

TITLE 57

Taxation

Summary of Bills Enacted by 2007 Legislative Assembly

This memorandum summarizes 2007 legislation primarily affecting North Dakota Century Code Title 57. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to taxation may be classified in these subject areas: property taxes; income taxes; sales, use, and motor vehicle excise taxes; coal taxes; oil and gas taxes; fuels taxes; emergency services communication fees; and tax administration.

PROPERTY TAXES

House Bill No. 1303 requires counties to use soil type and classification data from detailed and general soil surveys in agricultural property assessment. In determining relative value of assessment parcels of agricultural property, assessors must apply three considerations, listed in descending order of significance, for soil type and classification data from detailed or general soil surveys, a schedule of modifiers to adjust agricultural property assessments, and actual use of the property for cropland or noncropland purposes by the owner of the parcel. By February 1 of each year, the county director of tax equalization is required to provide all assessors within the county a schedule of modifiers to adjust agricultural property assessments and the schedule for each county must be approved by the state supervisor of assessments. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys for any taxable year after 2009, the Tax Commissioner must direct the State Treasurer to withhold 5 percent of the county's allocation each month from the state aid distribution fund. The bill requires that during the 2007-08 interim, each county that has not fully implemented use of soil type and soil classification data from detailed and general soil surveys must report to the Legislative Council the reason for failure to implement use of that information and the anticipated date when the county will have fully implemented use of that information.

House Bill No. 1332 reduces from four years to two years the time for foreclosure of a tax lien and issuance of a tax deed to the county for delinquent property taxes. The board of county commissioners may waive all or part of penalties and interest on delinquent property taxes if the board believes the reduced foreclosure period for tax liens creates a hardship for taxpayers.

House Bill No. 1446 increases the township excess levy limit from 50 percent to 100 percent over the basic legal limitations.

Senate Bill No. 2172 provides that the homestead property tax exemption for a paraplegic disabled veteran is limited to \$120,000 of true and full valuation of the property. For a disabled veteran with a service-connected disability of 50 percent or greater, the income limitation for the exemption is eliminated and the individual is entitled to a percentage exemption against the first \$120,000 of true and full valuation of the property equal to the percentage of the individual's certified rated service-connected disability. The bill provides that after the initial filing of a claim for homestead exemption for a disabled veteran, the exemption is automatically renewed each following year until a change of status occurs. A board of county commissioners may approve a resolution to disallow exemptions for disabled veterans within the county.

House Bill No. 1071 removes obsolete references from property tax laws, requires deposit in the state medical center fund of revenue equal to one mill of property taxes for all homestead property exemptions allowed by law, and updates statutory references to reflect changes previously made in other tax laws.

Senate Bill No. 2200 revises the allocation of state funding assistance for elementary and secondary education. The bill removes a provision from the school district general fund levy limitation law which allowed increased levy authority for school districts in which total assessed valuation of property increased 20 percent or more from the prior year, resulting in a loss of state aid payments to the school district because of the valuation increase.

Senate Bill No. 2299 allows cities to establish property valuations that recognize the supply of vacant lots available for sale in the city.

House Bill No. 1072 moves the statutory provisions regarding taxable valuation of centrally assessed wind turbine electric generators from the general property assessment chapter to the chapter on centrally assessed property.

House Bill No. 1317 reduces the taxable valuation of a centrally assessed wind turbine electric generation unit with a nameplate capacity of 100 kilowatts or more from 3 percent to 1.5 percent of assessed value if construction of the unit is completed after June 30, 2007, and before January 1, 2011.

House Bill No. 1018 makes corrections to the amendment in House Bill No. 1317 to reduce the taxable valuation of a centrally assessed wind turbine electric generation unit with a nameplate capacity of 100 kilowatts or more from 3 percent to 1.5 percent of assessed value if construction of the unit is completed after June 30, 2006, and before January 1, 2011.

Senate Bill No. 2137 allows use of the county emergency fund to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than 60 days preceding the determination.

Senate Bill No. 2205 requires adjustment in the maximum property tax levy for counties to reduce property taxes to reflect the transfer of employees and equipment from regional child support enforcement agencies to the Department of Human Services.

House Bill No. 1312 allows a school district property tax levy increase in tax years 2007 through 2011 to make up for revenue losses attributable to a mistake in the 2006 levy.

