

# TAXATION

## CHAPTER 341

S. B. No. 225  
(Luick, Ringsak)

### FOREIGN TAX STATUTES

#### AN ACT

To provide that the courts of North Dakota shall recognize and enforce taxation statutes of other states which extend like comity to North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Reciprocal Enforcement of Tax Statutes.)** The courts of this state shall recognize and enforce statutes concerning taxation constitutionally imposed by other states that extend like comity.

Approved March 15, 1961.

## CHAPTER 342

S. B. No. 53  
(Luick, Holand, Baeverstad, Gefreh,  
(Johnson, Kee, Thompson, Yunker)  
(From LRC Study)

### STATE SUPERVISOR OF ASSESSMENTS

#### AN ACT

Creating the office of state supervisor of assessments in the state tax commissioner's office and providing for his appointment and duties.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. State Supervisor of Assessments.)** The state tax commissioner shall appoint from a list of qualified applicants forwarded to him by the North Dakota merit system council a supervisor of assessments who shall be a person trained and experienced in property appraisals and familiar with assessment and equalization procedures and techniques. If the tax commissioner does not desire to appoint a supervisor of assessments from the list of candidates forwarded to him by the

merit system council he may request additional lists of qualified applicants from the council. The supervisor of assessments shall serve at the pleasure of the state tax commissioner and office space shall be furnished him by the commissioner.

The supervisor of assessments shall perform the following duties under the direction of the tax commissioner:

1. He shall advise and give the various assessors in the state the necessary instructions and directions as to their duties under the laws of this state, to the end that a uniform assessment of all real and personal property in this state will be attained.
2. He shall assist and instruct the various assessors in this state in the use of soil reconnaissance surveys, land classification methods, in the preparation and proper use of land maps and record cards, in the proper classification of real and personal property, and in the determination of proper standards of value.
3. He shall have the authority to require the attendance of groups of assessors at meetings called by him for the purpose of giving them further assistance and instruction as to their duties.
4. He shall make sales ratio and other studies of property assessments in the various counties, cities, and villages of this state for the purpose of properly advising the various assessors in the state and for the purpose of recommending to the tax commissioner changes to be made by the state board of equalization in the performance of the equalization powers and duties prescribed for it by section 57-13-04.
5. He shall cooperate with the North Dakota state university of agriculture and applied science in the development of a soil mapping program, a land classification system, valuation studies and other matters relating to the assessment of property, and shall provide for the use of such information and procedure at the earliest possible date by the assessors of this state.
6. He shall have general supervision of assessors and county supervisors of assessment pertaining to methods and procedures of assessment of all property and shall have authority to require all county supervisors of assessment to do any act necessary to obtain uniform methods and procedures of assessment.
7. He shall perform such other duties relating to assessment and taxation of property as the tax commissioner shall direct.

Approved March 11, 1961.



## CHAPTER 343

H. B. No. 797

(Aamoth, Saugstad, Boe, Stockman)

## FRATERNAL ORGANIZATIONS

## AN ACT

To amend and reenact subsection 11 of section 57-02-08 of the North Dakota Century Code, relating to exclusions and exemptions from taxation of non-profit fraternal organizations and associations, and providing for taxation of that portion not used exclusively for places of meeting and conduct of fraternal business, providing for taxation of that portion of such premises where food or alcoholic beverages are consumed or sold at a profit.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Subsection 11 of section 57-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. Real and personal property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations, and associations, grand or subordinate, not organized for profit, and used by them for places of meeting and for conducting their business and ceremonies, and all real and personal property owned by any fraternity, sorority, or organization of college students if such property shall be used exclusively for such purposes; provided further that any portion of such premises not exclusively used for places of meeting and conducting the business and ceremonies of such organization shall be subject to taxation.

Provided further that where any such organization as contemplated by this subsection shall be licensed for the sale of alcoholic beverages as defined by the statutes of the state of North Dakota, such portion of such premises where such alcoholic beverages are consumed or sold shall be deemed not to be so used exclusively for conduct of its business and meeting if such beverages are sold at a profit.

