

TAXATION

CHAPTER 473

SENATE BILL NO. 2360

(Senators Dotzenrod, Erbele, Wanzek)
(Representatives Holman, J. Nelson)

AN ACT to amend and reenact subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to the calculation of income for purposes of the farm residence property tax exemption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³² **SECTION 1. AMENDMENT.** Subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- b. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
 - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has received annual ~~netgross~~ income from farming activities which is ~~fifty~~~~sixty-six~~ percent or more of annual ~~netgross~~ income, including ~~netgross~~ income of a spouse if married, during any of the ~~three~~~~two~~ preceding calendar years.
 - (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual ~~netgross~~ income from farming activities which is ~~fifty~~~~sixty-six~~ percent or more of annual ~~netgross~~ income, including ~~netgross~~ income of a spouse if married, during any of the ~~three~~~~two~~ preceding calendar years. For purposes of this paragraph, "farmer" includes a:
 - (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the ~~three~~~~two~~ preceding calendar years; who normally devotes the major portion of time to

²³² Section 57-02-08 was also amended by section 1 of Senate Bill No. 2278, chapter 474.

the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the ~~three~~two preceding calendar years.

- (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.
- (3) "Gross income" means gross income as defined under the federal Internal Revenue Code.
- (4) "NetGross income from farming activities" means taxablegross income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) ~~The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.~~
- (b) ~~Interest expenses from farming activities which have been deducted in computing taxable income.~~
- (c) ~~Depreciation expenses from farming activities which have been deducted in computing taxable income~~farming as defined for purposes of determining if an individual is a farmer eligible to use the special estimated income tax payment rules for farmers under section 6654 of the federal Internal Revenue Code [26 U.S.C. 6654].
- ~~(4)(5)~~(5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that ~~fiftysixty-six~~ percent or more of the ~~netgross~~ income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, ~~netgross~~ income from farming activities.
- (5) ~~In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar~~

~~years. This paragraph does not apply to a retired farmer or a beginning farmer as defined in paragraph 2.~~

- (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events beginning after December 31, 2019.

Approved March 26, 2019

Filed March 27, 2019

CHAPTER 474

SENATE BILL NO. 2278

(Senators Dotzenrod, Kannianen, Meyer)

AN ACT to amend and reenact paragraph 4 of subdivision b of subsection 15 of section 57-02-08 and subdivision f of subsection 1 of section 57-02-08.1 of the North Dakota Century Code, relating to the farm home residence property tax exemption and the homestead credit to provide for the confidentiality of documents evidencing eligibility for the exemption and credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³³ **SECTION 1. AMENDMENT.** Paragraph 4 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- (4) When exemption is claimed under this subdivision for a residence, the ~~assessor may require that the occupant of the residence who it is claimed is a farmer shall~~ provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, net income from farming activities. The individual claiming the exemption also shall provide to the assessor, on a form prescribed by the tax commissioner, the necessary income information to demonstrate eligibility. Any income information provided to the assessor regarding eligibility for an exemption claimed under this subdivision is a confidential record.

²³⁴ **SECTION 2. AMENDMENT.** Subdivision f of subsection 1 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

- f. Any person claiming the exemption under this subsection shall sign a verified statement of facts establishing the person's eligibility. Any income information contained in the statement of facts is a confidential record.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for taxable years beginning after December 31, 2019.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act is effective for taxable years beginning after December 31, 2018.

Approved April 11, 2019

Filed April 12, 2019

²³³ Section 57-02-08 was also amended by section 1 of Senate Bill No. 2360, chapter 473.

²³⁴ Section 57-02-08.1 was also amended by section 1 of House Bill No. 1174, chapter 486.

CHAPTER 475

HOUSE BILL NO. 1041

(Legislative Management)
(Taxation Committee)

AN ACT to amend and reenact section 57-02-08.3 of the North Dakota Century Code, relating to the homestead tax credit for special assessments; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.3 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.3. Homestead credit for special assessments - Certification - Lien.

1. Any person who has qualified for the property tax credit provided for in section 57-02-08.1 may elect to also qualify for an additional homestead credit against that person's homestead for the portion of any special assessment levied by a taxing district which becomes due for the same year. The total amount of credits allowed for any one property must not exceed six thousand dollars, adjusted annually on January first of each year after December 31, 2019, by the consumer price index, excluding any interest charged by the body levying the special assessment. This credit may be granted only at the election of the qualifying person. The person making the election shall do so by filing with the county auditor a claim for the special assessment credit on a form prescribed by the tax commissioner. The claim must be filed with the county auditor on or before February first of the year in which the special assessment installment thereof becomes payable. For purposes of this subsection, "consumer price index" means the percentage change in the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics, for the most recent year ending December thirty-first.
2. a. By March first of each year, the county auditor of each county shall certify to the state tax commissioner, on forms prescribed by the tax commissioner, the following information:
 - (1) The name and address of each person for whom the special assessment credit provided for in subsection 1 was allowed for the preceding year.
 - (2) The amount of credit allowed for the special assessment installment thereof due for the preceding year.
 - (3) The total amount of the special assessment credits due in each special assessment district.
 - (4) Other information that the tax commissioner requires.

- b. The tax commissioner shall audit the certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county by June first of each year the sum of the amounts computed by adding the credits allowed for portions of special assessments which were due for each homestead in the county for the preceding year. No more than the portion of special assessments due for the preceding year shall be allowed as a credit for any homestead in any year.
 - c. The county treasurer upon receipt of the payment from the state treasurer shall forthwith apportion and distribute the payment to each special assessment district in the county according to the total credits allowed for each respective special assessment district.
 - d. Supplemental certifications by the county auditor and by the state tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed herein to make such corrections as may be necessary because of errors therein.
3. a. Any credit allowed under subsection 1, plus interest in the amount of ~~ninesix~~ percent per year from June first of the year for which the special assessment installment for which a credit is taken becomes payable, creates a lien in favor of the state against the property upon which the special assessment credit is allowed and remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.
 - b. (1) Except as otherwise provided in this subdivision, a transfer of title to the homestead because of sale, death, or otherwise may not be made without the lien being satisfied. When a credit under subsection 1 is allowed, the county auditor shall cause a notice of lien of record to be filed against subject property with the recorder.
(2) The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under this section, except for a transfer between spouses because of the death of one of them as provided in paragraph 3.
(3) When a transfer occurs between spouses because of the death of one of them, the lien allowed by this section need not be satisfied until the property is again transferred.
 - c. This lien has precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. A mistake in the description of the property covered by this lien or in the name of the owner of the property does not defeat the lien if the property can be identified by the description in the special assessment list.

SECTION 2. APPLICATION. This Act applies to credits granted after the effective date of this Act.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 8, 2019

Filed March 8, 2019

CHAPTER 476

SENATE BILL NO. 2189

(Senators Cook, Kannianen, Meyer)
(Representatives Hatlestad, Porter)

AN ACT to amend and reenact sections 57-02-51, 57-09-01, and 57-11-01 of the North Dakota Century Code, relating to the meeting of the board of equalization of a township and a city.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-51 of the North Dakota Century Code is amended and reenacted as follows:

57-02-51. Notice of township and city equalization meetings to be published - Date of equalization meeting.

Each year the county auditor shall publish in the official county newspaper for two successive weeks, a notice that proceedings for the equalization of assessments will be held by the several local equalization boards. The first publication of the notice may not be earlier than March first and the second publication may not be later than March twentieth. The notice must contain a statement that the proceedings will be held at the regular meeting place of the governing board or other place designated by that board of the township or city, as the case may be. The notice must also contain a statement that each taxpayer has the right to appear before the appropriate board of review or equalization and petition for correction of the taxpayer's assessment. The equalization proceedings in an organized township and a city must be held on the second Monday in April and in a city on the second Tuesday in within the first fifteen days of April.

SECTION 2. AMENDMENT. Section 57-09-01 of the North Dakota Century Code is amended and reenacted as follows:

57-09-01. Membership of board - Meeting.

1. The township board of equalization consists of the members of the board of supervisors of each township, and the township clerk shall act as clerk of said board. The board shall meet on the second Monday in within the first fifteen days of April in each year at the usual place of meeting of the township board of supervisors.
2. ~~Notwithstanding the provisions of subsection 1, if~~ the same person performs the duties of assessor for two or more townships or cities, the township clerk may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each township board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the political subdivisions involved and posted at the usual place of meeting by the township clerk at least ten days before the meeting.

SECTION 3. AMENDMENT. Section 57-11-01 of the North Dakota Century Code is amended and reenacted as follows:

57-11-01. Membership of board - Quorum - Meeting.

1. The board of equalization of a city consists of the members of the governing body, and shall meet at the usual place of meeting of the governing body of the city, ~~on the second Tuesday in April in~~ within the first fifteen days of April of each year. The executive officer of the governing body shall act as chairman, but in the executive officer's absence the governing body may elect one of its members to preside. A majority of the board constitutes a quorum to transact business, and it may adjourn from day to day until its work is completed. ~~In~~ case if a quorum is not present at any time, the clerk may adjourn from day to day and publicly announce the time to which the meeting is adjourned.
2. ~~Notwithstanding the provisions of subsection 1, if~~ the same person performs the duties of assessor for two or more cities or townships, the city auditor may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each city board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the political subdivisions involved and posted at the usual place of meeting by the city auditor at least ten days before the meeting.

Approved March 8, 2019

Filed March 8, 2019

CHAPTER 477

SENATE BILL NO. 2089

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subsection to section 57-39.4-35 of the North Dakota Century Code, relating to certified automated system software requirements; to amend and reenact sections 57-05-08, 57-06-05, 57-06-06, 57-06-09, 57-06-12, and 57-33.2-07, subdivision d of subsection 26 of section 57-39.2-04, subsection 1 of section 57-39.2-12, section 57-39.4-04, subsections 6 and 7 of section 57-39.4-06, section 57-39.4-19, subsection 1 of section 57-39.4-23, subsection 3 of section 57-39.4-28, subdivision d of subsection 12 of section 57-40.2-04, and subsection 7 of section 57-40.2-07 of the North Dakota Century Code, relating to reports from centrally assessed property companies, tentative assessments of centrally assessed property, the annual meeting of the state board of equalization, the definition of supplies used for bladder dysfunction, the filing of sales tax returns, seller registration, the database of local taxing jurisdictions, uniform tax returns, notices of temporary exemption periods, the library of definitions to be used in the tax administration practices of the sales and use tax agreement, and the filing of use tax returns; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-05-08 of the North Dakota Century Code is amended and reenacted as follows:

57-05-08. Report by railroad corporation to state tax commissioner.

Each railroad corporation required to be assessed under the provisions of this chapter annually shall, on or before ~~April~~May first of each year, under oath of the presiding or other chief executive officer, make and file ~~on the form and~~ in the manner ~~as prescribed by the tax commissioner~~ ~~may prescribe,~~ a report containing the following information:

1. The name of the company;
2. The laws of ~~what~~the state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same;
3. Location of its principal office;
4. The name of the place where its books, papers, and accounts are kept;
5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers;
6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state;

7. The total number of shares of capital stock;
8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon;
9. If ~~such~~the capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner ~~of this state~~;
10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year;
11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of the funded debt has no market value, then ~~the~~its actual value ~~thereof~~ for the dates and periods as the tax commissioner may specify;
12. ~~Such~~The general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the ~~said~~ property;
13. A description of the personal property of the company;
14. The number of miles [kilometers] of each main line of railroad, the number of miles [kilometers] of each branch line and sidetracks ~~thereof within the state of~~ North Dakota;
15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years;
16. The location of the property of the company within this state by counties, municipalities, and districts, in the manner and detail as the tax commissioner shall prescribe; and
17. Other facts and information as the tax commissioner may require ~~in the form of returns prescribed by the tax commissioner~~ or which the company may deem material upon relating to the question of taxation of its property in this state.

SECTION 2. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

57-06-05. Annual assessment.

The state board of equalization, at its annual meeting in ~~August~~July, shall assess the franchises and all operative property of power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

SECTION 3. AMENDMENT. Section 57-06-06 of the North Dakota Century Code is amended and reenacted as follows:

57-06-06. Reports of companies.

Each company required to be assessed under the provisions of this chapter annually, on or before the ~~fifteenth~~^{first} day of ~~April~~^{May}, under oath of the president or other chief executive officer, and the secretary or treasurer or auditor or superintendent of ~~such~~^{the} company, shall make and file with the tax commissioner, in the ~~form~~^{manner prescribed by} the tax commissioner ~~may prescribe~~, a report containing the following information, so far as applicable to the company making the report, as of January first of the year in which the report is furnished:

1. The name of the company.
2. The nature of the company, whether a person, association, corporation, or limited liability company, and under the laws of ~~what~~^{the} state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same.
3. Location of its principal office.
4. The name of the place where its books, papers, and accounts are kept.
5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers.
6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state.
7. The total number of shares of capital stock.
8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon.
9. If the capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner ~~of this state~~.
10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year.
11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of the funded debt has no market value, then ~~the~~^{its} actual value ~~thereof~~ for the dates and periods as the tax commissioner may specify.
12. The general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the ~~said~~ property.

13. A description of the personal property of the company, including moneys and credits, held by the company as a whole system, and the part thereof of the property apportioned to the line in North Dakota.
14. The whole length of the lines of the system operated by the company and the length of the lines in North Dakota, whether operated as owner, lessee, or otherwise. The length of the line operated for the whole system and in North Dakota shall be separately reported.
15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years.
16. The location of the property of the company within this state by counties, municipalities, and districts, in the manner and detail as the tax commissioner shall prescribe.
17. Other facts and information as the tax commissioner may require or which the company may deem material relating to the taxation of its property in this state.

SECTION 4. AMENDMENT. Section 57-06-09 of the North Dakota Century Code is amended and reenacted as follows:

57-06-09. Penalty for failure to furnish report.

If any company refuses or neglects to make the report required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall obtain the best information available on the facts necessary to be known in order to discharge the tax commissioner's duties with respect to the valuation and assessment of the property of the company. If any company fails to make the report required under this chapter on or before the ~~fifteenth~~^{first} day of ~~April~~^{May} of any year, the state board of equalization shall add twenty percent to the assessed value of the property of the company for that year, ~~but the tax commissioner, upon written application received on or before the fifteenth day of April, may grant an extension of time through the first day of May to file the required report.~~ If any company fails to make the report required under this chapter on or before the first day of June of any year, the state board of equalization shall add an additional ten percent to the assessed value of the property of the company for that year. On or before the first day of June, for good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

SECTION 5. AMENDMENT. Section 57-06-12 of the North Dakota Century Code is amended and reenacted as follows:

57-06-12. Tentative assessment to be made and notice of hearing.

The tax commissioner shall give ten days' notice ~~by mail~~ in a manner determined by the tax commissioner to each company, or its representative in North Dakota, of the amount of its tentative assessment and the meeting of the state board of equalization on the second Tuesday of July, at which meeting each company is entitled to present evidence before the state board of equalization relating to the value of the property of the company.

SECTION 6. AMENDMENT. Section 57-33.2-07 of the North Dakota Century Code is amended and reenacted as follows:

57-33.2-07. Filing of reports with tax commissioner.

