapter, "gross receipts" means the amount received directly or indirectly in money, credits,
7 property, or other money's worth in consideration of the performance of realty improvement
8 contracts within this state, without any deduction on account of the cost of the property sold, the
9 cost of materials used, the cost of services or labor purchased, amounts paid for interest or
10 discounts or any other expenses whatsoever, nor may any deduction be allowed for losses.
11 Gross receipts include those materials furnished to the prime contractor or subcontractor by the
12 owner or the lessee of the realty improvement. For the purposes of measuring the tax imposed
13 by this chapter, gross receipts include the greater of the cost of fair market value of materials
14 used by a contractor or subcontractor in the performance of a contract regardless of whether
15 the contractor or subcontractor owns or furnishes the materials.

16 **57-69-14. Improvement without contract taxable when sold within four years after**
17 **completion - Exceptions - Determination of gross receipts.** If any person, except for a
18 person making an isolated or occasional realty improvement and who does not hold out as
19 engaging in the business of making realty improvements, makes a realty improvement without a
20 realty improvement contract and subsequently sells the property containing the realty
21 improvement or the realty improvement at any time subsequent to the commencement of the
22 project and within four years of its completion, the gross receipts from the sale of the realty
23 improvement shall be subject to the excise tax imposed on the gross receipts of contractors
24 engaged in realty improvement contracts. In determining the gross receipts from the sale of
25 such realty improvements when land or land and improvements completed four years prior to
26 sale are included in the sale, land and such improvements shall be valued at cost or fair market
27 value, whichever is greater, and the portion of the gross receipts attributable to land or land and
28 improvements completed four years prior to sale shall be deducted from the sale price.

29 **57-69-15. Tax imposed on improvements built for lease - Credit against tax on**
30 **sale - Due date - Exemptions.** There is imposed a tax at the rate provided in section
31 57-69-01, on the fair market value of the improvement upon any person who builds a building

1 for lease by that person or others, with a value of over one hundred thousand dollars. If the
2 realty improvement becomes subject to tax under section 57-69-14, credit for tax due under that
3 section is given for any tax paid under this section. The tax imposed by this section does not
4 apply to the United States, the state of North Dakota and its subdivisions, or a public or
5 municipal corporation in the state of North Dakota. This section applies only to buildings
6 substantially completed after June 30, 2005.

7 **57-69-16. Administration of tax - Sales tax provisions applicable.** The tax
8 commissioner shall enforce and administer this chapter, and as to licensing and reports, it shall
9 be administered in the same manner as the tax imposed by chapter 57-64. For enforcement,
10 penalties, and interest purposes the provisions of chapter 57-64 which are not in conflict with
11 this chapter apply to enforcement, penalties, and interest under this chapter.

12 **57-69-17. Report and payment of tax.** The tax imposed by this chapter shall be
13 reported and paid pursuant to sections 57-69-07 and 57-69-08, upon the receipts received
14 under the contract during the period.

15 **57-69-18. Liens.** Section 57-40.3-07.1 providing for creation, notice, recording, and
16 enforcement of liens, applies to and is available for collection of the tax imposed by this
17 chapter.

18 **57-69-19. Contractors may list excise and use taxes as separate line item on**
19 **contracts and bills.** A contractor may list the contractor's excise tax and any tax imposed
20 under chapter 57-64 or 57-68 as a separate line item on all contracts and bills, both for public
21 and private entities. The line item for excise and other taxes is a part of the contractor's total
22 bill and is collectible from all entities, both public and private.

23 **57-69-20. Contractor to post excise tax license number with building permit for**
24 **realty improvement project.** A contractor shall post the contractor's excise tax license
25 number assigned pursuant to this chapter with the building permit for a realty improvement
26 project.

27 This chapter does not require a building permit if the political subdivision where the
28 realty improvement is located does not require a building permit.

29 **57-69-21. Personal liability of officers of corporation failing to file returns or pay**
30 **tax - Security in lieu of liability - Bonded municipal officials exempt.** If a corporation
31 subject to tax under this chapter fails for any reason to file the required returns or to pay the tax

1 due, any of its officers having control, or supervision of, or charged with the responsibility for
2 making such returns and payments shall be personally liable for such failure. The dissolution of
3 a corporation shall not discharge an officer's liability for a prior failure of the corporation to make
4 a return or remit the tax due. The sum due for such a liability may be assessed and collected as
5 provided by law.

6 If the corporate officers elect not to be personally liable for the failure to file the required
7 returns or to pay the tax due, the corporation shall provide the tax commissioner with a surety
8 bond or certificate of deposit as security for payment of any tax that may become due. The
9 bond or certificate of deposit provided for in this section shall be in an amount equal to the
10 estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This
11 section does not apply to elected or appointed officials of a municipality if they are bonded.