Provided further that if food other than that served at lodge functions and banquets and food sold or consumed in any fraternity or sorority house, is sold at a profit on the premises, that portion of the premises where such food is sold at a profit shall be deemed not to be used exclusively for places of meeting or conducting the business and ceremonies of such organization.

Approved March 3, 1961.

## CHAPTER 344

H. B. No. 826  
(Stockman, Schuler)

## DISABLED VETERANS

## AN ACT

To amend and reenact subsection 20 of section 57-02-08 of the North Dakota Century Code, providing for an exemption of net assessed valuation of property of disabled veterans.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsection 20 of section 57-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**Subsection 20, section 57-02-08.)** Fixtures, buildings and improvements upon lots in any city or village up to a net assessed valuation of ten thousand dollars used and owned as a homestead, as defined in section 47-18-01, by a disabled veteran who was discharged under honorable conditions with a service connected disability, and who shall have a certificate from the United States veterans administration, or its successors, certifying that the veteran is receiving or has received pecuniary assistance due to disability for specially adapted housing under the provision of Public Law 702 of the 80th Congress and amendments thereto. To obtain said exemption, an affidavit accompanied by said certificate, showing the facts herein required and a description of the property, shall be filed with the county auditor. Such affidavit and accompanying certificate shall be filed in the office of the county auditor and shall be opened to inspection. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which such veteran shall have held title to such exempt property;

Approved March 2, 1961.



## CHAPTER 345

H. B. No. 787

(Stockman)

BLIND AND PERMANENTLY AND TOTALLY DISABLED  
PERSONS

## AN ACT

To amend and reenact subsection 21 of section 57-02-08 of the North Dakota Century Code, relating to property exempt from taxation for blind persons or permanently and totally disabled persons.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Subsection 21 of section 57-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21. All clothing, musical instruments, and household goods owned and personally used by blind persons or permanently and totally disabled persons. For purposes of this subsection blind persons shall mean all persons who have no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential, and permanently and totally disabled persons shall mean all persons who are permanently and totally disabled who have income of less than \$100 per month or who lack sufficient income or other resources to provide himself a reasonable subsistence compatible with decency and health, as evidenced by physician's certificate filed with the assessor;

Approved March 2, 1961.

## CHAPTER 346

H. B. No. 866

(Poling)

## COUNTY TAX LEVY LIMITATIONS

## AN ACT

To amend and reenact section 57-15-06 of the North Dakota Century Code, relating to tax levy limitations on counties.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-15-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-15-06. Limitations on County Tax Levies.)** County tax levies shall be limited as follows:

1. The board of county commissioners shall not levy any taxes for general or special county purposes except as hereinafter provided which will exceed the amount produced by a levy of sixteen mills on the dollar of the net taxable valuation of the county;
2. The board of county commissioners annually shall levy taxes sufficient to meet the obligations of the county for the maintenance of its patients in the charitable institutions of the state, but such taxes shall not exceed the amount produced by a levy rate of one and one-quarter mills on the dollar of net taxable valuation. Such levy shall be within the amount produced by the sixteen mill rate, and shall be a paramount charge, to the exclusion of all other budget items, upon the necessary part of the total tax levies; provided that any funds now on hand or hereinafter levied for the purpose of this subsection shall not, in the discretion of the board of county commissioners, be included in the budget of the county;
3. The sixteen mill limitation shall apply to all tax levies which the county is authorized to levy for general and special county purposes, including taxes levied for road and bridge purposes. Any unexpended balance in the county road fund at the end of the fiscal year may be transferred to a special road fund, except that such special fund shall never exceed the amount a ten mill levy on the assessed valuation of the county would yield, and the balance in said fund shall not be consider-



ed in determining the budget or the amount that may be levied. Such mill limitation shall not apply:

