Prepared by the North Dakota Legislative Council staff
June 2009

TITLE 57
Taxation
Summary of Bills Enacted by 2009 Legislative Assembly

This memorandum summarizes 2009 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; fuels taxes; oil and gas taxes; coal taxes; emergency services communication fees; and miscellaneous tax provisions.

PROPERTY TAXES

Senate Bill No. 2199 provides property tax relief by appropriating $295 million for the 2009-11 biennium for allocation to school districts to reduce school district property taxes. The bill provides for a reduction of up to 75 mills in school district property tax levies and replacement of the revenue to school districts through mill levy reduction grants. The bill eliminates authority for unlimited levy approval for school districts. The bill establishes a deadline of 2015 for school districts with existing voter-approved excess levies or unlimited levies to obtain voter approval for continuation of a levy of up to a specific number of mills. If voter approval is not obtained by 2015, the school district levy limitation will be subject to statutory provisions allowing a levy based on the number of dollars levied by the school district in the highest of the most recent three years or the 185-mill general fund levy limitation. The bill also provides for transfer of $295 million in 2010 from the permanent oil tax trust fund to the property tax relief sustainability fund to be used for property tax relief allocations after the 2009-11 biennium.

House Bill No. 1400 reduces from 18 percent to 12 percent the amount by which a school district may increase its general fund levy from the previous taxable year, within the 185-mill general fund levy limitation.

Senate Bill No. 2297 changes the taxation of rural electric cooperatives from a tax on gross receipts to a transmission line mile tax and a tax of $1 per megawatt-hour for retail sales to consumers in this state. Cooperative electrical generating plants will remain subject to coal conversion facilities taxes. The taxes are in lieu of real or personal property taxes and an option is provided for investor-owned utilities to opt-in to the taxing system established by the bill. Revenue from the taxes are allocated among political subdivisions based on the location and tax rate for transmission lines and, for distribution companies, are allocated equally based on retail sales locations and the location and tax rate for distribution lines.

Senate Bill No. 2247 increases from $75,000 to $150,000 the value of new single-family and condominium and townhouse residential property which may be exempted from property taxes by the city or county. The bill retains the length of the allowable exemption at up to two taxable years but changes the commencement of the two-year exemption from the year construction is begun to the year construction is completed and the residence is owned and occupied for the first time.

Senate Bill No. 2239 establishes a property tax exemption for new single-family residential property for the year in which construction began and the next two taxable years, if the property remains owned by the builder, remains unoccupied, and the city or county has approved the exemption and special assessments and property taxes on the property are not delinquent. The bill provides that a builder is eligible for exemption of no more than 10 properties under this provision in a taxable year within each jurisdiction that has approved the exemption.

Senate Bill No. 2402 increases the maximum income for individuals aged 65 or older or permanently and totally disabled to qualify for the homestead property tax credit from $17,500 to $26,000. The bill also increases the maximum amount of the homestead credit from $3,375 to $4,500 of taxable valuation. The bill increases the maximum annual refund available to renters who otherwise qualify for the homestead credit from $240 to $400. The bill increases from $50,000 to $75,000 the value of assets of a person that would disqualify the person from the homestead credit.

Senate Bill No. 2201 provides for state payment to political subdivisions for the property tax credit for disabled veterans with an armed forces service-connected disability of 50 percent or greater. The credit is applied to the first $120,000 of true and full value of the individual's homestead and the reduction is equal to the percentage of the individual's disability compensation rating certified by the United States Department of Veterans Affairs. The bill eliminates the option for a county to disallow the property tax credit for disabled veterans.

Senate Bill No. 2244 allows continuation of the farm residence exemption for the surviving spouse of a deceased farmer. The exemption remains available for up to five years after the death of an individual who was an active farmer. The exemption applies for as long as the residence is continuously occupied by the surviving spouse of an individual who was a retired farmer at the time of death. The bill also reduces the capitalization rate used in the agricultural property valuation formula from 8.3 percent in 2008 to 8.0 percent in 2009, 7.7 percent in 2010, and 7.4 percent for 2011. After 2011, the capitalization rate will not be subject to a statutory minimum rate.