By June first of each year, each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the tax commissioner ~~on a form, in a manner~~ prescribed by the tax commissioner ~~any and all, a report containing the~~ information required by the tax commissioner. The ~~form~~ report must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the ~~August~~July meeting of the state board of equalization. Required information includes:

1. a. The company name.
- b. Whether the company is an individual, partnership, association, cooperative, corporation, limited liability company, or other legal entity and the state or country and date of original organization and any reorganization, consolidation, or merger with references to specific laws authorizing ~~such~~those actions.
- c. The location of its principal office.
- d. The place where the company's books, papers, and accounts are kept.
- e. The name and mailing address of the president, secretary, treasurer, auditor, general manager, and all other general officers.
- f. The name and mailing address of the chief officer or managing agent and any general officers of the company who reside in this state.
2. A copy of each report filed with any county auditor under section 57-33.2-06.
3. A report on the megawatt-hours of electricity produced by wind generators and generators of electricity from sources other than coal in each county in the state and a map showing the location of each generator and its rated capacity, and all components of the collector system, if any.
4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each taxing district in each county during the most recently completed calendar year.

²³⁵ **SECTION 7. AMENDMENT.** Subdivision d of subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and

²³⁵ Section 57-39.2-04 was also amended by section 3 of House Bill No. 1131, chapter 296, section 4 of Senate Bill No. 2192, chapter 95, and section 6 of Senate Bill No. 2193, chapter 341.

supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.

- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, adult diapers, and other items used for the care and management of bladder dysfunction. For the purposes of this paragraph:

(a) "Adult diapers" means diapers other than children's diapers.

(b) "Children's diapers" means diapers marketed to be worn by children.

(c) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

SECTION 8. AMENDMENT. Subsection 1 of section 57-39.2-12 of the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month. The tax commissioner may, upon request and for good cause shown, waive the requirement to file and remit monthly. The retailer shall pay the total tax due in the manner prescribed by the tax commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.

SECTION 9. AMENDMENT. Section 57-39.4-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-04. (303) Seller registration.

Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement ~~shall be registered~~may register in ~~each one or more of the member states~~ utilizing the central registration system provided in article IV of the agreement.

2. ~~A model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into the state or states if it has not had sales into the state or states for the preceding twelve months. This election does not relieve the seller of its agreement under section 401(B) to collect taxes on all sales into the states or its liability for remitting to the proper states any taxes collected.~~ certified service provider may require a seller registering under the agreement to register in all of the full-member states as a condition of receiving certified service provider services.
3. The member states agree not to require the payment of any registration fees or other charges for a seller ~~to register~~ registering through the central registration system in a state in which the seller has no legal requirement to register.
4. A written signature from the seller is not required.
5. An agent may register a seller under uniform procedures adopted by the member states.
6. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.
7. Nothing in this section shall be construed to relieve a seller of any legal obligation it may have under a state's laws to register in that state or its obligation to collect and remit taxes for at least thirty-six months in a state and meet all other requirements for amnesty set out in section 402 of the agreement in order to be eligible for amnesty in the state.
8. Whenever a state joins the agreement, sellers already registered under the agreement shall be ~~registered in the new~~ notified by the governing board and the sellers may elect to also be registered in the new state as follows:
 - a. ~~Model 1 sellers will be automatically registered in such state.~~
 - b. ~~Model 2, model 3, and model 4 sellers will be automatically registered in the new state but may elect to be registered as a seller which anticipates making no sales into the new state.~~
9. ~~Upon registration, the~~ The governing board shall provide to the seller make information available regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. ~~Member states~~ A member state may provide information to sellers concerning other tax return filing options in that state.
10. The governing board shall cause the system for registering under the agreement to include a feature that allows sellers registered under the agreement to update relevant registration data in the system and have such updated data provided to all ~~member~~ affected states utilizing the system. The governing board shall establish conditions and procedures to allow states which are not members of the agreement to participate in the registration system.

SECTION 10. AMENDMENT. Subsections 6 and 7 of section 57-39.4-06 of the North Dakota Century Code are amended and reenacted as follows:

6. Provide and maintain a database that assigns the proper tax rates and jurisdictions to each five-digit and nine-digit zip code within a member state to ~~the proper tax rates and jurisdictions~~. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a ~~purchase transaction~~ after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the ~~nine-digit zip code designation tax rate and jurisdiction~~ by ~~utilizing~~using software approved by the governing board that makes this ~~designation assignment~~ from the street address and the five-digit zip code information applicable to a ~~purchase the transaction~~.
7. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection 6. The database records must be in the same approved format as the database records under subsection 6 and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C. 119(a)]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based database provided by that member state. If any member state develops address-based assignment database records pursuant to the agreement, a seller or certified service provider may use those database records in place of the five-digit and nine-digit zip code database records provided for in subsection 6. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a ~~purchase transaction~~. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a ~~purchase transaction~~ after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by ~~utilizing~~using software approved by the governing board that makes this assignment from the address and zip code information applicable to the ~~purchase transaction~~.

SECTION 11. AMENDMENT. Section 57-39.4-19 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-19. (318) Uniform tax returns.

Each member state shall:

1. Require that only a single tax return for each taxing period for each seller be filed for the member state to include all the taxing jurisdictions within the member state.

2. a. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
- b. When the due date for a return falls on a Saturday or Sunday or legal holiday in the subject member state, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made under subdivision b of subsection 5 of section 57-39.4-20, the return shall be accepted as timely filed on the same day as the remittance under that subsection.
3. Make available to all sellers, whether or not registered under the agreement, except sellers of products qualifying for exclusion from the provisions of section 57-39.4-09 of this agreement, a simplified return that is filed electronically as follows:
 - a. The simplified electronic return hereinafter SER shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.
 - b. Each member state must notify the governing board if it requires the submission of the part 2 information provided no state may require the submission of part 2 information from a model 4 seller which has no legal requirement to register in the state.
 - c. Returns shall be required as follows:
 - (1) Certified service providers must file an SER in all member states in which the model 1 seller is registered under the agreement, on behalf of model 1 sellers. Certified service providers, on behalf of these sellers, shall file the audit reports provided for in article V of the rules and procedures of the agreement for the states, and in addition, shall be required to file part 1 of the SER each month for each member state in which the model 1 seller is registered under the agreement. A state shall allow a model 1 seller to file both part 1 and part 2 of the SER. A model 1 seller which chooses to file both part 1 and part 2 of the SER shall still be required to file the audit reports provided for in article V of the rules and procedures of the agreement.
 - (2) Model 2 and model 3 sellers must file an SER in all member states ~~other than states for which they have indicated that they anticipate making no sales~~ in which they are registered under the agreement. These sellers shall file part 1 of the SER every month for all states in which they anticipate making sales are registered under the agreement. These sellers ~~need not file part 2 information until January 1, 2012.~~ ~~After this date, they shall have the following options for meeting their obligation to furnish part 2 information:~~
 - (a) File part 2 of the SER together with part 1 of the SER every month;
or
 - (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months

of the same calendar year and shall only require annual and not monthly totals. The sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

- (3) Every member state shall allow model 4 sellers to file an SER. The sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in the state shall have the following options for meeting their obligation to furnish part 2 information:

- (a) File part 2 of the SER together with part 1 of the SER; or
- (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

Model 4 sellers which elect not to file an SER shall file returns in the form under schedules afforded to sellers not registered under the agreement according to the requirements of each member state.

- (4) ~~No later than January 1, 2013, every~~ Every member state shall allow sellers not registered under the agreement that are registered in the state to file an SER. These sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

- (a) File part 2 of the SER together with part 1 of the SER; or
- (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

- d. A state which requires the submission of part 2 information under paragraph 2 may provide an exemption from this requirement to a seller under terms and conditions set out by the state.
- e. A state may require a seller which elects to file an SER to give at least three months' notice of the seller's intent to discontinue filing an SER.

4. ~~Not require the filing of a return from a seller registered under the agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the agreement. A seller shall lose this exemption upon making any taxable sales into the state and shall file a return in the month following the sale. A state may, but is not required to, allow a seller to regain such filing exemption upon such terms and conditions as the state may impose.~~
5. Adopt web services as the standardized transmission process that allows for receipt of uniform tax returns and other formatted information as approved by the governing board. The process must provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, tax preparer, or any other authorized person to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.
- 6.5. Give notice to a seller registered under this agreement which has no legal requirement to register in the state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return provided a member state may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.
- 7.6. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

SECTION 12. AMENDMENT. Subsection 1 of section 57-39.4-23 of the North Dakota Century Code is amended and reenacted as follows:

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
 - a. Not apply an exemption unless the items to be exempted are specifically defined in part II or part III(B) of the library of definitions and the exemptions are uniformly applied to state and local sales and use taxes.
 - b. Provide notice of the exemption period at least sixty days prior to the first day of the calendar ~~quarter~~month in which the exemption period will begin.
 - c. Not apply an entity-based or use-based exemption except a member state may limit a product-based exemption to items purchased for personal or nonbusiness use.
 - d. Not require a seller to obtain an exemption certificate or other certification from a purchaser for items to be exempted during a sales tax holiday.

SECTION 13. AMENDMENT. Subsection 3 of section 57-39.4-28 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as specifically provided in sections 57-39.4-17 and 57-39.4-33.1, and the library of definitions, a member state shall impose a sales or use tax on all products or services included within each part II or part III(B) definition or exempt from sales or use tax all products or services within each definition.

including all products and services listed in the rules, appendices, and interpretive opinions adopted by the governing board. The requirements of this section shall only apply to part III(B) definitions to the extent such definitions are used in the administration of a sales tax holiday. A member state is not in compliance with the agreement if the member state excludes any product or service that is included within a product definition or includes a product or service that is excluded from a product definition.

SECTION 14. A new subsection to section 57-39.4-35 of the North Dakota Century Code is created and enacted as follows:

For purposes of this section:

a. "Certify a product category" means the state reviews the product category and determines that the taxability of a product properly included in that product category is consistent with that state's laws. The state certifies that the taxability is based only on:

- (1) The product-based exemptions or impositions provided by state law;
- (2) The specific description provided by the seller or certified service provider; and
- (3) Not requiring either the purchaser or seller to produce documentation to claim the exemption.

b. (1) "Product category" means:

- (a) Terms specifically defined in appendix C, part II or part III of the agreement, such as clothing, durable medical equipment, food, drugs, soft drinks, and disaster preparedness supplies;
- (b) Subcategories of terms specifically defined in subparagraph a that may be taxed differently than the product category as a whole, such as oxygen delivery equipment, kidney dialysis equipment, prewritten computer software delivered electronically, and prepared food that requires additional cooking by the consumer;
- (c) Terms representing groups of like products that do not fall within subparagraph a or b, such as other digital products, building materials, furniture, or motor vehicles; and
- (d) Subcategories of subparagraph c that are taxed differently than the product category as a whole, such as printed materials, newspapers, and catalogs.

- (2) The term does not include any individual product that properly falls within any product category in a state, such as shirts, reusable thermometers, ultrasound machines, bread, tables, chairs, automobiles, or motorcycles, unless the individual product is taxed differently than any other products within that product category; or "tangible personal property".

SECTION 15. AMENDMENT. Subdivision d of subsection 12 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. "Supplies for ostomy care or bladder dysfunction" includes:
- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
 - (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, adult diapers, and other items used for the care and management of bladder dysfunction. For the purposes of this paragraph:
 - (a) "Adult diapers" means diapers other than children's diapers.
 - (b) "Children's diapers" means diapers marketed to be worn by children.
 - (c) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

SECTION 16. AMENDMENT. Subsection 7 of section 57-40.2-07 of the North Dakota Century Code is amended and reenacted as follows:

7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter is payable monthly on or before the last day of the next succeeding month. The tax commissioner may, upon request and for good cause shown, waive the requirement to file and remit monthly. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty must be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed must be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement applies separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, a person may return to quarterly installments. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this section.

SECTION 17. EFFECTIVE DATE. Sections 1, 2, 3, 4, 5, and 6 of this Act are effective for taxable years beginning after December 31, 2018.

SECTION 18. EFFECTIVE DATE. Sections 8 and 16 of this Act are effective for sales and use tax returns due after July 31, 2019.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 478

HOUSE BILL NO. 1439

(Representatives Porter, Delzer, Dockter, Headland, Howe, Mock, Pollert)
(Senators Cook, Dotzenrod, Meyer, Unruh, Wardner)

AN ACT to amend and reenact sections 57-06-17.1 and 57-39.2-04.14, subsection 3 of section 57-51.1-03, and section 57-60-06 of the North Dakota Century Code, relating to a property tax exemption for pipelines used for secure geologic storage, a sales and use tax exemption for materials used for secure geologic storage, an oil extraction tax exemption for the incremental production from tertiary recovery projects using carbon dioxide, and property classification of secure geologic storage equipment for coal conversion tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-06-17.1. Carbon dioxide pipeline exemption.

Property, not including land, is exempt from taxation during construction and for the first ten full taxable years following initial operation if it consists of a pipeline, constructed after 1996, and necessary associated equipment for the transportation or storage of carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas.

SECTION 2. AMENDMENT. Section 57-39.2-04.14 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.14. Sales and use tax exemption for materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas.

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. Tangible personal property used to replace an existing system to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system must receive from the tax commissioner a certificate that the tangible

personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas qualifies for the exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.

3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system may apply to the tax commissioner for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section. Application for a refund must be made at the time and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
4. This chapter and chapter 57-40.2 apply to the exemption under this section.

SECTION 3. AMENDMENT. Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
- b. The incremental production from a tertiary recovery project which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks formations which has been certified as a qualified project by the industrial commission is not exempt from July 1, 2015, through June 30, 2017, and is thereafter exempt from any taxes imposed under this chapter for a period of five years from July 1, 2017, or the date the incremental production begins, whichever is later.
- c. The incremental production from a tertiary recovery project that injects more than fifty percent carbon dioxide produced from coal and has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of twenty years from the date the incremental production begins or from the date the project is certified by the industrial commission as meeting the fifty percent or more carbon dioxide produced from coal injection requirement, whichever is later. To qualify for the exemption under this subsection, the project must be located outside the Bakken or Three Forks formations and must use carbon dioxide produced from coal. The incremental production that has been certified by the industrial commission under this section must be used to calculate the exemption under this subdivision.
- d. The incremental production from a tertiary recovery project that injects more than fifty percent carbon dioxide produced from coal and has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins or from the date the project is

certified by the industrial commission as meeting the fifty percent or more carbon dioxide produced from coal injection requirement, whichever is later. To qualify for the exemption under this subsection, the project must be located within the Bakken or Three Forks formations and must use carbon dioxide produced from coal. The incremental production that has been certified by the industrial commission under this section must be used to calculate the exemption under this subdivision.

- e. For purposes of this subsection, incremental production is defined in the following manner:
- (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
 - (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
 - (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The

industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- (7) For purposes of determining the exemption provided for in subdivisions c and d, and with respect to a unit where a tertiary recovery project was in existence, and where the industrial

commission cannot establish an accurate production decline curve. incremental production means the difference between the total amount of oil produced from the unit during a new tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and shall upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, in determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.