- a. To tax levies made for the purpose of paying the principal and interest on any obligations of the county evidenced by the issuance of bonds;
- b. To tax levies made to pay the county tuition provided for by section 57-15-24;
- c. To taxes levied for the purpose of combating the grasshopper pest, pursuant to section 4-15-01;
- d. To taxes levied for the purpose of combating gophers pursuant to section 4-16-02;
- e. To taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein shall not be subject to the sixteen mill limitations for general and special county purposes;
- f. To the tax levied pursuant to the provisions of chapter 15-42 of the title Education, for support and maintenance of county agricultural and training schools, up to a maximum of two and one-half mills on the assessed value in the county for such purpose. Nothing herein contained shall be construed to prevent the appropriation of money from the county general fund for the support and maintenance of county agricultural and training schools;
- g. To taxes levied for the purpose of establishing and maintaining a library fund for public library services; or
- h. To taxes levied for the county poor relief fund in accordance with chapter 50-03.

Approved March 15, 1961.

## CHAPTER 347

H. B. No. 894

(Anderson of McHenry, Poling)

TAX LIMITATIONS AND TRANSFER OF FUNDS  
IN UNORGANIZED TOWNSHIPS

## AN ACT

To amend and reenact sections 57-15-22 and 57-15-22.1 of the North Dakota Century Code, relating to tax levy limitations in unorganized townships; to provide for transfer of funds for special roads and bridges; and to repeal section 57-15-19.1 of the North Dakota Century Code, relating to levies for surfacing highways in unorganized townships.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 57-15-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-15-22. Tax Levy Limitations in Unorganized Townships.)** Tax levies in unorganized townships shall be limited as follows:

The total tax levied by the board of county commissioners in any unorganized township for the construction, maintenance and improvement of any roads and bridges shall not exceed fourteen mills on the dollar of the net taxable assessed valuation of the township, but this shall not prohibit the levy of general county road and bridge taxes in such unorganized township.

§ 2. **Amendment.)** Section 57-15-22.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-15-22.1. Board of County Commissioners May Transfer Unexpended Balance in Road and Bridge Fund in Unorganized Townships—Limitations.)** The board of county commissioners, by resolution, may transfer any unexpended balance of the revenues produced under section 57-15-22 in any unorganized township to a special road and bridge fund to the credit of such unorganized township. Such special road and bridge fund shall not exceed a sum which would be produced by a levy of six mills on the net taxable valuation of any unorganized township. Such special road and bridge fund shall not be taken into consideration in determining the budget for the amount to be levied for road and bridge purposes in an unorganized township for the current fiscal year.



**§ 3. Repeal.)** Section 57-15-19.1 of the North Dakota Century Code is hereby repealed.

Approved March 11, 1961.

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## CHAPTER 348

S. B. No. 74

(Becker, Kisse, Miller, Kee,)  
(Lips, Lautenschlager)

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### NOTICE TO DELINQUENT PERSONAL PROPERTY TAXPAYERS

#### AN ACT

To amend and reenact section 57-22-02 of the North Dakota Century Code, relating to the county treasurer making out a list of delinquent personal property taxpayers, and the giving of notice by mail thereof to such delinquent taxpayers.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-22-02. Treasurer to Make List of Delinquent Taxes—Notice by Mail.)** On or before the first day of September in each year, the county treasurer shall make out a list of the unpaid delinquent personal property taxes, in the order in which they appear on the tax list, and, on or before the fifteenth day of September thereafter, shall notify each of the delinquents by mail that unless such taxes are paid on or before the fifteenth day of October of that year the taxes will be placed in the hands of the sheriff for collection.

Approved February 25, 1961.

## CHAPTER 349

S. B. No. 152

(Wartner, Garaas, Gefreh)

## PERSONAL PROPERTY TAXES LIEN ON REAL ESTATE

## AN ACT

To amend and reenact subsection 2 of section 57-22-21 of the North Dakota Century Code, relating to collection of personal property taxes made liens on real estate.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsection 2 of section 57-22-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The county auditor shall extend to and enter upon the tax list of real estate then in the hands of the county treasurer, for the year immediately preceding, opposite the descriptions of real estate designated by the board of county commissioners which belong to the personal property tax debtor, the year for which the personal property taxes are uncollected and the amount thereof. Such entry shall be made without regard to any prior payment of real estate taxes on said descriptions, and the treasurer shall be without authority thereafter to issue to the personal property tax debtor any receipt in full for said real estate taxes without making collection at the same time of the personal property taxes so extended; a taxpayer holding a specific superior lien on said descriptions ahead of personal property taxes charged thereon shall be entitled to tax receipts without regard to non-payment of such inferior personal taxes; and

Approved February 24, 1961.