12 **57-69-22. Penalties for violation of chapter.** Any person who:

- 13 1. Makes any false or fraudulent return in attempting to defeat or evade the tax
14 imposed by this chapter is guilty of a class A misdemeanor;
- 15 2. Fails to pay tax due under this chapter within thirty days from the date the tax
16 becomes due is guilty of a class A misdemeanor;
- 17 3. Fails to keep the required records and books or refuses to exhibit these records to
18 the commissioner or the commissioner's agents for the purpose of examination is
19 guilty of a class A misdemeanor;
- 20 4. Fails to file a return required by this chapter within thirty days from the date the
21 return is due is guilty of a class A misdemeanor;
- 22 5. Engages in business under this chapter without obtaining a contractor's excise tax
23 license is guilty of a class A misdemeanor;
- 24 6. Engages in business under this chapter after his contractor's excise tax license has
25 been revoked by the commissioner is guilty of a class C felony;
- 26 7. Violates either subsection 2 or subsection 4 two or more times in any twelve-month
27 period is guilty of a class C felony.
- 28 8. Engages in business under this chapter without obtaining a contractor's excise tax
29 license after having been notified in writing by the commissioner that the person is
30 a contractor subject to the provisions of the contractors' excise tax laws is guilty of
31 a class C felony. It is not a violation of this subdivision if the person engaging in

1 business files an application for a contractor's excise tax license and meets all
2 lawful prerequisites for obtaining such license within three days from receipt of
3 written notice from the tax commissioner.

4 For purposes of this section "person" includes corporate officers having control or
5 supervision of, or charged with the responsibility for making tax returns or payments under
6 section 57-69-21.

7 **57-69-23. Restriction on application of rate increase.** A tax increase imposed under
8 this chapter does not apply to the gross receipts of realty improvement contracts bid or entered
9 into on or before the effective date of the tax increase.

10 **57-69-24. Contractor's excise tax license required - Application - Signature.** Every
11 contractor or person engaging in a business in this state whose receipts are subject to tax
12 under this chapter shall file with the commissioner an application for a contractor's excise tax
13 license. Every application shall be made upon a form prescribed by the commissioner and shall
14 set forth the name under which the applicant transacts or intends to transact business, the
15 location of the applicant's place of places of business, and such other information as the tax
16 commissioner may require. The application shall be signed by the owner, if a natural person; in
17 the case of an association or partnership, by a member or partner thereof; or in the case of a
18 corporation, by an executive officer thereof or some person specifically authorized by the
19 corporation to sign the application, to which shall be attached the written evidence of the
20 signer's authority.

21 **57-69-25. Issuance of license - Assignment prohibited.** The tax commissioner shall
22 grant and issue to each applicant a contractor's excise tax license. A license is not assignable
23 and shall be valid only for the person in whose name it is issued. Any license issued is valid
24 and effective without further payment of fees until canceled or revoked.

25 **57-69-26. Refusal to issue licensure of failure to pay tax - Bond.** The tax
26 commissioner may refuse to issue a license to any person who is delinquent in payment of the
27 contractor's excise tax or use tax levied by this state. The tax commissioner may require an
28 applicant to furnish bond to the state, or other adequate security, as security for payment of any
29 contractor's excise tax and use tax that may become due, or require a bond or security as a
30 condition precedent to continuing in business as a contractor.

1 **57-69-27. Exemption for floor laying.** The service industry no. 1752 floor laying and
2 other floor work, not elsewhere classified enumerated in the standard industrial classification
3 manual of 1987 as prepared by the statistical policy division of the office of management and
4 budget, office of the President, is exempt from the provisions of this chapter.

5 **57-69-28. Exemption of repair shops, locksmiths, and locksmith shops.** The
6 following services enumerated in the standard industrial classification manual of 1987 as
7 prepared by the statistical policy division of the office of management and budget, office of the
8 President, are exempt from the provisions of this chapter: repair shops and related services,
9 not elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops.

10 **57-69-29. Rules.** The tax commissioner may adopt rules under chapter 28-32
11 concerning:

- 12 1. Licensing, including bonding and filing license applications;
- 13 2. The filing of returns and payment of the tax;
- 14 3. Determining the application of the tax and exemptions;
- 15 4. Taxpayer record-keeping requirements; and
- 16 5. Determining auditing methods.