- (8) For purposes of determining the exemption provided for in subdivisions c and d, and with respect to a unit where a tertiary recovery project was in existence, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new tertiary recovery project and the total amount of oil that would have been produced from the unit if the new tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of the tertiary recovery project that was previously in existence. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new tertiary recovery project is certified.

d-f. The industrial commission shall adopt rules relating to this exemption ~~that~~which must include procedures for determining incremental production as defined in subdivision ee.

SECTION 4. AMENDMENT. Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes.

Each coal conversion facility and any carbon dioxide capture system located at the coal conversion facility, and any equipment directly used for secure geologic storage of carbon dioxide or enhanced recovery of oil or natural gas must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which the facility, capture system, or equipment is located. The exemption provided by this section may not be interpreted to apply to tangible personal property incorporated as a component part of a carbon dioxide pipeline but this restriction does not affect eligibility of such a pipeline for the exemption under section 57-06-17.1. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property.

SECTION 5. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 2019. Sections 1 and 4 of this Act are effective for taxable years beginning after December 31, 2018. Section 2 of this Act is effective for taxable events occurring after June 30, 2019.

Approved April 24, 2019

Filed April 24, 2019

CHAPTER 479

SENATE BILL NO. 2350

(Senators Cook, Patten)
(Representatives Grueneich, Hatlestad)

AN ACT to create and enact a new section to chapter 57-06 and a new section to chapter 57-33.2 of the North Dakota Century Code, relating to county auditor verification of information reported by public utility companies and electric generation, distribution, and transmission companies; to amend and reenact sections 57-06-21, 57-08-01, and 57-33.2-06 of the North Dakota Century Code, relating to the review of public utility assessments and public utility and electric generation, distribution, and transmission reports received by county auditors; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-21 of the North Dakota Century Code is amended and reenacted as follows:

57-06-21. Maps - Reports to county auditors.

On or before the fifteenth day of

1. By January first of each year, the county auditor shall provide to each company required to be assessed under this chapter a current map of the county showing the boundaries of each taxing district in the county.
2. By February fifteenth of each year, each company required to be assessed under this chapter shall file with the:
 - a. The county auditor of each county within which any part of its operative property is located a, a report containing a copy of the information required in subsection 16 of section 57-06-06, subsection 1 of section 57-06-07, and subsection 1 of section 57-06-08. The report giving must provide a general description of all its the company's property located within the county, with operative and nonoperative property listed separately. The report must give the length of the line or lines within the county and the length in each taxing district of each line constituting part of a single and continuous line or property. The company also shall file with the
 - b. The county auditor and the tax commissioner, a map of all of its the company's lines within the county showing clearly the length of its the company's lines within each taxing district as of January first of that year. To facilitate the making of the maps, the county auditor, on or before the first day of January of each year, shall provide to each company a current map of the county showing the boundaries of each taxing district in the county.

SECTION 2. A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

Verification by county auditor of reports.

By May thirty-first of each year, the county auditor shall verify to the tax commissioner, in the manner and detail prescribed by the tax commissioner, the accuracy of the information filed with the county auditor under subdivision a of subsection 2 of section 57-06-21.

SECTION 3. AMENDMENT. Section 57-08-01 of the North Dakota Century Code is amended and reenacted as follows:

57-08-01. Action to review assessment of public utility.

If any company whose property has been valued and assessed for taxation purposes by the state board of equalization under the constitution or statutes of this state, or against whom any tax is levied or assessed by ~~said~~the board, feels aggrieved for any reason with the assessment ~~so~~made, the company may bring an action in the district court of the county in which the company maintains its principal place of business in this state, against the state and any subdivisions ~~thereof~~of the state which may be interested, for relief therefrom. ~~Any such~~The action must be brought on or before the date on which the taxes to be collected under the assessment involved become due. Any adjustments to an assessment brought forward after October first must be applied to the following taxable year.

SECTION 4. AMENDMENT. Section 57-33.2-06 of the North Dakota Century Code is amended and reenacted as follows:

57-33.2-06. Maps - Transmission and distribution line and electric generation property location reports to county auditors.

1. By February first of each year, the county auditor shall provide each company subject to taxation under this chapter an accurate map of the county showing the boundaries of each taxing district in the county.
2. By April fifteenth of each year, each company subject to taxation under this chapter shall file, with the county auditor of each county in which any of its electric generation, transmission, or distribution line property is located the following information:
 1. a. Each transmission or distribution company shall file a report showing the length and nominal operating voltage of its transmission and distribution line within the county and within each taxing district within the county. Reports under this subsection must be based upon nominal operating voltage, ownership, and location of transmission and distribution lines as of January first of each year. Reports under this subsection must be prepared to distinguish transmission lines from distribution lines.
 2. b. Each electric generation company shall file a report ~~showing~~containing a copy of the information required in subsection 3 of section 57-33.2-07 and the location and rated capacity of each wind generator or grid-connected generator within the county and each taxing district in the county. Reports under this subsection must be based upon the rated capacity, ownership, and location as of January first of each year.

~~By February first of each year, the county auditor shall provide each company subject to taxation under this chapter with an accurate map of the county showing the boundaries of each taxing district in the county.~~

SECTION 5. A new section to chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

Verification by county auditor of reports.

By June thirtieth of each year, the county auditor shall verify to the tax commissioner, in the manner and detail prescribed by the tax commissioner, the accuracy of the information filed with the county auditor under subsection 2 of section 57-33.2-06.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 14, 2019

Filed March 14, 2019

CHAPTER 480

SENATE BILL NO. 2232

(Senators Krebsbach, Burckhard, Hogue, O. Larsen)
(Representatives M. Ruby, Schobinger)

AN ACT to amend and reenact sections 40-55-09 and 57-15-12 of the North Dakota Century Code, relating to levy authority for city public recreation systems and general fund levy limitations in park districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-55-09 of the North Dakota Century Code is amended and reenacted as follows:

40-55-09. Voter-approved levy authority for city public recreation system.

1. The governing body of a city may, and upon receipt of a petition signed by at least ten qualified electors but not less than five percent of those qualified electors who voted at the last general election of the city shall, submit to the qualified electors the question of approval or disapproval of voter-approved levy authority for establishment, maintenance, and conduct of a public recreation system at the next general election or special municipal election if the question to be placed on the ballot is filed thirty days prior to the date of the election. The ballot measure question to approve a levy under this section must be stated to ask if the elector approves a voter-approved tax by the city for a public recreation system in a stated number of mills, not exceeding six mills. If approved by a majority of city electors voting on the question, the city may levy an additional tax within the limitation of subsection 13 of section 57-15-10. After January 1, 2015, approval or reauthorization by electors of voter-approved levy authority under this section may not be effective for more than ten taxable years. Any voter-approved levy under this section or section 40-55-08 approved by the electors of a city before January 1, 2015, remains effective for ten taxable years or the period of time for which it was approved by the electors after it was approved, whichever is less, under the provisions of law in effect at the time it was approved. The governing body of the city shall discontinue the levy for public recreation purposes if the qualified voters, at a regular or special election, by a majority vote on the proposition, decide to discontinue the levy. A vote of the qualified electors is not required to discontinue the levy under this section if the levy authority is no longer required as a result of a merger between a park district and a city public recreation system.
2. A vote that occurred pursuant to subsection 1 before a city public recreation system and a park district merged pursuant to subsection 2 of section 57-15-12 is no longer valid to authorize levying mills for a city public recreation system.

SECTION 2. AMENDMENT. Section 57-15-12 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12. General fund levy limitations in park districts.

1. A park district may levy for general fund purposes up to thirty-eight mills on the taxable valuation of property in the district, subject to the higher of the number of mills determined under the following limitations:
 - a. The general fund mill levy determined based upon the highest amount in dollars the park district levied for general fund purposes for the three taxable years immediately preceding the current year, plus twelve percent; or
 - b. The general fund mill levy determined by combining the highest number of mills the park district levied for general fund purposes plus the number of mills levied for employee pension contributions under section 40-49-22, old-age and survivors' insurance under section 52-09-08, an employee retirement program established by the governing body, and for forestry purposes for any one of the three taxable years immediately preceding the current year.
2. ~~For taxable years after 2014, the highest amount in dollars the park district levied for general fund purposes for the three immediately preceding taxable years for purposes of subdivision a of subsection 1, must be adjusted by adding the highest amount in dollars the park district levied in any one of the three immediately preceding taxable years for the combined levies for employee pension contributions under section 40-49-22, old age and survivors' insurance under section 52-09-08, an employee retirement program established by the governing body, and for forestry purposes under section 57-15-12.1.~~
3. ~~Notwithstanding the limitation in subsection 1, if a city public recreation system established under chapter 40-55 is merged with a park district that levied more than thirty-eight mills for the 2014 taxable year in the combined number of mills levied for general fund purposes plus the number of mills levied for the additional purposes of employee pension contributions under section 40-49-22, old-age and survivors' insurance under section 52-09-08, an employee retirement program established by the governing body, and for forestry purposes may levy for general fund purposes for taxable year 2015 the number of combined mills determined for the 2014 taxable year. A park district may levy for general fund purposes for taxable year 2016 thirty-eight mills plus seventy-five percent of the number of mills levied for the additional purposes listed in this subsection for the 2014 taxable year. A park district may levy for general fund purposes for taxable year 2017 thirty-eight mills plus fifty percent of the number of mills levied for the additional purposes listed in this subsection for the 2014 taxable year. A, the park district may levy up to thirty-eight mills on the taxable valuation of property in the district for general fund purposes for the first taxable year 2018 thirty-eight mills plus twenty-five percent of the number of mills levied for the additional purposes listed in this subsection for the 2014 taxable year in which mills are levied for the merged district.~~
- 4-3. A park district may increase its general fund levy under this section to any number of mills approved by a majority of the electors of the park district voting on the question at a regular or special park district election, up to a maximum levy under this section of thirty-eight mills on the dollar of the taxable valuation of the district for the current year. After January 1, 2015, approval or reauthorization by electors of voter-approved levy authority under this section may not be effective for more than ten taxable years.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 481

SENATE BILL NO. 2255

(Senators Cook, Schaible)

AN ACT to amend and reenact section 57-15-13 of the North Dakota Century Code, relating to changes in school district tax levies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-13 of the North Dakota Century Code is amended and reenacted as follows:

57-15-13. School district tax levies.

School district taxes must be levied by the governing body of each school district on or before the tenth day of August of each year. The governing body of the school district may ~~amend~~increase or decrease its tax levy and budget for the current fiscal year on or before the tenth day of October of each year but the certification must be filed with the county auditor within the time limitations under section 57-15-31.1. Taxes for school district purposes must be based upon an itemized budget statement which must show the complete expenditure program of the district for the current fiscal year and the sources of the revenue from which it is to be financed. The school board of each public school district, in levying taxes, is limited by the amount necessary to be raised for the purpose of meeting the appropriations included in the school budget of the current fiscal year, and the sum necessary to be provided as an interim fund, together with a tax sufficient in amount to pay the interest on the bonded debt of the district and to provide a sinking fund to pay and discharge the principal thereof at maturity.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 21, 2019

Filed March 22, 2019

CHAPTER 482

SENATE BILL NO. 2052

(Senators Schaible, Heckaman, Rust)
(Representatives Owens, Heinert)

AN ACT to create and enact a new section to chapter 15.1-09 and a new section to chapter 57-15 of the North Dakota Century Code, relating to school district safety plans and levy authority for a school safety plan; to amend and reenact section 57-15-14.2 of the North Dakota Century Code, relating to school district levies for a school safety plan; to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

School district safety plan - Establishment of school safety plan fund - Approval - Open records exemption.

The board of a school district may develop a school safety plan, in consultation with the qualified electors residing within the district, and establish and maintain a school safety plan fund subject to the limitations in section 57-15-14.2. A school safety plan developed by the board of a school district is exempt from the provisions of section 44-04-18 and section 6 of article XI of the Constitution of North Dakota with respect to aspects of the plan addressing the security of students.

SECTION 2. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Tax levy for school safety plan fund.

The school board of a school district may levy taxes for a school safety plan fund, subject to the limitations in section 57-15-14.2, when authorized to do so by a majority of the qualified electors of a school district voting upon the question at any regular or special school district election. The ballot must specify the number of mills proposed for approval and the number of years for which that approval is to apply. Approval or reauthorization by electors of levy authority under this section may not be effective for more than five taxable years.

²³⁶ **SECTION 3. AMENDMENT.** Section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

57-15-14.2. School district levies.

1. For taxable years after 2013, the board of a school district may levy a tax not exceeding the amount in dollars that the school district levied for the prior year, plus twelve percent, up to a levy of seventy mills on the taxable valuation of the district, for any purpose related to the provision of educational services. The proceeds of this levy must be deposited into the school district's general

²³⁶ Section 57-15-14.2 was also amended by section 17 of Senate Bill No. 2265, chapter 149.

fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.

2. For taxable years after 2013, the board of a school district may levy no more than twelve mills on the taxable valuation of the district, for miscellaneous purposes and expenses. The proceeds of this levy must be deposited into a special fund known as the miscellaneous fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
3. The board of a school district may levy no more than three mills on the taxable valuation of the district for deposit into a special reserve fund, in accordance with chapter 57-19.
4. The board of a school district may levy no more than the number of mills necessary, on the taxable valuation of the district, for the payment of tuition, in accordance with section 15.1-29-15. The proceeds of this levy must be deposited into a special fund known as the tuition fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
5. The board of a school district may levy no more than five mills on the taxable valuation of the district, pursuant to section 2 of this Act, for purposes of developing a school safety plan in accordance with section 1 of this Act. The proceeds of this levy must be deposited into a special fund known as the school safety plan fund and used in accordance with this subsection.
6. Nothing in this section limits the board of a school district from levying:
 - a. Mills for a building fund, as permitted in sections 15.1-09-49 and 57-15-16; and
 - b. Mills necessary to pay principal and interest on the bonded debt of the district, including the mills necessary to pay principal and interest on any bonded debt incurred under section 57-15-17.1 before July 1, 2013.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 21, 2019

Filed March 22, 2019

CHAPTER 483

SENATE BILL NO. 2331

(Senators Erbele, Dotzenrod, Wardner)
(Representatives Mock, Brandenburg)

AN ACT to amend and reenact section 57-33.2-18 of the North Dakota Century Code, relating to allocation of wind generation tax revenue; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-33.2-18 of the North Dakota Century Code is amended and reenacted as follows:

57-33.2-18. Deposit of revenue - Report to treasurer.

1. The commissioner shall transfer to the state treasurer, for deposit in the general fund, thirty-three percent of the revenue collected under subsection 1 of section 57-33.2-04 for wind projects that:
 - a. Begin initial construction after December 31, 2020.
 - b. Have been in operation for twenty years or more from the date of first assessment, whether initially taxed under section 57-06-14.1 or 57-33.2-04.
2. The commissioner shall transfer the remaining revenue collected under this chapter to the state treasurer for deposit in the electric generation, transmission, and distribution tax fund. With each transfer under this section, the commissioner shall provide a report showing the information necessary for the state treasurer to allocate the revenue under section 57-33.2-19.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2019.

Approved March 28, 2019

Filed March 29, 2019

CHAPTER 484

HOUSE BILL NO. 1384

(Representatives Nathe, Bosch, Dockter, Martinson)
(Senators Patten, J. Roers)

AN ACT to amend and reenact section 57-38-01.7 of the North Dakota Century Code, relating to the individual income tax credit for charitable contributions; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.7 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.7. Income tax credit for charitable contributions - Limitation.