Senate Bill No. 2052 extends the deadline from 2009 to 2011 for counties to fully implement use of soil type and soil classification data from detailed or general soil surveys in agricultural property assessments. Failure to meet the deadline will subject the county to a reduction of 5 percent in allocations from the state aid distribution fund until full implementation of soil survey use in agricultural property assessments.

House Bill No. 1234 increases the amount of the property tax exemption for the home owned and occupied by a blind person from a maximum of $5,000 of taxable valuation to a maximum of $7,200 of taxable valuation.

House Bill No. 1401 provides that the State Board of Equalization may not approve valuation and assessment of property in any taxing district if the true and full value for residential and commercial property as assessed in that district exceeds the true and full value for those property classifications as determined by the sales ratio study.

Senate Bill No. 2222 increases the limit on the balance that may be carried in a county emergency fund from 10 mills to 15 mills of taxable valuation of property in the county if the county has a population of 5,000 or fewer.

House Bill No. 1301 provides for conversion to property tax status for manufactured homes that are permanently affixed to real property.

Senate Bill No. 2031 extends from 2011 to 2015 the deadline for completion of construction of a wind turbine electric generation unit with a generation capacity of 100 kilowatts or more to qualify for valuation at 1.5 percent of assessed value to determine taxable valuation of the property.

House Bill No. 1382 provides that all taxable oil or gas pipeline property must be assessed by the State Board of Equalization.

House Bill No. 1505 allows a township to relevy property taxes omitted by mistake in the 2008 tax year.

House Bill No. 1166 eliminates or updates obsolete dates and references in property tax laws.

Senate Bill No. 2089 eliminates obsolete provisions relating to listing and assessment of severed coal and mineral interests.

INCOME TAXES

Senate Bill No. 2199 provides corporate and individual income tax rate reductions. For corporations, five income brackets are reduced to three income brackets and rates are reduced from a range of 2.6 percent to 6.5 percent to a range of 2.1 percent to 6.4 percent of taxable income. For individuals, rates in all brackets are reduced from a range of 2.10 percent to 5.54 percent to a range of 1.84 percent to 4.86 percent of taxable income. The individual rate reductions provide a uniform reduction of approximately 13.4 percent in all brackets.

House Bill No. 1324 eliminates the optional Form ND-2 for individual income tax filers.

Senate Bill No. 2269 imposes additional requirements to qualify for the angel fund investment income tax credit. The new requirements include that the angel fund must be headquartered in North Dakota and invest in a portfolio of at least three early-stage and mid-stage private and nonpublicly traded enterprises, the fund must consist of at least six accredited investors, one individual may not own more than 25 percent of the capitalized investment assets, the fund must have at least $500,000 in commitments from accredited investors, the fund must be member-managed and certified by the Department of Commerce, and the fund must be in compliance with securities laws. The bill prohibits an angel fund from investing in an enterprise if one angel fund investor owns more than 49 percent of the enterprise. The bill limits credits for one angel fund to not more than $5 million during the life of the angel fund.

House Bill No. 1209 created an income tax credit for premiums for long-term care partnership plan insurance coverage. The credit is available for premiums paid during the taxable year by the taxpayer for qualified long-term care partnership plan coverage for the taxpayer or the taxpayer's spouse, or both. The credit is limited for each insured individual to $250 in any taxable year.

House Bill No. 1448 allows certain persons, trusts, or estates that were omitted from coverage under the property tax relief income tax credit in 2007 Senate Bill No. 2032 to claim that credit during the 2009 tax year. The credit is subject to the same conditions and limitations that applied under 2007 Senate Bill No. 2032, except a taxpayer may not request a certificate for the amount of the credit exceeding tax liability. The credit is available to a passthrough entity and must be passed through to the partners, shareholders, or members in proportion to their interests in the passthrough entity.