17 **SECTION 48.** Chapter 57-70 of the North Dakota Century Code is created and enacted
18 as follows:

19 **57-70-01. Tax imposed on receipts from certain realty improvement contracts -**
20 **Rate of Tax.** There is imposed an excise tax upon the gross receipts of all prime contractors
21 and subcontractors engaged in realty improvements contracts for those persons subject to tax
22 under chapter 57-05, 57-06, 57-32, 57-33, 57-33.1, 57-34, 57-60, or 57-61 or any municipal
23 utility or rural water system, at the rate of two percent.

24 **57-70-02. Tax measured on accrual basis.** The tax commissioner shall allow
25 contractors to report and pay contractor's excise tax measured by gross receipts upon an
26 accrual basis if:

- 27 1. The contractor has not changed the contractor's basis in the previous calendar
28 year;
- 29 2. The contractor's records are kept in a manner which may be audited to determine
30 whether contractor's excise tax and use tax are paid for all realty improvement
31 contracts;

1 3. The contractor has made a written request to the tax commissioner for authority to
2 pay tax on the accrual basis; and

3 4. Authority to pay tax on the accrual basis applies only to realty improvement
4 contracts commencing after the authority is granted.

5 **57-70-03. Tax paid on cash basis.** If the tax commissioner has granted a contractor
6 the authority to report and pay contractor's excise tax on the accrual basis and the contractors
7 requests in writing for the authority to report and pay the tax on a cash basis, the tax
8 commissioner may grant such authority if assessment and collection of taxes are not
9 jeopardized.

10 **57-70-04. Taxes on receipts of worthless accounts.** Taxes paid on gross receipts
11 represented by accounts found to be worthless and actually charged off for federal income tax
12 purposes, may be credited upon a subsequent payment of the tax. If such accounts are
13 thereafter collected by the contractor, the tax shall be paid upon the amount so collected.

14 **57-70-05. Computation of excise tax.** Any person who is the holder of a contractor's
15 excise tax license or is a contractor whose receipts are subject to contractor's excise tax in this
16 state during the periods specified by this section shall make a return and remittance to the tax
17 commissioner on forms prescribed and furnished by the tax commissioner in the following
18 manner:

19 1. Any person whose tax liability is one thousand dollars or more annually, shall file
20 the return and remit the tax on or before the twentieth day of the month following
21 each monthly period;

22 2. Any person whose tax liability is less than one thousand dollars annually, shall file
23 the return and remit the tax on or before the last day of the month following each
24 two-month period;

25 3. Any person whose tax liability is one thousand dollars or more annually and who
26 remits the tax by electronic transfer to the state, shall file the return by electronic
27 means on or before the twenty-third day of the month following each monthly
28 period and remit the tax on or before the second the last day of the month following
29 each monthly period.

30 The tax commissioner may grant an extension of not more than five days for filing a
31 return and remittance. Unless an extension is granted, the person with the tax liability shall pay

1 the penalty or interest as provided by section 57-64-87 if a return or remittance is not made on
2 time.

3 **57-70-06. Excise tax - Schedule of filing return and remittance.** The tax
4 commissioner may require or allow a return and remittance to be filed on a monthly, bimonthly,
5 semiannual, or annual basis. The return and remittance is due the last day of the month
6 following the reporting period. For any person issued a temporary or seasonal contractor's
7 excise tax license, the return and remittance may be required at a time determined by the tax
8 commissioner. Section 57-64-87 applies to any return and remittance under this section.

9 **57-70-07. Prime contractors and subcontractors subject to tax.** Prime contractors
10 and subcontractors subject to the tax imposed by this chapter include those enumerated in
11 construction (division c) of the standard industrial classification manual of 1987 as prepared by
12 the statistical policy division of the office of management and budget, office of the President. If
13 a contractor engages in services not specifically listed in division c of the Standard Industrial
14 Classification Manual, 1987, then the services must entail the construction, building, installation,
15 or repair of a fixture to realty before the gross receipts are subject to the tax under this chapter.

16 **57-70-08. Total contract price as basis of tax.** The tax imposed by this chapter shall
17 apply to the total contract price including all labor and materials.

18 **57-70-09. Gross receipts defined - Items not deductible.** For the purpose of this
19 chapter, "gross receipts" means the amount received in money, credits, property, or other
20 money's worth in consideration of the performance of realty improvement contracts within this
21 state, without any deduction on account of the cost of the property sold, the cost of materials
22 used, the cost of services or labor purchased, amounts paid for interest or discounts, or any
23 other expenses whatsoever, nor shall any deduction be allowed for losses.