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a nonrefundable credit against the income tax liability under section 57-38-30 or, ~~in the case of contributions by a passthrough entity, under section 57-38-30.3~~ for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~twenty~~twenty-five percent of the taxpayer's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a nonrefundable credit against the income tax liability under section 57-38-30 or, ~~in the case of contributions by a passthrough entity, under section 57-38-30.3~~ for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~twenty~~twenty-five percent of the taxpayer's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
3. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a nonrefundable credit against the income tax liability under section 57-38-30 or, ~~in the case of contributions by a passthrough entity, under section 57-38-30.3~~ for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of primary education, located within the state. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~twenty~~twenty-five percent of the taxpayer's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

4. A passthrough entity entitled to a credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. For purposes of this section, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in the state of North Dakota which normally maintains a regular faculty and curriculum, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the state department of public instruction, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through the twelfth grades. The term "nonprofit private institution of primary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the state department of public instruction, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in kindergarten through eighth grade.
6. For purposes of this section, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed in section 57-38-34 for filing the return for that taxable year, including extensions granted by the commissioner.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 2018, after which this Act becomes ineffective.

Approved April 25, 2019

Filed April 26, 2019

CHAPTER 485

HOUSE BILL NO. 1406

(Representatives J. Nelson, Hager, Sanford, Schreiber-Beck)
(Senators Dever, Heckaman, Poolman)

AN ACT to create and enact a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for the employment of individuals with developmental disability or severe mental illness; to amend and reenact section 57-38-01.16 of the North Dakota Century Code, relating to an income tax credit for the employment of individuals with developmental disabilities or severe mental illness; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.16. Income tax credit for employment of individuals with developmental disabilities or chronically mentally ill personssevere mental illness.

1. A taxpayer filing an income tax return under this chapter may claim a credit against the tax liability imposed under section 57-38-30 or section 57-38-30.3 for a portion of the wages paid to an employee with a developmental disability or a chronically mentally ill employeesevere mental illness.
2. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each employee with a developmental disability or chronically mentally ill employee of the taxpayer twenty-five percent of up to six thousand dollars in wages paid annually by the taxpayer for each employee with a developmental disability or severe mental illness, if the department of human services' vocational rehabilitation division determines the individual has a most significant disability, is eligible for services, and requires customized employment in order to obtain competitive integrated employment.
3. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.
4. The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.
5. A taxpayer shall apply, on a form and in the manner prescribed by the department of human services' vocational rehabilitation division, for a determination of whether an employee meets the requirements under subsection 2. If an employee meets the requirements, a letter of certification containing the names of the taxpayer and the qualifying employee must be issued to the taxpayer. No more than one hundred employees may be certified

as qualifying under this section. Applications must be processed in the order the applications are received.

6. A taxpayer claiming a credit under this section shall include a copy of the certification letter received from the department of human services' vocational rehabilitation division with the taxpayer's return filed under this chapter for each taxable year the credit is claimed.
7. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this section against the individual's state income tax liability under section 57-38-30.3.

²³⁷ **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for employment of individuals with developmental disabilities or severe mental illness under section 57-38-01.16.

SECTION 3. EFFECTIVE DATE. This Act is effective for the first two taxable years after December 31, 2018.

Approved April 10, 2019

Filed April 11, 2019

²³⁷ Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

CHAPTER 486

HOUSE BILL NO. 1174

(Representatives Bellew, Dockter, Martinson, Nathe, Rohr, M. Ruby, Trottier)
(Senators Dever, Schaible)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an individual income tax deduction for social security benefits; to amend and reenact subsection 5 of section 57-02-08.1 and section 57-38-01.28 of the North Dakota Century Code, relating to the homestead tax credit and the marriage penalty credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁸ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section:
 - a. "Dependent" has the same meaning it has for federal income tax purposes.
 - b. "Homestead" has the same meaning as provided in section 47-18-01.
 - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law with the exception of income from social security benefits, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
 - d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
 - e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician or a written determination of disability from the social security administration or any federal or state agency that has authority to certify an individual's disability.

²³⁸ Section 57-02-08.1 was also amended by section 2 of Senate Bill No. 2278, chapter 474.

SECTION 2. AMENDMENT. Section 57-38-01.28 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.28. Marriage penalty credit.

1. A married couple filing a joint return under section 57-38-30.3 is allowed a credit of not to exceed three hundred dollars per couple as determined under this section. The tax commissioner shall adjust the maximum amount of the credit under this subsection each taxable year at the time and rate adjustments are made to rate schedules under subdivision g of subsection 1 of section 57-38-30.3.
2. The credit under this section is the difference between the tax on the couple's joint North Dakota taxable income under the rates and income levels in subdivision b of subsection 1 of section 57-38-30.3 and the sum of the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the qualified income of the lesser-earning spouse, and the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the couple's joint North Dakota taxable income, minus the qualified income of the lesser-earning spouse.
3. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
4. For purposes of this section:
 - a. "Qualifying income" means the sum of the following, to the extent included in North Dakota taxable income:
 - (1) Earned income as defined in section 32(c)(2) of the Internal Revenue Code;
 - (2) Income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and
 - (3) Social security benefits as defined in section 86(d)(1) of the Internal Revenue Code to the extent included in North Dakota taxable income.
 - b. "Qualifying income of the lesser-earning spouse" means the qualifying income of the spouse with the lesser amount of qualifying income for the taxable year minus the sum of:
 - (1) The amount for one exemption under section 151(d) of the Internal Revenue Code; and
 - (2) One-half of the amount of the standard deduction under section 63(c)(2)(A)(4) of the Internal Revenue Code.

239 SECTION 3. A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

²³⁹ Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

For taxpayers with federal adjusted gross income of fifty thousand dollars or less, or one hundred thousand dollars or less if married filing jointly, reduced by an amount equal to social security benefits included in a taxpayer's federal adjusted gross income under section 86 of the Internal Revenue Code.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved April 26, 2019

Filed April 29, 2019

CHAPTER 487

HOUSE BILL NO. 1040

(Legislative Management)
(Taxation Committee)

AN ACT to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to the provision of an income tax credit for purchases of manufacturing machinery and equipment to automate manufacturing processes; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Twenty-first century manufacturing workforce incentive.

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes in this state to improve job quality or increase productivity. The amount of the credit under this section is twenty percent of the cost of the manufacturing machinery and equipment purchased in the taxable year. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed under this chapter.
2. For purposes of this section:
 - a. "Improved job quality" means a five percent increase in average wages or a five percent improvement in workplace safety as documented through participation in workforce safety and insurance safety incentive programs.
 - b. "Increased productivity" means no less than a five percent increase in output or a five percent increase in the number of units produced per automated line per time period.
 - c. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment used to upgrade or advance a manufacturing process. The term does not include replacement automation and robotic equipment that does not upgrade or advance a manufacturing process.
 - d. "Primary sector business" has the meaning provided in section 1-01-49.
 - e. "Purchase" includes manufacturing machinery and equipment acquired under a capital lease only for the taxable year in which the lease is executed. A capital lease is a lease which meets generally accepted accounting principles. The qualifying costs of the equipment acquired

- under a capital lease is the fair market value of the equipment at the inception of the lease.
3. The taxpayer shall claim the total credit amount for the taxable year in which the manufacturing machinery and equipment are purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.
 4. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.
 5. The aggregate amount of credits allowed each calendar year under this section may not exceed one million dollars. However, if the maximum amount of allowed credits are not claimed in any calendar year, any remaining unclaimed credits may be carried forward and made available in the next succeeding calendar year. If the aggregate amount of credits claimed under this section exceeds the amount available in a calendar year, the tax commissioner shall prorate the credits among the claimants.
 6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.
 7. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.
 8. The department of commerce shall provide the tax commissioner the name, address, and federal identification number or social security number of the taxpayer approved as qualifying for the credit under this section, and a list of those items approved as a qualified expenditure by the department. The taxpayer claiming the credit shall file with the taxpayer's return, on forms prescribed by the tax commissioner, the following information:
 - a. The name, address, and federal identification number or social security number of the taxpayer that made the purchase; and
 - b. An itemization of:
 - (1) Each item of machinery or equipment purchased for automation, including a description of the equipment or system being upgraded or advanced, and an explanation of how the upgrade or advancement will improve job quality or increase productivity;
 - (2) The amount paid for each item of machinery or equipment if the amount paid for the machinery or equipment is being used as a basis for calculating the credit; and

(3) The date on which payment for the purchase was made.

9. Within one year after claiming a tax credit under this section, a taxpayer shall file with the tax commissioner a report that documents the improved job quality or increased productivity required under this section and any other information the tax commissioner determines is necessary for administration of this section. Failure to document the improved job quality or increased productivity requirements is cause to disallow the credit attributable to the noncompliance. The tax commissioner shall provide notice of the disallowed credit to the taxpayer. Within ninety days after the date of the notice, the taxpayer shall file an amended return for each taxable year in which the disallowed credit reduced the taxpayer's tax liability and pay the amount due. If an amended return is not filed timely, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
10. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.

²⁴⁰ **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Twenty-first century manufacturing workforce incentive under section 1 of this Act (effective for the first four taxable years beginning after December 31, 2018).

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first four taxable years beginning after December 31, 2018, and is ineffective after that date.

Approved April 25, 2019

Filed April 26, 2019

²⁴⁰ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

CHAPTER 488

HOUSE BILL NO. 1276

(Representatives K. Koppelman, Devlin, Hatlestad, Karls, Louser, Pollert, Satrom, Schauer)
(Senators Heckaman, Hogan, Kannianen)

AN ACT to amend and reenact subdivision q of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for a birth resulting in stillbirth; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴¹ **SECTION 1. AMENDMENT.** Subdivision q of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- q. ~~Reduced by an amount equal to the exemption available for a qualifying child under section 152 of the Internal Revenue Code [26 U.S.C. 152], as amended, four thousand one hundred fifty dollars for taxable year 2018, for each birth resulting in stillbirth, as defined in section 23-02.1-01, for which a fetal death certificate has been filed under section 23-02.1-20. For taxable years beginning after December 31, 2018, the deduction amount must be adjusted annually on January first of each year by the cost-of-living adjustment. For purposes of this subdivision, the "cost-of-living adjustment" means the percentage increase in the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics, for the most recent year ending December thirty-first. The exemption may only be claimed in the taxable year in which the stillbirth occurred.~~

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to taxable years beginning after December 31, 2017.

Approved March 8, 2019

Filed March 8, 2019

²⁴¹ Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

CHAPTER 489

HOUSE BILL NO. 1475

(Representatives Mitskog, Boschee, Dockter)
(Senator Cook)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax exclusion for employee education assistance provided by an employer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

242 SECTION 1. A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of expenses incurred by an employee which are directly related to the attainment of higher education or career and technical education which are reimbursed by the employee's employer, but only to the extent the amount of reimbursement is reported as federal taxable income.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 28, 2019

Filed March 29, 2019

²⁴² Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, and section 11 of Senate Bill No. 2036, chapter 54.

CHAPTER 490

HOUSE BILL NO. 1053

(Representatives Vetter, Kasper, C. Johnson, Schneider, Eidson, Beadle, Blum,
Johnston, Schauer)
(Senators Meyer, Sorvaag, Burckhard)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for retired military personnel benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴³ **SECTION 1.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount received by a taxpayer as retired military personnel benefits, including retired military personnel benefits paid to the surviving spouse of a deceased retired member of the armed forces of the United States, a reserve component of the armed forces of the United States, or the national guard, but only to the extent the amount was included in federal taxable income.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

²⁴³ Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

CHAPTER 491

HOUSE BILL NO. 1111

(Representatives Headland, Dockter, Grueneich)
(Senators Cook, Wanzek)

AN ACT to amend and reenact section 57-38-30.5 of the North Dakota Century Code, relating to the alternative simplified method for calculating the research and experimental expenditure credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.5. Income tax credit for research and experimental expenditures.

A taxpayer is allowed a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
 - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

- e. ~~For~~Except as provided in subsection 4, for the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - f. The maximum annual credit a taxpayer may obtain under this subsection is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 78.
2. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
 - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 3. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 4. A taxpayer may elect to use the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code [26 U.S.C. 41(c)] the amount of the credit under this subsection is:
 - a. Seventeen and one-half percent of the first one hundred thousand dollars of the alternative excess research and development for the taxable year plus five and six-tenths percent of the alternative excess research and development for the taxable year in excess of one hundred thousand dollars.

- b. If a taxpayer has zero qualified research expenses in any one of the three taxable years preceding the taxable year for which the credit is determined, the amount of qualified research expenses for the taxable year multiplied by seven and one-half percent of the first one hundred thousand dollars plus two and four-tenths percent of qualified research expenses for the taxable year more than one hundred thousand dollars.
5. For purposes of this section:
- a. "Alternative excess research and development" means the amount of qualified research expenses which exceeds fifty percent of the average qualified research expenses for the three taxable years preceding the taxable year for which the credit is being determined.
- b. "Alternative simplified credit" means the computation set forth in section 41(c)(5) of the Internal Revenue Code [26 U.S.C. 41(c)(5)], except the term does not include qualified research expenses incurred outside the state of North Dakota.
- c. "Base amount" means base amount as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
- b.d. "Director" means the director of the department of commerce division of economic development and finance.
- e.e. "Primary sector business" has the meaning provided in section 1-01-49.
- d.f. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
- e.g. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
- f.h. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
- 5-6. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
- 6-7. In the case of a taxpayer that is a partner, shareholder, or a member in a passthrough entity, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
- 7-8. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 56, the excess may be used as a research credit carryback to

each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year. A claim to carry back the credit under this section must be filed within three years of the due date or extended due date of the return for the taxable year in which the credit was earned.

8-9. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 45. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:

- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax

commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.

- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.

9-10. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

40-11. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 89.

44-12. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-30.3.

42-13. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

43-14. For any taxable year in which the federal research tax credit provisions of section 41 of the Internal Revenue Code are ineffective, the provisions of section 41 of the Internal Revenue Code [26 U.S.C. 41] referenced in this section have the same meaning and application as provided in section 41 of the Internal Revenue Code, as amended through the most recent taxable year in which the provisions were in effect.

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15. If a taxpayer claims a credit under this section on the taxpayer's original return, the taxpayer's election to calculate the credit under subsection 1, 2, 3, or 4 is binding for the taxable year in which the election is made. A taxpayer claiming a credit for tax years beginning before January 1, 2019, may not file an amended return for the purpose of calculating the credit under subsection 4.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 492

HOUSE BILL NO. 1248

(Representatives Hanson, Dockter, Eidson, Trottier)
(Senators Dever, Dotzenrod)

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to optional income tax contributions to the veterans' postwar trust fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Optional contributions to veterans' postwar trust fund.