House Bill No. 1489 adds soybean and canola crushing facility equipment costs to the corporate income tax credit available for biodiesel production facilities. The credit is 10 percent per year for five years of the taxpayer's direct costs to adapt or add equipment to produce crushed soybeans or canola.

Senate Bill No. 2405 adjusts the add-back of a federal income tax deduction for certain qualifying cooperatives to provide for state income tax purposes that if the cooperative elected to pass the deduction through to its patrons, the add-back does not include the amount passed through to patrons.

House Bill No. 1392 provides an income tax deduction for interest charge domestic international sales corporations without economic substance owned by individuals or passthrough entities equal to the amount of actual or deemed distributions to the owners of the corporation.

House Bill No. 1256 provides that qualified dividend income taxed at the same rate as long-term capital gain for federal income tax purposes is eligible for the same 30 percent reduction for state income tax purposes which is available for long-term capital gain.

Senate Bill No. 2388 provides an individual and corporate income tax credit for employers for 25 percent of the reduction in compensation that the employer continues to pay for an employee mobilized for active military duty under Title 10 of the United States Code. The maximum credit for each eligible employee is $1,000. The credit is measured by the difference in pay received by the employee for active military duty and the amount the employee would have received if the employee had not been mobilized, including any related retirement plan contributions.

Senate Bill No. 2033 extends the deadline from 2011 to 2015 for installation of a geothermal, solar, wind, or biomass energy device to qualify for the income tax credit equal to 3 percent per year for five years of the actual cost of acquisition and installation of the device.

House Bill No. 1277 allows the income tax credit for geothermal energy device installation to be claimed on the Form ND-1 income tax return.

House Bill No. 1088 provides that for income tax information subject to the confidentiality provisions provided by law, a court of competent jurisdiction may issue an order or subpoena directing the Tax Commissioner to disclose the information to local, state, or federal law enforcement officials conducting a criminal investigation if the applicant satisfies the court that there is probable cause to believe a specific criminal act has been committed and the return information constitutes evidence relevant to the offense, the return information is sought exclusively for use in a criminal investigation or proceeding, and the information sought cannot reasonably be obtained from another source.

House Bill No. 1199 allows a setoff of income tax refund for debts owed to a fund or program administered by the Insurance Commissioner.

House Bill No. 1086 makes technical corrections of statutory references for financial institutions taxes, the research and experimental expenditure income tax credit, corporate income tax return filing requirements, calculation of interest on refunds relating to carryback of a tax credit, and allocation of gain or loss on the sale of a partnership interest.

Senate Bill No. 2089 provides for add-back of dividends paid by captive real estate investment trusts for income tax purposes.

SALES, USE, AND MOTOR VEHICLE EXCISE TAXES

Senate Bill No. 2040 provides a sales and use tax exemption for equipment used in telecommunications infrastructure development. To be exempt, the property must be incorporated into telecommunications service infrastructure owned by a telecommunications company.

House Bill No. 1289 includes irrigation equipment repair parts in the gross receipts tax exemption available for used farm machinery, farm machinery repair parts, and used irrigation equipment.

Senate Bill No. 2037 includes gas recovered from oil wells for purposes of the sales tax exemption for materials used in compressing, processing, gathering, or refining of gas and requires that, to be exempt, the property must be incorporated in expansion of a system used to compress, process, gather, or refine gas.

Senate Bill No. 2032 extends the deadline from 2011 to 2015 for the exemption from sales and use taxes for materials used in construction or expansion of a wind-powered facility.

Senate Bill No. 2035 removes the limitation that beneficiated coal must have been subject to severance taxes before being exempt from sales taxes. The bill also extends the sales and use tax exemption for power plant equipment to cover the equipment for an electrical generating plant that converts beneficiated coal into electrical power.