House Bill No. 1073 requires exclusion of carbon dioxide pipeline property, for which payments in lieu of taxes are required, from valuation of property in a taxing district for purposes of determining the mill rate for the taxing district.

House Bill No. 1139 allows a resolution of the board of county commissioners retroactively to authorize use of excess farm-to-market road tax levies to apply to road programs subject to elections before August 1, 1987.

Senate Bill No. 2088 allows submission of a written determination of disability from the Social Security Administration to qualify an individual as permanently and totally disabled under the homestead property tax credit.

House Bill No. 1186 provides that when property taxes are paid under protest, the uncontested amount of taxes paid under protest may be allocated among taxing districts immediately as provided by law and only the contested amount of taxes paid under protest must be retained until the protest is decided. The uncontested amount of taxes is defined as the amount that would be payable if the application for abatement, adjustment, or refund is approved by the board of county commissioners as submitted.

Senate Bill No. 2032 increases the maximum income to qualify for the homestead property tax credit from \$14,500 to \$17,500 and increases the maximum amount of property covered by the exemption from \$67,511 to \$75,000 of true and full valuation. The amount of an assessment increase for property which triggers the requirement for written notice to a property owner is reduced from a 15 percent increase to a 10 percent increase. The time the notice of assessment increases must be delivered to property owners

is increased from 10 to 15 days before the meeting of the local board of equalization. The time for which voters may approve unlimited or increased school district general fund levies is limited to not more than 10 years. The number of petition signatures required to place the question of discontinuing increased or unlimited school district general fund levy authority on the ballot is reduced from 20 percent of the persons in the school census to 10 percent of the number of electors who cast votes in the most recent school district election. Real estate and mobile home tax statements must include, or be accompanied by a separate sheet, with three columns showing, for the year of the tax statement and the two preceding tax years, the property tax levy in dollars against the property by the county and school district and any city or township that levied taxes against the property. The bill also provides income tax credits, which are summarized in the **income taxes** section of this memorandum.

INCOME TAXES

Senate Bill No. 2032 provides an income tax marriage penalty credit of up to \$300 per couple to offset any marriage penalty incurred for couples with income up to \$154,200. A homestead income tax credit is provided for individuals for taxable years 2007 and 2008 in the amount of 10 percent of property taxes or mobile home taxes that became due during the tax year and have been paid on the individual's homestead. For purposes of the credit, "homestead" means the dwelling occupied as a primary residence in this state and any residential or agricultural property owned by the individual in this state. The amount of the homestead income tax credit for a year may not exceed \$1,000 for married persons filing a joint return or \$500 for a single individual or married individuals filing separate returns. The amount of the homestead income tax credit exceeding the taxpayer's income tax liability may be carried forward for up to five years or the taxpayer may request that the Tax Commissioner issue the taxpayer a certificate in the amount of the excess. A certificate issued to a taxpayer may be used by the taxpayer against property or mobile home tax liability during the ensuing taxable year by delivering the certificate to the county treasurer of the county in which the taxable property or mobile home is subject to taxes. The county treasurer is to forward certificates redeemed in payment of tax obligations to the Tax Commissioner, who is to issue payment to the county in the amount of the certificates. A commercial property income tax credit is provided for an individual or corporation for taxable years 2007 and 2008 in the amount of 10 percent of commercial property taxes or commercial mobile home taxes that became due during the income tax year and have been paid. The amount of the credit for commercial property for a year may not exceed \$1,000 for any taxpayer and is limited for individuals to \$1,000 for married persons filing a joint return or \$500 for a single individual or married individuals filing separate returns.

House Bill No. 1018 provides an individual and corporate income tax credit for angel fund investments, internship employment, and workforce recruitment for hard-to-fill employment positions and expands the income tax credit for research and experimental expenditures to apply to individual taxpayers. The aggregate amount of seed capital investment tax credits allowed is increased from \$2.5 million to \$3.5 million for each calendar year and biofuels production facilities are added to businesses for which agricultural business investment tax credits are available.

Senate Bill No. 2224 allows investments by an angel fund to be eligible for the seed capital investment income tax credit.

House Bill No. 1412 makes the research and experimental expenditures income tax credit available to a passthrough entity.