An individual may designate on the tax return of that individual a contribution to the veterans' postwar trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that otherwise would be payable by or to the individual. The tax commissioner shall notify taxpayers of this optional contribution on the individual state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the veterans' postwar trust fund.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 493

HOUSE BILL NO. 1112

(Representatives Headland, Dockter)
(Senator Cook)

AN ACT to create and enact a new subsection to section 57-38-60 of the North Dakota Century Code, relating to filing information returns; to amend and reenact subsection 11 of section 57-38-60 of the North Dakota Century Code, relating to filing quarterly withholding returns; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 57-38-60 of the North Dakota Century Code is amended and reenacted as follows:

11. A payroll service provider authorized under the provisions of this chapter to file and remit withholding taxes on behalf of an employer shall file the ~~returns~~return required by ~~subsections~~subsection 2, 3, and 4, and pay any tax due, by electronic data interchange or other electronic media as determined by the tax commissioner. As used in this subsection, a "payroll service provider" means a person that, for federal tax purposes, electronically processes and transmits an employer's withholding returns and taxes, including wage information returns. The tax commissioner may waive, upon a showing of good cause, the requirement to file a return or pay the tax electronically.

SECTION 2. A new subsection to section 57-38-60 of the North Dakota Century Code is created and enacted as follows:

Any person required to file ten or more information returns under subsection 3 of section 57-38-42, or subsection 3 or 4 of this section, shall file the returns by electronic data interchange or other electronic media as determined by the tax commissioner. The tax commissioner may waive, upon a showing of good cause, the requirement to file the returns electronically.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 6, 2019

Filed March 6, 2019

CHAPTER 494

HOUSE BILL NO. 1083

(Finance and Taxation Committee)
(At the request of the North Dakota University System)

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 of the North Dakota Century Code, relating to setoff of income tax refund for debts owed to the state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, state institutions of higher education, the North Dakota student loan service center, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 8, 2019

Filed March 8, 2019

CHAPTER 495

SENATE BILL NO. 2165

(Senators Vedaa, Clemens, Kreun)
(Representatives D. Anderson, M. Ruby, Vetter)

AN ACT to amend and reenact subdivision d of subsection 12 of section 57-39.2-01 of the North Dakota Century Code, relating to the definition of gross receipts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁴ **SECTION 1. AMENDMENT.** Subdivision d of subsection 12 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

d. "Gross receipts" does not include:

- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
- (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; ~~and~~
- (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer; and
- (5) The amount of compensation received from an insurance company for the loss of a stolen or totally destroyed watercraft that has been previously taxed under this chapter or chapter 57-40.2, if that compensation is used as a trade-in on the purchase of a replacement watercraft. The trade-in credit is not included in the gross receipts of the retailer.
 - (a) If a watercraft is purchased by an owner who has had a watercraft stolen or totally destroyed, a trade-in credit must be allowed against one or more replacement watercraft purchases in a

²⁴⁴ Section 57-39.2-01 was also amended by section 2 of Senate Bill No. 2192, chapter 95, section 4 of Senate Bill No. 2193, chapter 341, and section 1 of Senate Bill No. 2338, chapter 496.

cumulative amount not to exceed the total amount of compensation from the insurance company for the loss.

- (b) The purchaser of a replacement watercraft shall provide the seller with an original notarized statement from the insurance company verifying the original watercraft was a total loss and indicating the date and amount of compensation.
- (c) If the full amount of trade-in credit under this section has not been used, the seller shall record on the face of the notarized statement the necessary information to identify partial use of the credit, retain a copy of the notarized statement to verify the credit allowed, and return the original notarized statement to the purchaser. If the full amount of the credit has been used, the seller shall retain the original notarized statement to verify the amount of trade-in credit allowed.
- (d) Trade-in credit for a watercraft stolen or totally destroyed may be applied to purchases of replacement watercraft made within three years from the date of compensation by the insurance company.

Approved March 28, 2019

Filed March 29, 2019

CHAPTER 496

SENATE BILL NO. 2338

(Senator Cook)
(Representative Dockter)

AN ACT to create and enact sections 57-39.2-02.3 and 57-40.2-02.4 of the North Dakota Century Code, relating to collection of sales and use tax by marketplace facilitators; to amend and reenact subsection 22 of section 57-39.2-01, and subsections 6 and 7 of section 57-40.2-01 of the North Dakota Century Code, relating to the definition of retailer and retail sale; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁵ **SECTION 1. AMENDMENT.** Subsection 22 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. ~~A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.~~

SECTION 2. Section 57-39.2-02.3 of the North Dakota Century Code is created and enacted as follows:

57-39.2-02.3. Marketplace facilitator tax collection requirement.

1. For the purposes of this section:

²⁴⁵ Section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2165, chapter 495, section 2 of Senate Bill No. 2192, chapter 95, and section 4 of Senate Bill No. 2193, chapter 341.

- a. "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax or use tax. The term includes a resale certificate or other documentation authorized in section 57-39.2-10 furnished by a buyer to a seller.
- b. "Marketplace" means a physical or electronic place where one or more marketplace sellers sell or offer for sale tangible personal property or other products or services subject to tax under section 57-39.2-02.1, regardless of whether the marketplace seller has a physical presence in this state. A physical or electronic place includes a store, booth, internet website, catalog, television, radio broadcast, or a dedicated sales software application.
- c. (1) "Marketplace facilitator" means a person that:
- (a) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person;
 - (b) Engages directly or indirectly, through one or more affiliated persons, in any of the following:
 - [1] Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
 - [2] Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
 - [3] Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
 - [4] Software development or research and development activities related to any of the activities described in subparagraph a, if such activities are directly related to a physical presence or electronic marketplace operated by the person or an affiliated person; and
 - (c) Engages in any of the following activities with respect to the seller's products:
 - [1] Payment processing services;
 - [2] Fulfillment or storage services;
 - [3] Listing products for sale;
 - [4] Setting prices;
 - [5] Branding sales as those of the marketplace facilitator;
 - [6] Order taking;
 - [7] Advertising or promotion; or

- [8] Providing customer service or accepting or assisting with returns or exchanges.
- (2) The term does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties.
- d. "Marketplace seller" means a retailer that sells or offers for sale tangible personal property or other products or services subject to tax under section 57-39.2-02.1, through a marketplace that is owned, operated, or controlled by a marketplace facilitator.
2. Notwithstanding any other provision of law, any marketplace facilitator facilitating sales of tangible personal property or other products or services subject to tax under section 57-39.2-02.1, which does not have a physical presence in this state, is a retailer subject to chapters 57-39.2 and 57-40.2 and shall remit sales or use tax if the marketplace facilitator facilitates or makes sales through the marketplace that, when the sales are combined, meet the threshold amount in section 57-39.2-02.2. A marketplace facilitator exceeding the sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier.
3. A marketplace facilitator shall be considered the retailer of each sale the facilitator facilitates on its forum for a marketplace seller. Each marketplace facilitator shall:
- a. Be required to collect and remit for each sale any tax imposed under chapters 57-39.2 and 57-40.2.
- b. Be responsible for all obligations imposed under chapter 57-39.2 as if the marketplace facilitator was the retailer of the sale.
- c. In accordance with the provisions of section 57-39.2-10, keep such records and information as may be required by the tax commissioner to ensure proper collection and remittance of tax.
- d. Certify to its marketplace sellers that it will collect and remit state and local sales and use tax on sales of tangible personal property or other products or services subject to tax under section 57-39.2-02.1 made through the marketplace. A marketplace seller that accepts a marketplace facilitator's collection certificate in good faith may exclude sales made through the marketplace from the marketplace seller's return of gross receipts under section 57-39.2-11.
- e. Be subject to audit by the tax commissioner with respect to all retail sales for which it is required to collect and pay the tax imposed under chapters 57-39.2 and 57-40.2. If the tax commissioner audits the marketplace facilitator, the tax commissioner is prohibited from auditing the marketplace seller for the same retail sales unless the marketplace facilitator seeks relief under subsection 4.

4. A marketplace facilitator is not liable under this section for failure to collect and remit sales and use tax if the marketplace facilitator demonstrates to the satisfaction of the department that:
 - a. The marketplace facilitator has a system in place to require the seller to provide accurate information and has made a reasonable effort to obtain accurate information from the seller about a retail transaction;
 - b. The failure to collect and remit the correct tax was due to reliance upon incorrect or insufficient information provided to the marketplace facilitator by the seller. If the marketplace facilitator is relieved of liability under this subsection, the seller and the purchaser are liable for any amount of uncollected, unpaid, or unremitted tax; and
 - c. The marketplace facilitator and marketplace seller are not affiliated. A marketplace facilitator and a marketplace seller are affiliated if:
 - (1) Either owns more than five percent of the other; or
 - (2) Both are subject to the control of a common entity that owns more than five percent of each.
5. Notwithstanding any other provision of law, the tax imposed under this section may be refunded under the following conditions:
 - a. A person qualifying for an exemption under subsection 5, 6, 24, 32, 43, 48, or 52 of section 57-39.2-04 may apply in writing to the tax commissioner on a form and in the manner as the tax commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale.
 - b. The refund is five dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the five dollar limit.
6. A class action may not be brought against a marketplace facilitator on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator, regardless of whether such action is characterized as a tax refund claim.
7. No marketplace facilitator is required to collect or remit sales or use tax under this section on any sale made before October 1, 2019.

SECTION 3. AMENDMENT. Subsections 6 and 7 of section 57-40.2-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this

chapter. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.

SECTION 4. Section 57-40.2-02.4 of the North Dakota Century Code is created and enacted as follows:

57-40.2-02.4. Marketplace facilitator tax collection requirement.

1. For the purposes of this section:

- a. "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales or use tax. The term includes a resale certificate or other documentation authorized in section 57-40.2-04 furnished by a buyer to a seller.
- b. "Marketplace" means a physical or electronic place where one or more marketplace sellers sell or offer for sale tangible personal property or other products or services subject to tax under section 57-40.2-02.1, regardless of whether the marketplace seller has a physical presence in this state. A physical or electronic place includes a store, booth, internet website, catalog, television, radio broadcast, or a dedicated sales software application.
- c. (1) "Marketplace facilitator" means a person that:
- (a) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person;
- (b) Engages directly or indirectly, through one or more affiliated persons, in any of the following:
- [1] Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
- [2] Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

- a. Be required to collect and remit for each sale any tax imposed under chapters 57-39.2 and 57-40.2.
 - b. Be responsible for all obligations imposed under chapter 57-40.2 as if the marketplace facilitator was the retailer of the sale.
 - c. In accordance with the provisions of section 57-40.2-09, keep such records and information as may be required by the tax commissioner to ensure proper collection and remittance of tax.
 - d. Certify to its marketplace sellers that it will collect and remit state and local sales and use tax on sales of tangible personal property or other products or services subject to tax under section 57-40.2-02.1 made through the marketplace. A marketplace seller that accepts a marketplace facilitator's collection certificate in good faith may exclude sales made through the marketplace from the marketplace seller's return of gross receipts under section 57-39.2-11.
 - e. Be subject to audit by the tax commissioner with respect to all retail sales for which it is required to collect and pay the tax imposed under chapters 57-39.2 and 57-40.2. Where the tax commissioner audits the marketplace facilitator, the tax commissioner is prohibited from auditing the marketplace seller for the same retail sales unless the marketplace facilitator seeks relief under subsection 4.
4. A marketplace facilitator is not liable under this section for failure to collect and remit sales and use tax if the marketplace facilitator demonstrates to the satisfaction of the department that:
- a. The marketplace facilitator has a system in place to require the seller to provide accurate information and has made a reasonable effort to obtain accurate information from the seller about a retail transaction;
 - b. The failure to collect and remit the correct tax was due to reliance upon incorrect or insufficient information provided to the marketplace facilitator by the seller. If the marketplace facilitator is relieved of liability under this subsection, the seller and the purchaser are liable for any amount of uncollected, unpaid, or unremitted tax; and
 - c. The marketplace facilitator and marketplace seller are not affiliated. A marketplace facilitator and a marketplace seller are affiliated if:
 - (1) Either owns more than five percent of the other; or
 - (2) Both are subject to the control of a common entity that owns more than five percent of each.
5. Notwithstanding any other provision of law, the tax imposed under this section may be refunded under the following conditions:
- a. An entity qualifying for an exemption under subsection 5, 6, 24, 32, 43, 48, or 52 of section 57-39.2-04 may apply in writing to the tax commissioner on a form and in the manner as the tax commissioner may prescribe, reciting sufficient facts establishing the exempt status of the sale.

- b. The refund is five dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the five dollar limit.
- 6. A class action may not be brought against a marketplace facilitator on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator, regardless of whether such action is characterized as a tax refund claim.
- 7. No marketplace facilitator is required to collect or remit sales or use tax under this section on any sale made before October 1, 2019.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable events occurring after July 1, 2019.

Approved March 26, 2019

Filed March 27, 2019

CHAPTER 497

SENATE BILL NO. 2191

(Senators Cook, Bekkedahl)
(Representatives Dockter, Hatlestad)

AN ACT to amend and reenact sections 57-39.2-02.2 and 57-40.2-02.3 of the North Dakota Century Code, relating to the application of sales and use tax to certain sellers located outside this state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.2. Certain sellers located outside this state required to collect and remit sales taxes - Criteria.

Notwithstanding any other provision of law, any seller of tangible personal property or other taxable product for delivery in this state, which does not have a physical presence in this state, is subject to this chapter and chapter 57-40.2 and shall remit sales or use tax if the seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars in the previous calendar year, or the current calendar year. A seller that exceeds this sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales delivered during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier. The seller shall follow all applicable procedures and requirements of law as if the seller has a physical presence in this state, if the seller meets either of the following criteria in the previous calendar year or the current calendar year:

1. ~~The seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars; or~~
2. ~~The seller sold tangible personal property and other taxable items for delivery in this state in two hundred or more separate transactions.~~

SECTION 2. AMENDMENT. Section 57-40.2-02.3 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.3. Certain sellers located outside this state required to collect and remit sales taxes - Criteria.

Notwithstanding any other provision of law, any seller of tangible personal property or other taxable product for delivery in this state, which does not have a physical presence in this state, is subject to this chapter and chapter 57-39.2 and shall remit sales or use tax if the seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars in the previous calendar year, or the current calendar year. A seller that exceeds this sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales delivered during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier. The seller shall

follow all applicable procedures and requirements of law as if the seller had a physical presence in this state, if the seller meets either of the following criteria in the previous calendar year or the current calendar year:

1. ~~The seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars; or~~
2. ~~The seller sold tangible personal property and other taxable items for delivery in this state in two hundred or more separate transactions.~~

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Approved March 14, 2019

Filed March 14, 2019

CHAPTER 498

HOUSE BILL NO. 1205

(Representatives Dockter, Headland, Howe, Porter)
(Senator Cook)

AN ACT to create and enact a new section to chapter 57-39.2 and a new subdivision to subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code, relating to a sales tax exemption for materials used to construct a straddle plant, a fractionator, or qualified associated infrastructure; to amend and reenact subsection 2 of section 57-39.2-04.15 of the North Dakota Century Code, relating to a sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-04.15 of the North Dakota Century Code is amended and reenacted as follows:

2. On or before June 30, ~~2019~~2023, the owner of the fertilizer or chemical processing plant must receive from the state department of health ~~an environmental quality~~ an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section.

SECTION 2. AMENDMENT. Subsection 2 of section 57-39.2-04.15 of the North Dakota Century Code is amended and reenacted as follows:

2. On or before June 30, ~~2019~~2023, the owner of the fertilizer or chemical processing plant must receive from the state department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section.