Senate Bill No. 2184 provides for exclusion from motor vehicle excise taxes of motor vehicle manufacturers' incentives or discounts that reduce the amount paid by the purchaser.

Senate Bill No. 2201 adds an emergency clause to provide a May 1, 2009, effective date for the motor vehicle excise tax exclusion for manufacturers' incentives or discounts under Senate Bill No. 2184.

Senate Bill No. 2012 reduces the 2009-11 biennium state general fund share of motor vehicle excise tax revenues from 100 percent to 75 percent and provides that 25 percent of the revenues are to be transferred to the highway fund. The bill eliminates withholding of one cent per gallon from fuels tax refunds for deposit in the township highway aid fund and provides instead for a direct allocation from the highway tax distribution fund to the township highway fund.

House Bill No. 1083 eliminates the once per biennium accelerated due date for sales tax returns which required taxes collected during May of each odd-numbered year to be payable by June 22 of that year.

Senate Bill No. 2090 makes a technical correction in the sales tax exemption for residents of an adjoining state that does not impose sales taxes to allow the exemption to be claimed by legal entities other than individuals. The change was deemed necessary when it was determined that corporate farming operations in Montana were not entitled to the exemption when purchasing new farm machinery in North Dakota.

Senate Bill No. 2053 extends the sales and use tax exemption for purchases by federal, state, and local governments to also include sales to an Indian tribal government agency, instrumentality, or political subdivision that performs essential government functions.

Senate Bill No. 2325 makes conforming changes to sales, use, and gross receipts tax laws for compliance with the streamlined sales and use tax agreement.

Senate Bill No. 2347 provides a sales and use tax exemption for the sale of items delivered electronically, including specified digital products.

House Bill No. 1131 provides that the motor vehicle excise tax credit for a leased vehicle that is stolen or totally destroyed may not exceed the total amount of motor vehicle excise tax that has actually been paid under the lease. The bill also provides for use of the average value of a similar motor vehicle lease to determine the tax due when a motor vehicle lease is a gift or other agreement for nominal value.

House Bill No. 1082 makes technical corrections in provisions of sales and motor vehicle excise tax laws.

House Bill No. 1042 makes technical corrections in sales and use tax laws.

House Bill No. 1088 provides an exception to the confidentiality provisions governing sales tax administration to allow a court of competent jurisdiction to issue an order or subpoena directing the Tax Commissioner to disclose sales tax return information to local, state, or federal law enforcement officials conducting a criminal investigation if the applicant satisfies the court that there is probable cause to believe that a specific criminal act has been committed and the return information constitutes evidence of a criminal offense, the return information is sought exclusively for use in a criminal investigation or proceeding, and the information cannot reasonably be obtained from another source.

Senate Bill No. 2006 provides an adjustment in use of aircraft excise tax revenue deposited in the Aeronautics Commission special fund to allow the Aeronautics Commission to increase its share from providing matching funds to provide up to 90 percent of the project costs for airport projects.

FUELS TAXES

Senate Bill No. 2388 provides for deposit of up to $1.6 million per biennium in the highway-rail grade crossing safety projects fund from special fuels taxes paid by railroads on diesel fuels. The bill provides an appropriation for grants by the Department of Transportation for highway-rail grade crossing safety projects.

Senate Bill No. 2375 allows use of dyed special fuel by a city that has computerized fuel dispensing equipment that allows tracking of fuel usage by the city's vehicles and requires the city to pay taxes appropriate for that usage.

Senate Bill No. 2224 allows a special fuels tax refund for fuel used in a truck or trailer refrigeration unit that has a separate supply tank.

House Bill No. 1082 makes technical corrections in motor vehicle excise and special fuels tax laws.