24 **57-70-10. Improvement without contract taxable when sold within four years after**
25 **completion - Exceptions - Determination of gross receipts.** If any person, except for a
26 person making an isolated or occasional realty improvement and who does not hold out as
27 engaging in the business of making realty improvements, make a realty improvement without a
28 realty improvement contract and subsequently sells the property containing the realty
29 improvement or the realty improvement at any time subsequent to the commencement of the
30 project and within four years of its completion, the gross receipts from the sale of the realty
31 improvement shall be subject to the excise tax imposed on the gross receipts of contractors

1 engaged in realty improvement contracts. In determining the gross receipts from the sale of
2 such realty improvements when land or land and improvements completed four years prior to
3 sale are included in the sake, land and such improvements shall be valued at cost or fair market
4 value, whichever is greater, and the portion of the gross receipts attributable to land or land and
5 improvements completed four year prior to sale shall be deducted from the sale price.

6 **57-70-11. Administration of tax - Sales tax provisions applicable.** The tax
7 commissioner shall enforce and administer this chapter, and as to licensing and report, it shall
8 be administered in the same manner as the tax imposed by chapter 57-64. For enforcement,
9 penalties, and interest purposes the provisions of chapter 57-64 which are not in conflict with
10 this chapter apply to enforcement, penalties, and interest under this chapter.

11 **57-70-12. Report and payment of tax.** The tax imposed by this chapter shall be
12 reported and paid pursuant to sections 57-70-05 and 57-70-06 upon receipts received under
13 the contract during the period.

14 **57-70-13. Liens.** Section 57-40.3-07.1 providing for creation, notice, recording, and
15 enforcement of liens, applies to and is available for collection of the tax imposed by this
16 chapter.

17 **57-70-14. Contractors may list excise and use taxes as separate line item on**
18 **contracts and bill.** A contractor may list the contractor's excise tax and any tax imposed under
19 chapter 57-64 or 57-68 as a separate line item on all contracts and bills, both for public and
20 private entities. The line item for excise and other taxes is a part of the contractor's total bill
21 and is collectible from all entities, both public and private.

22 **57-70-15. Contractor to post excise tax license number with building permit for a**
23 **realty improvement contract.** A contractor shall post the contractor's excise tax license
24 number assigned pursuant to this chapter with the building permit for a realty improvement
25 contract. This chapter does not require a building permit if the political subdivision where the
26 realty improvement is located does not require a building permit.

27 **57-70-16. Personal liability of officers of corporation failing to file returns or pay**
28 **tax - Security in lieu of liability - Bonded municipal officials exempt.** If a corporation
29 subject to tax under this chapter fails for any reason to file the required returns or to pay the tax
30 due, any of its officers having control, or supervision of, or charged with the responsibility for
31 making such returns and payments shall be personally liable for such failure. The dissolution of

1 a corporation shall not discharge an officer's liability for a prior failure of the corporation to make
2 a return or remit the tax due. The sum due for such a liability may be assessed and collected
3 as provided by law.

4 If the corporate officers elect not to be personally liable for the failure to file the required
5 returns or to pay the tax due, the corporation shall provide the tax commissioner with a surety
6 bond or certificate of deposit as security for payment of any tax that may become due. The
7 bond or certificate of deposit provided for in this section shall be in an amount equal to the
8 estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This
9 section does not apply to elected or appointed officials of a municipality if they are bonded.

10 **57-70-17. Penalties for violation of chapter.** Any person who:

- 11 1. Makes any false or fraudulent return in attempting to defeat or evade the tax
12 imposed by this chapter is guilty of a class A misdemeanor;
- 13 2. Fails to pay tax due under this chapter within thirty days from the date the tax
14 becomes due is guilty of a class A misdemeanor;
- 15 3. Fails to keep the required records and books or refuses to exhibit these records to
16 the commissioner or the commissioner's agents for the purpose of examination is
17 guilty of a class A misdemeanor;
- 18 4. Fails to file a return required by this chapter within thirty days from the date the
19 return is due is guilty of a class A misdemeanor;
- 20 5. Engages in business under this chapter without obtaining a contractor's excise tax
21 license is guilty of a class A misdemeanor;
- 22 6. Engages in business under this chapter after his contractor's excise tax license
23 has been revoked by the tax commissioner is guilty of a class C felony;
- 24 7. Violates either subsection 2 or subsection 4 two or more times in any twelve-month
25 period is guilty of a class C felony;
- 26 8. Engages in business under this chapter without obtaining a contractor's excise tax
27 license after having been notified in writing by the tax commissioner that the
28 person is a contractor subject to the provisions of the contractors' excise tax laws
29 is guilty of a class C felony. It is not a violation of this subdivision if the person
30 engaging in business files an application for a contractor's excise tax license and

1 meets all lawful prerequisites for obtaining such license within three days from
2 receipt of written notice from the tax commissioner.