SECTION 3. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for materials used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure.

1. Gross receipts from sales of tangible personal property used to construct or expand a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure in this state are exempt from the tax imposed under this chapter. To qualify for the exemption, the tangible personal property must be incorporated into a qualifying straddle plant or a qualifying fractionator plant, or used in the construction process to the point of having no residual economic value. Replacement of tangible personal property does not qualify

for the exemption under this section unless the replacement creates an expansion of the plant or qualified associated infrastructure.

2. To receive the exemption at the time of purchase, the owner of the plant or qualified associated infrastructure must receive from the tax commissioner a certificate that the tangible personal property used to construct the plant qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption allowed by this section. Application for a refund must be made at the time and in the manner directed by the tax commissioner, and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
4. For purposes of this section:
 - a. "Deep cut fractionator" means a plant that processes a mixed natural gas liquids stream into purity natural gas liquids, including ethane, propane, butane, and C-five plus.
 - b. "Expansion" means an increase in production volume, employment, or the type of products produced.
 - c. "Qualified associated infrastructure" means:
 - (1) Natural gas liquid pipelines built to supply mixed natural gas liquids to the qualified fractionator;
 - (2) Storage facilities for mixed natural gas liquids that will be processed by the qualified fractionator;
 - (3) Storage facilities for purity natural gas liquids, including ethane, propane, butane, and C-five plus, that are produced by the qualified fractionator;
 - (4) Disposal facilities built for the qualified fractionator and for onsite purchasers of the fractionator's processed end-product;
 - (5) Rail upgrades required for the qualified fractionator and onsite purchasers to access rail transportation; and
 - (6) Roads developed for the qualified fractionator, storage facilities, and onsite customers.
 - d. "Qualified fractionator" means a deep cut fractionator located in this state with a daily design capacity of at least forty-five thousand barrels of ethane, fifteen thousand barrels of propane, thirteen thousand barrels of butane, and three thousand barrels of C-five plus.

- e. "Qualified straddle plant" means a straddle plant located in this state that is either connected to a qualified fractionator or produces Y-grade liquids that are dedicated for use by a qualified fractionator.
- f. "Straddle plant" means a gas processing plant located on or near a gas transmission line, which removes residual natural gas liquids from the gas stream and returns the residue gas to the transmission line.

SECTION 4. A new subdivision to subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 2 of this Act.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 2019.

SECTION 6. EFFECTIVE DATE - EXPIRATION DATE. If, by July 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, section 2 of this Act becomes effective on July 1, 2019, and remains in effect until the date certification is received, after which section 2 of this Act is ineffective. If the certification is received before July 1, 2019, section 2 of this Act does not become effective.

Section 1 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, section 1 of this Act becomes effective on the date certification is received.

Approved April 23, 2019

Filed April 24, 2019

CHAPTER 499

HOUSE BILL NO. 1214

(Representatives Dockter, Hatlestad, Headland)
(Senators Bekkedahl, Cook)

AN ACT to amend and reenact section 57-39.4-31 of the North Dakota Century Code, relating to membership of the streamlined sales tax governing board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.4-31 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-31. Membership of streamlined sales tax governing board.

~~1. Two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative management, shall represent this state on the~~The streamlined sales tax governing board consists of:

1. The tax commissioner or the commissioner's designee;
 2. One member appointed by the majority leader of the senate; and
 3. One member appointed by the majority leader of the house of representatives.
- ~~2. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board.~~

Approved March 6, 2019

Filed March 6, 2019

CHAPTER 500

SENATE BILL NO. 2258

(Senators Cook, Heckaman, Wardner)
(Representatives Boschee, Headland, Pollert)

AN ACT to create and enact chapter 57-39.9 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-39.9 of the North Dakota Century Code is created and enacted as follows:

57-39.9-01. Authority to enter state-tribal sales, use, and gross receipts tax agreements.

The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Spirit Lake Tribe, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, which comply with this chapter relating to the collection, administration, enforcement, and allocation of state sales, use, and gross receipts taxes imposed and collected within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced. An agreement under this chapter must include the sales tax, use tax, farm machinery gross receipts tax, and the alcoholic beverages gross receipts tax.

57-39.9-02. Agreement requirements.

The governor may enter an agreement with a tribe or tribes if the agreement complies with this section.

1. The taxes subject to an agreement under this chapter are the state's sales, use, and gross receipts taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, as may be amended subsequently by the legislative assembly, for taxable transactions and activities occurring exclusively within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.

2. Except as otherwise provided in this chapter, the state's sales, gross receipts, and use taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, must apply to all transactions and activities by all persons and entities occurring within the boundaries of the reservation.
3. A tribe or tribes shall impose taxes equal to the state's taxes which conform in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, but must be applied only to those taxable transactions and activities occurring within the exterior boundaries of a reservation which are exempt from state taxes because the transactions or activities occur within the tribe's or tribes' jurisdiction.
4. Chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this chapter.
5. Except as provided in subsection 6, tribally owned and tribal member-owned business entities operating within the boundaries of a reservation are subject to the state's tax or taxes contained in the agreement.
6. Any tax subject to an agreement may not be imposed on a tribally owned entity that solely performs a governmental function or provides essential government services that directly impact the health, welfare, or safety of the tribe and its members, if the tribal entity is identified as such in the agreement. Any other tribally owned business enterprise whose moneys are used, in whole or in part, to fund governmental functions or services, is not subject to the exemption provided under this subsection.
7. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal employment rights office fees.
8. The tax commissioner retains authority to collect, administer, and enforce the taxes as provided in chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the reservation under an agreement.
9. Any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.
10. The amount of state sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or tribes under an agreement must be calculated as follows:
 - a. Fifty percent of the taxes collected from retailers within the exterior boundaries of the reservation. The state shall receive the remainder.

- b. An amount of estimated use taxes paid or collected from enrolled tribal members residing within the exterior boundaries of the reservation determined by multiplying the enrolled membership of the tribe by the estimated per capita use tax. The estimated per capita use tax is ten percent of the per capita sales tax burden. The per capita sales tax burden is determined by multiplying the state tax rate factor by one third of the sales tax burden reported by the most recent "Tax Rates and Tax Burdens in the District of Columbia - A Nationwide Comparison", published by the government of the District of Columbia office of revenue analysis, for a family of three living in the largest city in North Dakota, and earning fifty thousand dollars per year. The state tax rate factor is a fraction representing the state general sales tax rate as a share of the combined state and local sales tax rate for the North Dakota city referenced in this subdivision.
 - c. Except as provided in subdivision d, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
 - d. The tribe or tribes shall provide the initial population required by subdivision c no less than sixty days before the effective date of the agreement.
 - e. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.
11. The amount of alcoholic beverages gross receipts tax allocated to the tribe under an agreement must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcohol revenue per capita.
- a. The state alcohol revenue per capita is the monthly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
 - b. The enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.

- b. The agreement must specify the processes or procedures necessary to safeguard the confidential nature of the tax information.
15. The administration, collection, and enforcement of the taxes under an agreement may begin no sooner than the first day of a calendar quarter which is at least ninety days after the agreement is signed by the parties.
16. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under an agreement entered under this chapter.

57-39.9-03. Inapplicability of chapter 54-40.2.

Chapter 54-40.2 does not apply to an agreement entered under this chapter.

57-39.9-04. Revenue allocation and distribution - Refunds - Continuing appropriation.

The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 10 of section 57-39.9-02. Tax revenues collected under this chapter are not subject to section 57-39.2-26.1, and are provided as a standing and continuing appropriation to the state treasurer for distribution on a monthly basis.

57-39.9-05. Refunds - Continuing appropriation.

1. Refunds of the tax imposed under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, which are subject to an agreement under this chapter, must be paid from the state general fund, and are provided to the state treasurer as a standing and continuing appropriation.
2. Refunds of taxes paid under this section must be reimbursed to the state general fund, with interest at the rate prescribed in section 57-39.2-25, from the first available moneys deposited in the tribal allocation fund.
3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund is attributable. The refund, including interest, must be reimbursed from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

²⁴⁶ **SECTION 2. REPEAL.** Chapter 57-39.8 of the North Dakota Century Code is repealed.

SECTION 3. APPLICATION. Section 1 of this Act applies to agreements entered after the effective date of this Act.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 23, 2019

Filed April 24, 2019

²⁴⁶ Chapter 57-39.8 was also repealed by section 2 of Senate Bill No. 2257, chapter 501.

CHAPTER 501

SENATE BILL NO. 2257

(Senators Cook, Heckaman, Wardner)
(Representatives Boschee, Headland, Pollert)

AN ACT to create and enact chapter 57-39.10 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of the alcoholic beverage wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax within the exterior boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-39.10 of the North Dakota Century Code is created and enacted as follows:

57-39.10-01. Authority to enter state-tribal alcoholic beverages wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax agreements.

1. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03 for sales of alcoholic beverages, including beer, wine, sparkling wine, and distilled spirits, for delivery to licensed retailers or sale directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.
2. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state tobacco products wholesale taxes under chapter 57-36 for tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to consumers within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of

the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.

3. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state alcoholic beverages gross receipts tax under chapter 57-39.6, imposed and collected within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.
4. An agreement under this chapter must include the alcoholic beverages wholesale tax, tobacco products wholesale tax, and the alcoholic beverages gross receipts tax.

57-39.10-02. Requirements for all state-tribal tax agreements.

Any agreement entered under this chapter must comply with this section.

1. The agreement must include:
 - a. A statement that the parties to the agreement are not forfeiting any legal rights to apply each party's respective taxes by entering an agreement, except as specifically set forth in the agreement;
 - b. A statement recognizing the sovereign rights of the state and the tribe or tribes; and
 - c. A statement that:
 - (1) The rights of each party must be determined by the terms of the agreement with respect to the taxes subject to the agreement;
 - (2) Neither party may seek additional entitlement or seek to deny entitlement on any federal ground, including federal pre-emption, whether statutorily provided for or otherwise with respect to the taxes that are the subject of an agreement;
 - (3) Both parties shall defend the agreement from attack by third parties;
 - (4) A taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established by the agreement; and
 - (5) The state and tribal government shall cooperate to collect only one tax and share or refund the revenue as specified in the agreement.

2. Any tribally owned entity or other entity owned in whole or part by a tribal member, whether chartered under state law or tribal law, and operating within the exterior boundaries of a reservation, is subject to the state's tax or taxes and regulatory requirements of the tax subject to an agreement.
3. The tax commissioner retains authority to collect, administer, and enforce the taxes subject to an agreement under this chapter, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the exterior boundaries of a reservation in this state in the manner provided by the applicable state laws.
4. Any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.
5. An agreement under this chapter must give the tax commissioner, after consulting with the governor, and a tribe or tribes the authority to terminate an agreement with or without cause.
6. An agreement may begin no sooner than the first day of a calendar quarter which is at least ninety days after the agreement is signed by both parties. The tribe or tribes and the state must provide the initial population required by sections 57-39.10-03 and 57-39.10-04 no fewer than sixty days before the effective date of the agreement.

57-39.10-03. Alcoholic beverages wholesale tax agreement requirements.

The governor may enter an alcoholic beverages wholesale tax agreement with a tribe or tribes if the agreement complies with section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this section are the state's alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03, as may be amended subsequently by the legislative assembly, for alcoholic beverages sold by licensed wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, for delivery to licensed retailers or sale directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. A tribe or tribes shall impose taxes equal to the state's alcoholic beverages wholesale taxes on all sales of alcoholic beverages sold by licensed wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, for delivery to all persons within the exterior boundaries of the reservation in this state.
3. Chapters 5-01, 5-02, and 5-03, and title 81 of the North Dakota Administrative Code govern the collection and administration of the taxes subject to an agreement under this section.
4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the

enrolled membership of the tribe by the state alcohol revenue per capita. The state alcohol revenue per capita is the quarterly collections of the state's alcoholic beverages wholesale taxes designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.

5. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

57-39.10-04. Tobacco products wholesale tax agreement requirements.

The governor may enter a tobacco products wholesale tax agreement with a tribe or tribes if the agreement complies with section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this section are the state's tobacco products wholesale taxes under chapter 57-36, as may be amended subsequently by the legislative assembly, for tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to consumers within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. A tribe or tribes shall impose taxes equal to the state's tobacco products wholesale taxes on all tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to customers within the exterior boundaries of the reservation in this state.
3. Chapters 57-36 and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this section.
4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state tobacco revenue per capita. The state tobacco revenue per capita is the quarterly collections of the state's tobacco products wholesale taxes designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
5. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically

residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

57-39.10-05. Alcoholic beverages gross receipts tax agreement requirements.

The governor may enter an alcoholic beverages gross receipts tax agreement with a tribe or tribes if the agreement complies with the requirements of section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this chapter are the state's alcoholic beverages gross receipts tax under chapter 57-39.6, as may be amended subsequently by the legislative assembly, for taxable transactions and activities occurring exclusively within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. A tribe or tribes shall impose a tax equal to the state's alcoholic beverages gross receipts tax on all sales at retail of alcoholic beverages within the exterior boundaries of the reservation in this state.
3. Chapters 57-39.2 and 57-39.6, and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this section.
4. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal employment rights office fees.
5. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcoholic beverages gross receipts tax revenue per capita. The state alcoholic beverages gross receipts tax revenue per capita is the quarterly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
6. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by

September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

7. a. Notwithstanding any other provision of state law, the agreement must contain provisions in which:
 - (1) Except as otherwise provided by law, the tax commissioner shall maintain the confidentiality of tax information relating to and gathered under the terms of an agreement as provided in section 57-39.2-23;
 - (2) The tribe or tribes may receive a list of retailers located within the exterior boundaries of the reservation and the amount of tax collected from each retailer during a reporting period; and
 - (3) The tribe or tribes agree to protect the confidentiality of tax information received from the tax commissioner.
- b. The agreement must specify the processes or procedures necessary to safeguard the confidential nature of the tax information.
8. Alcoholic beverages gross receipts taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under an agreement entered under this chapter.

57-39.10-06. Inapplicability of chapter 54-40.2.

Chapter 54-40.2 does not apply to an agreement entered under this chapter.

57-39.10-07. Alcoholic beverages wholesale tax revenue allocation and distribution - Refunds - Continuing appropriation.

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 4 of section 57-39.10-03. Tax revenues collected under section 57-39.10-03 are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.
2. Refunds of the tax imposed under chapters 5-01, 5-02, and 5-03 which are subject to an agreement under section 57-39.10-03 must be paid from the state general fund and are provided to the state treasurer as a standing and continuing appropriation.
3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund paid under subsection 2 is attributable. The refund, including interest at the rate prescribed in section 5-03-06, must be reimbursed to the state general fund from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

57-39.10-08. Tobacco products wholesale tax revenue allocation and distribution - Refunds - Continuing appropriation.

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 4 of section 57-39.10-04. Tax revenues collected under section 57-39.10-04 are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.
2. Refunds of the tax imposed under chapter 57-36 which are subject to an agreement under section 57-39.10-04 must be paid from the general fund and are provided to the state treasurer as a standing and continuing appropriation.
3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund paid under subsection 2 is attributable. The refund must be reimbursed to the state general fund from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

57-39.10-09. Alcoholic beverages gross receipts tax revenue allocation and distribution - Refunds - Continuing appropriation.