OIL AND GAS TAXES

House Bill No. 1235 provides a contingent rate reduction in the oil extraction tax, which reduces the oil extraction tax rate for horizontal wells from 6.5 percent to 2 percent during the time the rate reduction is in effect. Existing law provides a complete oil extraction tax exemption that triggers into effect if the price of oil for five consecutive months remains below the trigger price. April 2009 would have been the fifth consecutive month below the trigger price but the average price for April rose to an amount exceeding the trigger price, which meant that the exemptions under existing law did not trigger into effect. Because the exemptions did not trigger into effect, the rate reduction provided by House Bill No. 1235 became effective May 1, 2009, and will remain in effect until the first day of the month following a month in which the average price of a barrel of crude oil exceeds $70. The rate reduction applies to oil produced during the first 18 months after completion for a horizontal well and is limited to the first 75,000 barrels or the first $4.5 million of gross value at the well of oil produced from the well. If the rate reduction is effective on the date of completion of a well, the rate reduction applies to production from that well for up to 18 months after completion, even if the price of oil rises to more than $70. If the rate reduction is ineffective on the date of completion of a well, the rate reduction does not apply to production from that well at any time.

Senate Bill No. 2034 provides an oil extraction tax exemption for incremental production from a tertiary recovery project that uses carbon dioxide to enhance oil recovery.

House Bill No. 1304, as amended by House Bill No. 1324, significantly increases allocation of oil and gas gross production taxes to political subdivisions and the oil and gas impact grant fund. From the tax equal to the first 1 percent of gross value at the well of oil production, a direct allocation of $500,000 is created for a city in an oil-producing county which has a population of 7,500 or more and more than 2 percent of its employment engaged in the mining industry. The allocation is increased to $1 million if the city's employment in the mining industry exceeds 7.5 percent of its employment. Also from the tax equal to the first 1 percent of value of oil produced, the biennial allocation to the oil and gas impact grant fund is increased from $6 million to $8 million per biennium. The bill makes several changes in allocations of oil and gas gross production tax revenue to political subdivisions. The bill increases from $1 million to $2 million the initial amount of tax revenue allocated 100 percent to the producing county. The bill removes the caps on tax revenue allocations to counties but provides that the amount exceeding $18 million of annual revenue to a county is allocated 10 percent to the county and 90 percent to the state general fund. The bill requires a county to levy at least 10 mills for county road and bridge, farm-to-market and federal-aid road, and county road purposes to receive any allocation of oil and gas gross production tax revenues. The bill restructures allocation of revenues within counties to hold school district allocations at approximately the level provided under existing law and establishes a county infrastructure fund for deposit of funds exceeding $5,350,000 allocated to the county. Revenues allocated to a county infrastructure fund are allocated to the county and to cities in the same proportion as existing law, but the 35 percent share allocated to school districts under existing law is instead allocated to the board of county commissioners to provide grants to or for the benefit of townships or school districts. Grants are available on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of county infrastructure fund revenues to offset oil and gas development impact to township roads or other infrastructure needs. The bill provides that within 60 days after the end of each fiscal year, the board of county commissioners of a county that has received oil and gas gross production tax revenue allocations must file a report with the Tax Commissioner showing the amount received by the county, the amount expended for each purpose to which the funds were devoted, the share of county property tax revenue expended for each of those purposes, and the amount of unexpended funds remaining at the end of the fiscal year. The report must also show the amount available in the county infrastructure fund, the amount allocated to each organized township or school district and the amount expended from that allocation by that township or school district, the amount expended on behalf of unorganized townships, and the amount in the county infrastructure fund which remained unexpended at the end of the fiscal year. The bill requires the Tax Commissioner to compile the information from the reports and provide a report to the Legislative Council.

Senate Bill No. 2413 provides an oil and gas gross production tax exemption for gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well.

House Bill No. 1164 provides for monthly, rather than quarterly, transfers of oil extraction tax revenues to the resources trust fund, common schools trust fund, foundation aid stabilization fund, and state general fund.