Senate Bill No. 2091 establishes April 15, or the date prescribed by the Internal Revenue Service, as the filing date for financial institutions and corporate income tax returns for shortened tax years.

Senate Bill No. 2083 establishes a time limit of four years for the Tax Commissioner to audit seed capital investment tax credit or agricultural business investment tax credit claims.

Senate Bill No. 2298 provides that for geothermal, solar, or wind energy devices installed after December 31, 2006, if ownership of the device is transferred at the time installation is complete, the purchaser of the device is eligible for the income tax credit for such devices.

House Bill No. 1514 adds biomass energy devices to the income tax credit available for installation of geothermal, solar, or wind energy devices.

Senate Bill No. 2084 revises the provisions governing certification by the director of the Department of Commerce Division of Economic Development and Finance for businesses qualified to receive investments eligible for the seed capital investment income tax credit. Adjustments are made to calculation of the maximum annual credit a taxpayer may claim for the seed capital investment income tax credit.

Senate Bill No. 2079 rearranges individual income tax provisions governing filing on Form ND-1. References to tax credits are arranged in a single subsection and a reference is removed to unused federal credit for prior year minimum tax.

Senate Bill No. 2078 revises administrative provisions of the family care income tax credit. Disability determination for a qualifying family member will be determined under the Social Security Act and care expenses will be required to be deductible medical expenses under the Internal Revenue Code. A provision relating to prorating the credit among taxpayers who contribute to qualified care expenses is eliminated.

House Bill No. 1091 allows an individual income tax deduction for up to \$5,000, or \$10,000 on a joint return, for contributions under a higher education savings plan administered by the Bank of North Dakota.

House Bill No. 1233 allows assignment of a wind energy device installation income tax credit but the assignment may be made only to the purchaser of the power under a power purchase agreement or to a taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007.

Senate Bill No. 2081 revises provisions of the agricultural business investment income tax credit to provide that qualified investments must be in the form of cash or a fee simple interest in real property in this state and revises the provisions for certification of qualified businesses and limitations on the credit. The carryforward for excess credits is extended from 5 to 10 years.

Senate Bill No. 2082 revises administrative provisions governing determination of the credit for income taxes paid to another state.

Senate Bill No. 2363 expands the individual income tax credit for planned gifts to nonprofit organizations to provide a corporate income tax credit and to include gifts to qualified endowments. The credit for individuals is increased from 20 percent to 40 percent of the charitable gift and the maximum credit for individuals is increased from \$5,000 per year to \$10,000 per year or \$20,000 for married individuals filing a joint return. The credit for a corporation is 40 percent of a charitable gift to a qualified endowment and the maximum credit for a corporation is \$10,000 per year.

House Bill No. 1403 creates an individual and corporate income tax credit for operation of a microbusiness. A microbusiness is defined as a business employing five or fewer employees inside an economically viable small community. A taxpayer certified as a microbusiness is entitled to a corporate and individual income tax credit equal to 20 percent of new investment and new employment in the microbusiness during the taxable year, limited to not more than \$10,000 in credits over any combination of years.

House Bill No. 1393 provides an individual income tax exemption for income of a taxpayer from activities or sources within the boundaries of any Indian reservation in this state, if the taxpayer resides within the boundaries of any reservation in this state and is an enrolled member of a federally recognized Indian tribe. The bill also provides sales and motor vehicle excise tax exemptions for tribal members, which are summarized in the sales tax portion of this memorandum.

SALES, USE, AND MOTOR VEHICLE EXCISE TAXES

House Bill No. 1393 provides a sales tax exemption for sales on a reservation in this state to an individual who resides on any reservation in this state and is an enrolled member of an Indian tribe and a motor vehicle excise tax exemption for a sale in this state to an individual who resides on any reservation in this state and is an enrolled member of an Indian tribe.

House Bill No. 1012 eliminates the requirement of residency within the boundaries of a reservation in this state for a tribal member to qualify for the motor vehicle excise tax exemption as created by House Bill No. 1393. The bill also reduces the state general fund share of motor vehicle excise tax revenue from 100 percent to 90 percent and requires a deposit of 10 percent in the highway fund. House Bill No. 1012 also would have eliminated the requirement of residency within the boundaries of a reservation in this state for a tribal member to qualify for the motor vehicle excise tax exemption created by House Bill No. 1393 but the Governor vetoed the relevant section of House Bill No. 1012.