3 For purposes of this section "person" includes corporate officers having control or
4 supervision of or charged with the responsibility for making tax returns or payments under
5 section 57-70-16.

6 **57-70-18. Prospective application of increases in tax.** A tax increase imposed
7 under this chapter does not apply to the gross receipts of realty improvement contracts bid or
8 entered into on or before the effective date of the tax increase.

9 **57-70-19. Contractor's excise tax license required - Application - Signature.** Every
10 contractor or person engaging in a business in this state whose receipts are subject to tax
11 under this chapter shall file with the tax commissioner an application for a contractor's excise
12 tax license. Every application shall be made upon a form prescribed by the tax commissioner
13 and shall set forth the name under which the applicant transacts or intends to transact
14 business, the location of the applicant's place or places of business, and such other information
15 as the tax commissioner may require. The application shall be signed by the owner, if a natural
16 person; in the case of an association or partnership, by a member or partner thereof; or in the
17 case of a corporation, by an executive officer thereof or some person specifically authorized by
18 the corporation to sign the application, to which shall be attached the written evidence of the
19 signer's authority.

20 **57-70-20. Issuance of license - Assignment prohibited.** The tax commissioner shall
21 grant and issue to each applicant a contractor's excise tax license. A license is not assignable
22 and shall be valid only for the person in whose name it is issued. Any license issued is valid
23 and effective without further payment of fees until canceled or revoked.

24 **57-70-21. Refusal to issue license for failure to pay tax - Bond.** The tax
25 commissioner may refuse to issue a license to any person who is delinquent in payment of
26 contractor's excise tax or use tax levied by this state. The tax commissioner may require an
27 applicant to furnish bond to the state, or other adequate security, as security for payment of any
28 contractor's excise tax and use tax that may become due, or require a bond or security as a
29 condition precedent to continuing in business as a contractor.

30 **57-70-22. Exemption for floor laying.** The
31 service industry no. 1752 floor laying and other floor work,

1 not elsewhere classified enumerated in the standard industrial
2 classification manual of 1987 as prepared by the statistical
3 policy division of the office of management and budget, office of
4 the President, is exempt from the provisions of this chapter.

5 **57-70-23. Exemption of repair shops, locksmiths, and locksmith shops.** The
6 following services enumerated in the standard industrial classification manual of 1987 as
7 prepared by the statistical policy division of the office of management and budget, office of the
8 President, are exempt from the provisions of this chapter; repair shops and related services, not
9 elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops.

10 **57-70-24. Rules.** The tax commissioner may adopt rules under chapter 28-32
11 concerning:

- 12 1. Licensing, including bonding and filing license applications;
- 13 2. The filing of returns and payment of the tax;
- 14 3. Determining the application of the tax and exemptions;
- 15 4. Taxpayer record-keeping requirements; and
- 16 5. Determining auditing methods.

17 **SECTION 49. AMENDMENT.** Section 65-04-26 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **65-04-26. Lien priority and filing - Remedies available in action for delinquent**
20 **premiums - Exemptions restricted.** The claim of the organization in bankruptcy, probate,
21 insolvency, and receivership proceedings for premiums in default and penalties is a lien with the
22 same priority as prior income tax liens, except that this lien is not enforceable against a
23 purchaser (including a lien creditor) of real estate or personal property for valuable
24 consideration without notice. Notice of this lien must be filed in the place and manner provided
25 for in section 57-38-49. A certificate of the organization that premiums and penalties are due
26 for the period stated in the certificate is prima facie evidence of this fact. In any action brought
27 for the recovery of premiums in default and penalties, the remedies of garnishment or
28 attachment, or both, are available. No exemptions except absolute exemptions under section
29 28-22-02 may be allowed against any levy under execution pursuant to judgment recovered in
30 the action.

1 **SECTION 50. REPEAL.** Chapter 10-30.1, sections 10-33-124, 40-63-09, and chapters
2 52-02.1, 57-38, 57-38.1, 57-38.3, 57-38.4, 57-38.5, 57-38.6, 57-39.2, 57-39.3, 57-39.5, 57-39.6,
3 and 57-40.2 of the North Dakota Century Code are repealed.

4 **SECTION 51. EFFECTIVE DATE.** This Act is effective for taxable events occurring
5 after June 30, 2005, except the provisions of this Act relating to income tax and financial
6 institutions tax changes are effective for taxable years beginning after December 31, 2004.