House Bill No. 1140 made technical corrections in the language relating to the share of oil and gas tax revenues deposited in the general fund and the permanent oil tax trust fund. The bill provides that interest earnings of the permanent oil tax trust fund shall be credited to the general fund as they accrue, rather than at the end of each fiscal year.

Senate Bill No. 2051 increases from $3 million to $4 million per biennium the share of oil and gas tax revenues deposited in the oil and gas research fund.

House Bill No. 1126 makes technical changes to provide that oil and gas research fund deposits are made before deposit of revenues in the general fund or permanent oil tax trust fund.

House Bill No. 1394 extends from 2007 to 2009 the provision providing for transfer of the first $700,000 of the state's share of tax revenues from oil production within the Fort Berthold Reservation to the permanent oil tax trust fund. The bill also provides a statement of legislative intent that the amendment prevails over the repeal of Section 57-51.1-07.4 contained in **Senate Bill No. 2088**.

COAL TAXES

Senate Bill No. 2297 revised taxation of rural electric cooperatives and cooperative electrical generating plants. The bill provides that cooperative electrical generating plants continue to be taxed as coal conversion facilities.

Senate Bill No. 2221 provides a credit against coal conversion facilities taxes for carbon dioxide capture from the emissions of the facility. A coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions after 2009 is entitled to a 20 percent reduction in the state general fund's share of the coal conversion facilities tax. The facility is entitled to an additional reduction of 1 percent of the state general fund share of the tax for every additional two percentage points of the capture of carbon dioxide emissions, up to a maximum reduction of 50 percent of the state general fund share of the tax. The credit is available for 10 years from the date of first capture of carbon dioxide emissions.

House Bill No. 1015 provides that beginning with the 2011-13 biennium, the State Treasurer shall allocate funds provided by legislative appropriation to a coal-producing county to offset 50 percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county because of the proximity of a tipple to the border of the coal-producing county. The bill requires the State Treasurer to include in each biennial budget request the amount estimated to be necessary to fund the payment by the state.

Senate Bill No. 2036 provides that a coal conversion facility's tax exemption for repowering applies to a facility using beneficiated coal and that the exemption applies to electrical generating units, rather than the entire plant.

Senate Bill No. 2035 provides a coal severance tax exemption for coal purchased for improvement through the process of coal beneficiation for use to produce steam used in agricultural commodity processing facilities in North Dakota or adjacent states or facilities owned by the state or a political subdivision.

Senate Bill No. 2377 makes a technical correction of statutory language relating to the provision for coal severance tax allocation because of the proximity of a tipple of an active coal mining operation to the border of a county in which no coal is mined.

EMERGENCY SERVICES COMMUNICATION FEES

House Bill No. 1412 provides that political subdivisions with an intrastate multicounty public safety answering point may increase the maximum emergency services communication fee from $1.00 to $1.50 by resolution, subject to a vote in that political subdivision at the next general election. The change is effective through June 30, 2012.

House Bill No. 1135 adds a member appointed by the Chief Information Officer of the state to the membership of the Emergency Services Communications Coordinating Committee. The bill also adds to the duties of the committee the responsibility to serve as the governmental body to coordinate plans for implementing emergency 911 services and Internet protocol-enabled emergency applications for 911.

MISCELLANEOUS TAX PROVISIONS

House Bill No. 1086 increases the annual salary of the Tax Commissioner from $86,360 through June 30, 2009, to $90,678 through June 30, 2010, and $95,212 after June 30, 2010.

House Bill No. 1163 extends the deadline for the State Treasurer to transfer transmission line tax revenues from July 15 of each year to July 31 of each year.

Senate Bill No. 2093 extends the deadline for the State Treasurer to transfer telecommunications carriers tax fund revenues to counties from the 10^{th} working day in March to March 31 of each year.

House Bill No. 1436 changes a reference from the Legislative Council to Legislative Management for purposes of receiving a report from the Emergency Services Communications Coordinating Committee.