House Bill No. 1160 provides a motor vehicle excise tax and aircraft excise tax exemption for the operator of an emergency medical services operation for purchase of a motor vehicle originally manufactured for use as an ambulance or an aircraft for use as an air ambulance.

House Bill No. 1049 provides for reduction and elimination of sales and use taxes on natural gas and other fuels used for heating purposes. On January 1, 2008, the sales and use tax rate for natural gas is reduced from 2 percent to 1 percent, coal used for heating purposes is exempted from sales taxes, the special fuels tax on diesel fuel used as heating fuel is reduced from four cents to two cents per gallon, and the rate of special fuels tax on propane is reduced from 2 percent to 1 percent. On July 1, 2009, sales of natural gas and other heating fuels are exempted from sales and use taxes and special fuels taxes.

House Bill No. 1462 provides a sales and use tax exemption for materials used in compressing, processing, gathering, or refining natural gas and materials used in construction or expansion of an oil refinery.

Senate Bill No. 2113 limits the motor vehicle excise tax exemption for the purchase of motor carrier vehicles engaged in interstate commerce which is measured by the extent their fleet miles outside North Dakota bear to their total fleet miles. The bill adds a limitation that the exemption is only available for motor carrier vehicles titled and registered in North Dakota.

Senate Bill No. 2101 creates a motor vehicle excise tax exemption for a motor vehicle procured by or on behalf of the North Dakota lottery which is to be awarded as a prize in a game or promotion.

Senate Bill No. 2086 places a limit of three years on the time a total loss statement from an insurer may be used as a motor vehicle excise tax credit against the purchase of a replacement vehicle.

Senate Bill No. 2381 provides that the sales and use tax deduction to reimburse retailers for administrative expenses of tax collection is available to a certified service provider performing sales and use tax collection administration for remote sellers under the streamlined sales tax agreement. The amount of the deduction for certified service providers is the amount approved by the streamlined sales and use tax governing board.

House Bill No. 1033 updates a reference to the revised chapter on public improvement contracts for purposes of contractor's performance bonds for payment of use taxes.

Senate Bill No. 2225 eliminates sales and use taxes for sales of bingo cards and substitutes a 3 percent excise tax on gross proceeds from the sale of bingo cards.

House Bill No. 1074 establishes reporting responsibilities for special events promoters under the sales tax laws. A promoter of a special event at which 10 or more special event vendors participate is required

to provide the Tax Commissioner a list identifying each special event vendor within 20 days following the special event.

House Bill No. 1450 provides that under home rule sales and use tax collection agreements with a city or county, the retailer may provide the purchaser a refund equal to the refund to which the purchaser would be entitled if the purchaser filed a refund claim.

House Bill No. 1365 provides that the sales and use tax exemption for power plant repowering or environmental upgrade equipment is available for equipment delivered on or after January 1, 2007, for plants that began construction before July 1, 1991. The bill also expands the exemption for an electrical generating plant burning any type of coal, rather than only lignite coal.

House Bill No. 1014 extended until December 31, 2009, the provision allowing member states to define sourcing rules for sales by florists for purposes of the streamlined sales tax agreement.

Senate Bill No. 2380 is intended to keep North Dakota in compliance with the streamlined sales tax agreement. A definition is provided for "bundled transaction" to determine how to apply sales taxes to transactions involving taxable and nontaxable products sold for one lump sum price. The bill brings statutory provisions into streamlined sales tax agreement compliance relating to the definition of prepared food, requiring states to provide zip code data bases to determine sales taxes in a transaction, identifying the source of sales involving electronic communications, and requiring member states to review and certify that certified service providers and certified automated systems are correctly calculating taxes.

Senate Bill No. 2298 extends the sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment from electrical generating facilities powered by lignite or wind to apply to any other type of electrical power generating facility. The sales tax exemption for materials used to construct agricultural commodity processing facilities is amended to allow the facility to receive the exemption at the time of purchase, rather than by applying for a refund.

COAL TAXES

House Bill No. 1365 extends coal conversion tax benefits for repowering to plants using any type of coal, rather than only lignite coal.