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 5 of section 57-39.10-05. Tax revenues collected under section 57-39.10-05 are not subject to section 57-39.2-26.1, and are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.
2. Refunds of the tax imposed under chapter 57-39.6, which are subject to an agreement under section 57-39.10-05, must be paid from the state general fund, and are provided to the state treasurer as a standing and continuing appropriation.
3. Refunds of taxes paid under this section must be reimbursed to the state general fund, with interest at the rate prescribed in section 57-39.2-25, from the first available moneys deposited in the tribal allocation fund.
4. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund is attributable. The refund, including interest, must be reimbursed from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund paid under this section is attributable.

247 SECTION 2. REPEAL. Chapter 57-39.8 of the North Dakota Century Code is repealed.

SECTION 3. APPLICATION. Section 1 of this Act applies to agreements entered after the effective date of this Act.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 28, 2019

Filed March 29, 2019

²⁴⁷ Chapter 57-39.8 was also repealed by section 2 of Senate Bill No. 2258, chapter 500.

CHAPTER 502

HOUSE BILL NO. 1292

(Representatives Schmidt, Dockter, B. Koppelman)

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of purchase price for motor vehicle excise tax purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise. The purchase price excludes the amount of a manufacturer's incentive or discount that reduces the amount paid by the purchaser to the seller at the time of purchase. If a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed against one or more replacement motor vehicle purchases in a cumulative amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss plus the amount of the purchaser's deductible at the time of the loss. For a leased vehicle that is stolen or totally destroyed, the credit may not exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company within three years from the date of issuance verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss and the amount of the purchaser's deductible at the time of the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. If the full amount of the credit under this subsection has not been used, the director of the department of transportation shall record on the face of the notarized statement the necessary information to identify the partial use of the credit and shall retain a copy and return the original to the purchaser. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average

value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

Approved March 28, 2019

Filed March 29, 2019

CHAPTER 503

SENATE BILL NO. 2187

(Senators J. Lee, Mathern, Sorvaag)
(Representatives Dockter, Holman, Mitskog)

AN ACT to amend and reenact subsection 7 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁸ **SECTION 1. AMENDMENT.** Subsection 7 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Any motor vehicle in the possession of and used ~~as a bus~~ exclusively by a nonprofit senior citizens' or handicapped persons' corporation for transportation of the elderly or disabled; provided, that ~~such bus~~the motor vehicle may not be used for commercial activities.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2019.

Approved March 21, 2019

Filed March 22, 2019

²⁴⁸ Section 57-40.3-04 was also amended by section 11 of House Bill No. 1012, chapter 12.

CHAPTER 504

HOUSE BILL NO. 1066

(Representatives Nathe, Owens, Porter, Howe, Vigesaa, Lefor, D. Ruby, Mock)
(Senators Wardner, Cook, Robinson, Bekkedahl)

AN ACT to create and enact a new section to chapter 2-05 and sections 57-51.1-07.7 and 57-51.1-07.8 of the North Dakota Century Code, relating to infrastructure funds; to amend and reenact subsection 5 of section 57-51-01 and sections 57-51-15, 57-51.1-07.3, and 57-51.1-07.5 of the North Dakota Century Code, relating to oil and gas tax revenue allocations; to provide a continuing appropriation; to provide for a report; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 2-05 of the North Dakota Century Code is created and enacted as follows:

Airport infrastructure fund.

There is created in the state treasury the airport infrastructure fund. The fund consists of all moneys deposited in the fund pursuant to chapter 57-51.1. Moneys in the fund may be spent by the aeronautics commission pursuant to legislative appropriations to provide grants to airports for infrastructure projects. Grant funds must be distributed giving priority to projects that have been awarded or are eligible to receive federal funding.

SECTION 2. AMENDMENT. Subsection 5 of section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Hub city" means a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which ~~has more than two percent of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakotas located in a county that has oil and gas gross production tax or oil extraction tax revenue collections attributed to it, as reported by the tax commissioner in certifications made to the state treasurer, in any three consecutive months during the twenty-four month period preceding September first of the most recent odd-numbered year.~~

²⁴⁹ **SECTION 3. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. Gross production tax allocation.

The gross production tax must be allocated monthly as follows:

1. The tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited

²⁴⁹ Section 57-51-15 was also amended by section 22 of House Bill No. 1014, chapter 14.

with the state treasurer. The state treasurer shall allocate the funding in the following order:

- a. ~~To each hub city, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of three hundred seventy five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota. For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:~~
 - (1) ~~Thirty-three percent for the city of Williston;~~
 - (2) ~~Seventeen percent for the city of Dickinson; and~~
 - (3) ~~Four percent for the city of Minot.~~
- b. ~~To each hub city, which is located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota.~~
- e. ~~To each hub city school district, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one hundred twenty five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of the hub city's private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota. Hub city school districts, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subdivision. For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:~~
 - (1) ~~Thirty-three percent for the city of Williston;~~
 - (2) ~~Seventeen percent for the city of Dickinson; and~~
 - (3) ~~Four percent for the city of Minot.~~
- d. ~~To each county that received more than five million dollars but less than thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will be added to the allocations to school districts under subdivision b of subsection 5, as follows:~~

- (1) ~~To each county that received more than five million dollars but not exceeding ten million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
 - (2) ~~To each county that received more than ten million dollars but not exceeding fifteen million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million two hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
 - (3) ~~To each county that received more than fifteen million dollars but not exceeding twenty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
 - (4) ~~To each county that received more than twenty million dollars but not exceeding twenty-five million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of seven hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
 - (5) ~~To each county that received more than twenty-five million dollars but not exceeding thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
- e. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding ten million dollars per biennium. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty first of the following odd-numbered calendar year.
- (2) After August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars per fiscal year.
- f. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate four percent of the amount

~~available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding four million dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.~~

- ~~(2) After August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.~~
- ~~g. For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:~~
- ~~(1) Up to twenty five million dollars to the oil and gas impact grant fund.~~
- ~~(2) Any remaining revenues under subsection 3.~~
- ~~h. After August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:~~
- ~~(1) Up to five million dollars per biennium to the oil and gas impact grant fund. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.~~
- ~~(2) Any remaining revenues under subsection 3~~Eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars per fiscal year.~~~~
- ~~b. Four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.~~
- ~~c. Any remaining revenues pursuant to subsection 3.~~
- ~~i.d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.~~
2. The tax revenue collected under this chapter equal to four percent of the gross value at the well of the oil and four-fifths of the tax on gas must be deposited with the state treasurer. The state treasurer shall allocate the funding in the following order:
- a. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received less than five million dollars of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in

- ~~subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:~~
- ~~(1) The first five million dollars of collections received each fiscal year is allocated to the county.~~
 - ~~(2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.~~
- ~~b. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:~~
- ~~(1) The first five million dollars of collections received each fiscal year is allocated to the county. From the first five million dollars allocated to the county, the state treasurer shall allocate an amount from each county to the energy impact fund to provide a total allocation of two million per fiscal year to the fund. The amount allocated from each county to the energy impact fund under this paragraph must be proportional to the county's monthly oil and gas gross production tax revenue collected relative to the total monthly oil and gas gross production tax revenue collected from all the counties under this subdivision. The state treasurer shall allocate the amount remaining from this paragraph to the county under subsection 5. For the purposes of determining the counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year under this section, any amounts withheld from the county for allocations to the energy impact fund are considered allocations to the county.~~
 - ~~(2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.~~
- ~~c. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated after August 31, 2019, as follows:~~
- ~~(1) The first five million dollars is allocated to the county.~~
 - ~~(2) Of all annual revenue exceeding five million dollars, thirty percent is allocated to the county. The first five million dollars of collections received from a county each fiscal year is allocated to the county.~~
- ~~b. The remaining revenue collections received from a county each fiscal year are allocated thirty percent to the county and seventy percent as follows:~~
- ~~(1) Monthly amounts to the hub city funding pool to provide fifteen million four hundred thousand dollars per fiscal year for the allocations under paragraph 2 of subdivision a of subsection 5.~~

- (2) Monthly amounts to the hub city school district funding pool to provide two million one hundred thousand dollars per fiscal year for the allocations under paragraph 3 of subdivision a of subsection 5.
- (3) Monthly amounts to the supplemental school district funding pool to provide seventy percent of the total amount needed for the allocations under paragraph 4 of subdivision a of subsection 5.
- (4) Any remaining revenue collections to the state for the state's allocations pursuant to subsection 3.

d-c. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.

3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.
4. For a county that received less than five million dollars of allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
 - a. Forty-five percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
 - b. Thirty-five percent must be distributed proportionally to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.
 - c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be proportional based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.

- d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
5. For a county that received five million dollars or more of allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
 - a. A portion of the revenues from each county must be distributed to a hub city funding pool, a hub city school district funding pool, and a supplemental school district funding pool as follows:
 - (1) The amount distributed from each county to the funding pools under this subdivision must be proportional to each county's monthly oil and gas gross production tax revenue collections relative to the combined total monthly oil and gas gross production tax revenue collections from all the counties that receive allocations under this subsection.
 - (2) The state treasurer shall distribute, to the hub city funding pool, the monthly amount needed from each county to provide six million six hundred thousand dollars per fiscal year for the allocations under this paragraph.
 - (a) The state treasurer shall allocate monthly amounts from the hub city funding pool to provide a combined total of twenty-two million dollars per fiscal year to all the hub cities, which includes the fifteen million four hundred thousand dollars under paragraph 1 of subdivision b of subsection 2 and the six million six hundred thousand dollars under this paragraph. The monthly allocation to each hub city must be proportional to each hub city's impact percentage score, including fractional percentage points rounded to the nearest tenth of a percent, relative to the combined total of all the hub cities' impact percentage scores.
 - (b) The state treasurer shall calculate the impact percentage score for each hub city by summing the following:
 - [1] The percentage of mining, quarrying, and oil and gas extraction employment relative to the total employment of all industries in the county in which the hub city is located, based on the most recent annual data for all ownership types compiled by job service North Dakota in the quarterly census of employment and wages, multiplied by forty-five hundredths;
 - [2] The average of the percentage of mining, quarrying, and oil and gas extraction employment relative to the total employment of all industries in each county for all the counties in the human service region in which the hub city is located, based on the most recent annual data for all ownership types compiled by job service North Dakota in the quarterly census of employment and wages, multiplied by fifteen hundredths;
 - [3] The percentage of establishments engaged in mining, quarrying, and oil and gas extraction relative to the total

establishments of all industries in the county in which the hub city is located, based on the most recent annual data for all ownership types compiled by job service North Dakota in the quarterly census of employment and wages, multiplied by one-tenth;

- [4] The percentage of oil production in the human service region in which the hub city is located relative to the total oil production in all the human service regions with hub cities, based on the most recently available calendar year data compiled by the industrial commission in a report on the historical barrels of oil produced by county, multiplied by one-tenth;
 - [5] The percentage change in population from five years prior for the hub city, based on the most recent actual or estimated census data published by the United States census bureau, multiplied by one-tenth; and
 - [6] The percentage change in population from five years prior for the county in which the hub city is located, based on the most recent actual or estimated census data published by the United States census bureau, multiplied by one-tenth.
- (c) For purposes of this paragraph, "human service region" means the areas designated by the governor's executive order 1978-12 dated October 5, 1978.
- (3) The state treasurer shall distribute, to the hub city school district funding pool, the monthly amount needed from each county to provide nine hundred thousand dollars per fiscal year for the allocations under this paragraph.
- (a) The state treasurer shall allocate monthly amounts from the hub city school district funding pool to provide a combined total of three million dollars per fiscal year to all the hub city school districts, which includes the two million one hundred thousand dollars under paragraph 2 of subdivision b of subsection 2 and the nine hundred thousand dollars under this paragraph. The monthly allocation to each hub city school district must be proportional to each hub city school district's impact percentage score, including fractional percentage points rounded to the nearest tenth of a percent, relative to the combined total of all the hub cities' impact percentage scores.
 - (b) For the purpose of determining the impact percentage score for each hub city school district, the state treasurer shall use the same impact percentage score as the corresponding score calculated for each hub city in paragraph 2.
- (4) The state treasurer shall distribute, to the supplemental school district funding pool, the monthly amount needed from each county to provide for thirty percent of the total allocations under this paragraph. To each county that received more than five million dollars but less than thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the

biennium, the state treasurer shall allocate a monthly amount from the supplemental school district funding pool which will be added to the distributions to school districts under paragraph 2 of subdivision b, as follows:

- (a) To each county that received more than five million dollars but not exceeding ten million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
 - (b) To each county that received more than ten million dollars but not exceeding fifteen million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million two hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
 - (c) To each county that received more than fifteen million dollars but not exceeding twenty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
 - (d) To each county that received more than twenty million dollars but not exceeding twenty-five million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of seven hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
 - (e) To each county that received more than twenty-five million dollars but not exceeding thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
- b. After the distributions in subdivision a, each county's remaining revenues must be distributed as follows:
- (1) Sixty percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under

this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.

b. (2) Five percent must be distributed proportionally to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.

e. (3) Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be proportional based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.

d. Three

(4) Four percent must be allocated among the organized and unorganized townships of the county. The state treasurer shall allocate the funds available under this subdivision among townships in proportion to each township's road miles relative to the total township road miles in the county. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.

~~e. Three percent must be allocated among the organized and unorganized townships in all the counties that received five million dollars or more of allocations under subsection 2 in the most recently completed even-numbered fiscal year. The amount available under this subdivision must be allocated by the state treasurer in an equal amount to each eligible organized and unorganized township. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.~~

f. (5) Nine percent must be distributed among hub cities. Sixty percent of funds available under this subdivision must be distributed to the hub city receiving the highest percentage of allocations to hub cities under subdivision a of subsection 1 for the quarterly period, thirty percent of funds available under this subdivision must be distributed to the hub city receiving the second highest percentage of such allocations, and ten percent of funds available under this subdivision must be distributed to the hub city receiving the third highest percentage of such allocations. Hub cities, which are located in a county that did not receive an allocation under subsection 2 in the most recently

~~completed even-numbered fiscal year, must be excluded from the allocations under this subsection. If fewer than three hub cities are eligible for the allocations under this subdivision, the state treasurer shall allocate the available funds in proportion to the amounts the eligible hub cities received under subdivision a of subsection 4. The state treasurer shall distribute the funds available under this subdivision in proportion to the amounts the hub cities receive under paragraph 2 of subdivision a.~~

(6) Two percent must be distributed among hub city school districts. The state treasurer shall distribute the funds available under this subdivision in proportion to the amounts the hub city school districts receive under paragraph 3 of subdivision a.

~~g-~~ (7) For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.

6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:
 - a. The county's statement of revenues and expenditures;
 - b. The county's ending fund balances;
 - c. The amounts allocated under this section to the county's general fund, the amounts expended from these allocations, and the purposes of the expenditures; and
 - d. The amounts allocated under this section to or for the benefit of townships within the county, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

7. Within thirty days after the end of each fiscal year ended June thirtieth, each school district that has received an allocation under this section shall file a report for the fiscal year ended June thirtieth with the commissioner, in a format prescribed by the commissioner, including:
 - a. The school district's statement of revenue and expenditures;
 - b. The school district's ending fund balances; and
 - c. The amounts allocated under this section to the school district, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

SECTION 4. AMENDMENT. Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.