House Bill No. 1093 provides that for the 2007-09 biennium, 3.5 percent of coal conversion tax allocations to the state general fund are instead allocated to the lignite research fund and from July 1, 2009, until July 31, 2018, 5 percent of coal conversion tax allocations to the state general fund must be instead allocated to the lignite research fund.

OIL AND GAS TAXES

House Bill No. 1279 makes permanent the gross production tax exemption for shallow gas during the first 24 months of production, which was scheduled to expire June 30, 2007.

Senate Bill No. 2397 provides an oil extraction tax reduction to 2 percent for the first 75,000 barrels of oil during the first 18 months after completion from a horizontal well drilled and completed in the Bakken formation from July 1, 2007, through June 30, 2008.

House Bill No. 1044 increases allocations to counties from oil and gas gross production taxes by up to \$750,000 per year per county.

Senate Bill No. 2178 allows a county that reaches the annual cap on oil and gas gross production tax revenue to receive an additional \$1 million in revenues if the county levies a total of at least 10 mills for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any additional amount received by the county is not for allocation to political subdivisions within the county but must be credited entirely to the county general fund.

House Bill No. 1128 increases from \$1.3 million to \$3 million per biennium the amount of oil extraction tax revenues to be deposited into the oil and gas research fund.

Senate Bill No. 2419 provides the Governor authority to enter agreements with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation. The state oil and gas gross production tax must apply to all wells within the Fort Berthold Reservation and the state oil extraction tax for trust lands on the Fort Berthold Reservation may not exceed a 6.5 percent rate but may be reduced through negotiation of the agreement. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state. For production from nontrust lands on the Fort Berthold Reservation, the tribe must receive 20 percent of total oil and gas gross production tax collections in lieu of application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state's share of revenue under the agreement is subject to allocation among political subdivisions within the boundaries of the reservation. The bill is ineffective after June 30, 2009, unless by that date the Governor's office notifies the Tax Commissioner and Legislative Council that an agreement has been entered with the Three Affiliated Tribes.

House Bill No. 1395 provides that the first \$700,000 of the state's share of tax revenues from oil produced from wells within the exterior boundaries of the Fort Berthold Reservation must be transferred to the permanent oil tax trust fund.

Senate Bill No. 2178 repeals the statutory permanent oil tax trust fund effective June 30, 2009, if the voters of the state approve the constitutional oil tax trust fund at the 2008 general election, as proposed by 2007 House Concurrent Resolution No. 3045.

FUELS TAXES

House Bill No. 1049 reduces the special fuels tax for diesel fuel used for heating fuel from four cents to two cents per gallon from January 1, 2008, through June 30, 2009, and after that date makes diesel fuel used for heating fuel exempt from the special fuels tax. The bill reduces the rate of tax for propane sold for use as heating fuel from 2 percent to 1 percent effective January 1, 2008, and makes that fuel exempt from special fuels taxes beginning July 1, 2009.

House Bill No. 1348 retains the special fuels special excise tax rate of 2 percent for sales of propane but changes the tax rate to four cents per gallon for diesel fuel and special fuels other than propane.

House Bill No. 1138 allows a refund for emergency medical services operations for taxes paid on motor vehicle fuel, special fuel, and aviation fuel.

Senate Bill No. 2089 eliminates the motor vehicle fuels tax requirement that invoices or sales tickets must include the state fuels tax as a separate item or a statement that the state tax is included in the price.

Senate Bill No. 2085 provides that fuels tax reports must be based on fuel in physical inventory and that reports of physical inventory readings must be provided to the Tax Commissioner on a monthly basis.

Senate Bill No. 2087 provides a definition of E85 fuel for motor vehicle fuels tax purposes and biodiesel for special fuels tax purposes.

EMERGENCY SERVICES COMMUNICATION FEES

Senate Bill No. 2169 provides for imposition and collection of fees for prepaid wireless service and voice over Internet protocol service for emergency 911 service purposes.

Senate Bill No. 2265 provides that a record obtained for emergency 911 services which reveals the address of a person requesting emergency services or reporting an emergency is exempt from the open records law and may be redacted from any records before they are released.

TAX ADMINISTRATION

Senate Bill No. 2006 is the appropriation bill for the office of the Tax Commissioner. The bill increases the annual salary of the Tax Commissioner from \$79,345 to \$83,039 on July 1, 2007, and \$86,360 on June 1, 2008.