There is established a special fund in the state treasury to be known as the oil and gas research fund. Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund, tax relief fund, budget stabilization fund, strategic investment and improvements fund, state disaster relief fund, or lignite research fund under section 57-51.1-07.5, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to ten million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

²⁵⁰ **SECTION 5. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;
2. The next two hundred million dollars into the tax relief fund;
3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;
4. For the period beginning August 1, 2017, and ending July 31, 2019, the next two hundred million dollars into the state general fund and after July 31, 2019, the next one hundred million dollars into the state general fund;
5. The next one hundred million dollars:
 - a. Eighty percent into the strategic investment and improvements fund and twenty percent into the lignite research fund until three million dollars has been deposited into the lignite research fund to be used for advanced energy technology grants; and
 - b. One hundred percent into the strategic investment and improvements fund after three million dollars has been deposited into the lignite research fund; and
6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars; and

²⁵⁰ Section 57-51.1-07.5 was also amended by section 9 of Senate Bill No. 2016, chapter 41.

7. The next thirty million three hundred seventy-five thousand dollars, or the amount necessary to provide for the distributions under subsection 2 of section 57-51.1-07.7, into the municipal infrastructure fund;
8. The next four hundred million dollars into the strategic investment and improvements fund;
9. An amount equal to the deposit under subsection 7 into the county and township infrastructure fund;
10. The next one hundred sixty-nine million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;
11. The next twenty million dollars into the airport infrastructure fund; and
12. Any additional revenues into the strategic investment and improvements fund.

SECTION 6. Section 57-51.1-07.7 of the North Dakota Century Code is created and enacted as follows:

57-51.1-07.7. Municipal infrastructure fund - Continuing appropriation - State treasurer - Reports.

There is created in the state treasury the municipal infrastructure fund. The fund consists of all moneys deposited in the fund under section 57-51.1-07.5. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of providing grants to cities located in non-oil-producing counties. The grant funding may be distributed only to cities located in non-oil-producing counties, excluding hub cities, and may be used only for essential infrastructure projects.

1. By November thirtieth of each even-numbered year, starting in 2022, a city that receives a grant from the fund shall provide a report to the state treasurer on the use of the funding. The state treasurer shall notify cities of the reporting requirement by November first of each even-numbered year, starting in 2022. Upon request, the state treasurer may provide an extension of up to fifteen days for a city to submit the report. The state treasurer shall determine the format of the report. The report must include the amount of grant funding received and spent by the city and a description of the infrastructure projects completed in part or in whole with the grant funding. The state treasurer shall make the reports available to the public on the state treasurer's website. A city that does not provide the report in a timely manner or in the correct format is not eligible to receive a grant from the fund for a period of two years starting from the date the report was due. If a city uses the funding in a manner inconsistent with the requirements of this section as identified in any financial audits conducted by the state auditor or an independent accounting firm, the state treasurer shall reduce any future grants to that city by the amount spent that was inconsistent with the requirements.
2. Within forty days after the fund balance is greater than or equal to the amount needed for the grants under this subsection or by September thirtieth of each odd-numbered year, whichever is earlier, the state treasurer shall distribute

moneys in the fund as grants to cities for essential infrastructure projects based on the following:

- a. Two million five hundred thousand dollars to each city with a population of at least five thousand;
 - b. Five hundred thousand dollars to each city with a population of at least two thousand but less than five thousand; and
 - c. One hundred twenty-five thousand dollars to each city with a population of at least one thousand but less than two thousand.
 - d. If, at the time of the distributions, the moneys in the fund are less than the amount needed for the grants under this subsection, the state treasurer shall distribute the grants under this subsection on a pro rata basis.
 - e. For the purposes of determining the city's population under this subsection, the state treasurer shall use the most recent actual or estimated census data published by the United States census bureau.
3. Within sixty days after the fund receives its statutory limit of oil and gas tax allocations under section 57-51.1-07.5 or by September thirtieth of each odd-numbered year, whichever is earlier, the state treasurer shall distribute the moneys in the fund as grants to cities for essential infrastructure projects based on the following:
- a. One hundred fifty dollars per person of the city's population.
 - b. In addition to the amounts in subdivision a, for a city with a positive average of the annual percentage increase in population from three years prior, a dollar amount equal to the product of the following:
 - (1) The amount calculated in subdivision a; and
 - (2) The average of the annual percentage increase in population from three years prior, multiplied by ten.
 - c. In addition to the amounts in subdivisions a and b, for a city with a positive average of the annual percentage increase in taxable property values from three years prior, a dollar amount equal to the average of the annual property valuation percentage increase for the three most recent years, multiplied by twenty-five thousandths.
 - d. Grants may be distributed under this subdivision only if the grant distributions under subsection 2 are completed. If the moneys in the fund are insufficient to provide for the grants, the state treasurer shall distribute the grants under this subsection on a pro rata basis. If any moneys remain in the fund after the distribution of grants under this subsection, the state treasurer shall distribute any remaining moneys in the fund in proportion to the combined total distributed to each city under this section relative to the combined total distributed to all the cities under this section.
 - e. For the purposes of determining the city's population under this subsection, the state treasurer shall use the most recent actual or estimated census data published by the United States census bureau.

- f. For the purposes of determining taxable property values, the state treasurer shall use the most recent data published by the tax commissioner in the tax levy report.
4. For purposes of this section:
- a. "Essential infrastructure projects" means capital construction projects to construct new infrastructure or to replace existing infrastructure, which provide the fixed installations necessary for the function of a city. Capital construction projects exclude debt repayments and routine maintenance and repair projects, but include the following:
- (1) Water treatment plants;
 - (2) Wastewater treatment plants;
 - (3) Sewer lines and water lines, including lift stations and pumping systems;
 - (4) Water storage systems, including dams, water tanks, and water towers;
 - (5) Storm water infrastructure, including curb and gutter construction;
 - (6) Road and bridge infrastructure, including paved and unpaved roads and bridges;
 - (7) Airport infrastructure;
 - (8) Electricity transmission infrastructure;
 - (9) Natural gas transmission infrastructure; and
 - (10) Communications infrastructure, excluding fiber optic infrastructure.
- b. "Fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
- c. "Non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.

SECTION 7. Section 57-51.1-07.8 of the North Dakota Century Code is created and enacted as follows:

57-51.1-07.8. County and township infrastructure fund - Continuing appropriation - State treasurer - Reports.

There is created in the state treasury the county and township infrastructure fund. The fund consists of all moneys deposited in the fund under section 57-51.1-07.5. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of providing grants to non-oil-producing counties and townships located in non-oil-producing counties. The grant funding may be distributed only to non-oil-producing counties and townships located in non-oil-producing counties and may be used only for road and bridge infrastructure projects.

1. By November thirtieth of each even-numbered year, starting in 2022, a county that receives a grant from the fund shall provide a report to the state treasurer on the use of the funding. The state treasurer shall notify counties of the reporting requirement by November first of each even-numbered year, starting in 2022. Upon request, the state treasurer may provide an extension of up to fifteen days for a county to submit the report. The state treasurer shall determine the format of the report. The report must include the amount of grant funding received and spent by the county and a description of the road and bridge infrastructure projects completed in part or in whole with the grant funding. The state treasurer shall make the reports available to the public on the state treasurer's website. A county that does not provide the report in a timely manner or in the correct format is not eligible to receive a grant from the fund for a period of two years starting from the date the report was due. If a county uses the funding in a manner inconsistent with the requirements of this section as identified in any financial audits conducted by the state auditor or an independent accounting firm, the state treasurer shall reduce any future grants to that county by the amount spent that was inconsistent with the requirements.
2. Within sixty days after the fund receives its statutory limit of oil and gas tax allocations under section 57-51.1-07.5 or by September thirtieth of each odd-numbered year, whichever is earlier, the state treasurer shall distribute moneys in the fund as grants to counties for road and bridge infrastructure projects.
3. The state treasurer shall distribute the lesser of thirteen percent of the balance of the fund or sixteen million one hundred thousand dollars to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county. The distribution to each non-oil-producing county must provide for an equal allocation to each organized and unorganized township. The amount allocated to organized townships under this section must be paid by the county treasurer to each organized township. The amount allocated to unorganized townships under this section must be credited by the county treasurer to a special fund for unorganized township roads. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads.
4. After the distributions in subsection 3, the state treasurer shall distribute the remaining money in the fund to non-oil-producing counties based on the most recent data compiled by the upper great plains transportation institute regarding North Dakota's county, township, and tribal road and bridge infrastructure needs. The distribution to each non-oil-producing county must be proportional to each non-oil-producing county's total estimated road and bridge investment needs relative to the combined total estimated road and bridge investment needs of all the non-oil-producing counties. The total estimated road and bridge investment needs for each county is the twenty-year estimate for unpaved and paved road and bridge needs as identified by the upper great plains transportation institute. If the data compiled by the upper great plains transportation institute includes more than one twenty-year estimate for the total needs of each county, the state treasurer shall use an average of the twenty-year estimates for each county.
5. If the moneys in the fund are insufficient to provide for the grants under this section, the state treasurer shall distribute the grants on a pro rata basis.

6. For purposes of this section:

- a. "Fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
- b. "Non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.
- c. "Road and bridge infrastructure projects" means the projects associated with the construction of new unpaved and paved road and bridge infrastructure or associated with the maintenance, repair, or replacement of existing unpaved and paved road and bridge infrastructure.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2019.

Approved March 20, 2019

Filed March 20, 2019

CHAPTER 505

SENATE BILL NO. 2362

(Senators Cook, Holmberg, Wardner)
(Representatives Delzer, Headland, Pollert)
(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to the allocation of oil extraction tax; to provide a contingent appropriation; to provide for a transfer; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

~~**57-51.1-07. Allocation of moneys in oil extraction tax development fund. (Effective through July 31, 2019)**~~

~~Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:~~

- ~~1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:~~
 - ~~a. The state water commission for planning for and construction of water related projects, including rural water systems. These water related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02.~~
 - ~~b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.~~

- e. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent must be allocated and credited to the state's general fund.

Allocation of moneys in oil extraction tax development fund. (Effective after July 31, 2019)

Moneys deposited in the oil extraction tax development fund from revenue collected under section 57-51.1-02 and oil extraction tax revenue allocated to the state under the terms of an agreement entered pursuant to chapter 57-51.2 must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed one million two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
 - c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.

2. One-half of one percent must be allocated to the resources trust fund beginning with allocations made by the state treasurer in August 2019 and continuing until the combined allocations under this subsection total one hundred twenty-eight million seven hundred forty thousand dollars, after which the state treasurer shall discontinue making allocations under this subsection.
3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- ~~3-4.~~ Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent
5. The remainder must be allocated and credited to the state's general fund.

SECTION 2. CONTINGENT APPROPRIATION - TRANSFER - GENERAL FUND TO COMMON SCHOOLS TRUST FUND. If the actual legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium in accordance with section 26 of article X of the Constitution of North Dakota exceed the estimate made by the sixty-sixth legislative assembly by at least \$64,370,000, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,370,000, which the state treasurer shall immediately transfer to the common schools trust fund, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 3. EFFECTIVE DATE. This Act is effective for allocations made by the state treasurer beginning on the first day of the month following the month in which this Act is filed with the secretary of state.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2019

Filed April 12, 2019

CHAPTER 506

SENATE BILL NO. 2312

(Senators Kannianen, Wardner)
(Representative Pollert)

AN ACT to amend and reenact section 57-51.2-01 and subsection 5 of section 57-51.2-02 of the North Dakota Century Code, relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; to suspend section 54-35-23 of the North Dakota Century Code, relating to the tribal and state relations committee; to provide for a legislative management tribal taxation issues committee; to provide for application; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.2-01. Authority to enter agreements.

The governor, in consultation with the tax commissioner, may enter separate agreements with the Three Affiliated Tribes, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, relating to taxation and regulation of oil and gas exploration and production within the exterior boundaries of the Fort Berthold Reservation, ~~that portion of the Standing Rock Sioux Tribe Reservation located in this state,~~ or Turtle Mountain Band of Chippewa Indians Reservation and on trust properties outside reservation boundaries. Each tribal governing body is entitled to enter a separate agreement that conforms with the requirements of this chapter.

~~Each agreement under this chapter is subject to confirmation by a majority of members elected to the house of representatives and the senate and does not become effective until its confirmation date or the effective date in the agreement, whichever is later. Each agreement presented for confirmation must contain an expiration date not more than sixteen years after its effective date and the expiration date must be March thirty first of an odd-numbered year.~~

SECTION 2. AMENDMENT. Subsection 5 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The allocation of revenue from oil and gas gross production and oil extraction taxes on the reservation must be as follows:
 - a. Production attributable to trust lands. ~~All~~The tribe must receive eighty percent of the total revenues, and be subject to all applicable exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the reservation and on trust properties outside reservation boundaries must be evenly divided between the tribe and the state. The state must receive the remainder.

- b. All other production. The tribe must receive ~~fifty~~twenty percent of the total oil and gas gross production and oil extraction taxes collected, and be subject to all applicable exemptions, from all production attributable to nontrust lands on the reservation in lieu of the application of tribal fees and taxes related to production on such lands. The state must receive the remainder.
- c. The state's share of the oil and gas gross production tax revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapter 57-51.

SECTION 3. SUSPENSION. Section 54-35-23 of the North Dakota Century Code is suspended.

SECTION 4. TRIBAL TAXATION ISSUES - LEGISLATIVE MANAGEMENT COMMITTEE.

1. During the 2019-20 interim, the tribal taxation issues committee is created and is composed of ten members as follows:
 - a. The governor;
 - b. The lieutenant governor;
 - c. The tax commissioner;
 - d. The executive director of the Indian affairs commission;
 - e. The majority leader of the house of representatives and the majority leader of the senate;
 - f. The minority leader of the house of representatives and the minority leader of the senate; and
 - g. The chairmen of the finance and taxation standing committees of the house of representatives and the senate.
2. The nonlegislative members shall serve as nonvoting members of the committee.
3. The legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedures governing the operation of other legislative management interim committees.
4. The committee shall study tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, the procedure for withdrawal from an agreement and how to handle disputed funds; and methods for sourcing revenue generated from wells located inside or outside of the external boundaries of a reservation in this state when a horizontal lateral enters a spacing unit that is

located both inside and outside of the external boundaries of a reservation in this state.

5. The committee may study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.
6. The chairman of the committee shall invite tribal chairmen to each committee meeting.
7. At the conclusion of its meetings, the committee shall report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative management.

SECTION 5. APPLICATION. Sections 1 and 2 of this Act are effective for all new oil and gas wells on which drilling first commences after June 30, 2019, and which are the subject of an agreement authorized under this chapter, or the first day of the next succeeding month after the date an agreement authorized under this chapter is executed, whichever occurs later.

SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective through July 31, 2021, and after that date is ineffective.

SECTION 7. EMERGENCY. Sections 1 and 2 of this Act are declared to be an emergency measure.

Approved March 28, 2019

Filed March 29, 2019