## CHAPTER 350

H. B. No. 769

(Poling)

## ABATEMENT, REFUND, AND COMPROMISE OF TAXES

## AN ACT

To amend and reenact section 57-23-05, relating to applications for abatement or refund of property taxes, and section 57-23-07, relating to abatement and compromise of property taxes of the North Dakota Century Code.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-23-05. Application for Abatement or Refund—Who May Make.)** An application for an abatement or refund shall be in writing and shall be filed in duplicate with the county auditor. It shall state the grounds relied upon for such abatement or refund, give the postoffice address of the applicant, and shall be verified. The county auditor shall note the date of filing and shall file the same. He shall present the application to the board of county commissioners at its next regular meeting.

Any person having any estate, right, title or interest in or lien upon any real or personal property who claims that the assessment made or the tax levied against the same is excessive or illegal, in whole or in part, shall be entitled to make an application for abatement, refund, or compromise, as the case may be, and have such application granted if the facts upon which the application is based bring it within the provisions of this chapter for abatement, refund or compromise.

**§ 2. Amendment.)** Section 57-23-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-23-07. County Commissioners May Compromise Tax.)** Whenever taxes on any real estate remain unpaid and such property has not been sold to any purchaser other than the county, or when any personal property taxes remain unpaid, the board of county commissioners, subject to the approval of the state tax commissioner, by reason of depreciation in the value of such property or for other valid cause, may compromise with the owner of such property by abating a portion of such delinquent taxes, together with any penalty and interest on such portion, on payment of the remainder.

Approved March 7, 1961.

## CHAPTER 351

S. B. No. 218

(Gefreh, Reichert, Miller, Murphy)

## TAX DEED PROCEEDINGS

## AN ACT

To amend and reenact sections 57-27-05, 57-28-05, 57-28-07, 57-28-08, 57-28-09, and 57-28-10 of the North Dakota Century Code, relating to tax deed proceedings.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 57-27-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-27-05. Tax Deed To Be Issued.)** At the expiration of the period of redemption, and after the filing of the proof of service of the notice of expiration of such period, the county auditor, if no redemption has been made, on surrender of the certificate of tax sale to him, shall execute to the owner of the certificate, his heirs and assigns, in the name of the state, a deed of the land remaining unredeemed, which shall vest in the said certificate owner, his heirs and assigns, an absolute estate in fee simple in such lands, subject to the claims of the state or other taxing districts on account of taxes or other liens or encumbrances, including installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of the service of the notice of expiration of the period of redemption. Such deed shall be executed by the county auditor under his hand and seal. Such deed shall be prima facie evidence of the truth of all facts therein recited and of the regularity of all the proceedings from the assessment and valuation of the land by the assessor up to the execution of the deed.

§ 2. **Amendment.)** Section 57-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-28-05. Form of Notice for Service by Registered or Certified Mail.)** The notice of the expiration of the period of redemption which the county auditor is required to serve by registered or certified mail shall be substantially in the following form:



### Notice of Expiration of Period of Redemption

To ....., the owner of the record title of the real estate hereinafter described, and to all mortgagees, lien holders, and other persons interested in said real estate:

I, ....., county auditor of ..... county, North Dakota, hereby give notice that the real estate hereinafter described, at the annual tax sale held in the county on the ..... of December, 19....., was offered for sale of delinquent taxes against it for the year ..... and was sold to the county, that subsequent tax sale certificates have been issued to the county for the years hereinafter set forth, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, and that the same still are the property of such county, and unless redemption is made from each of said tax sale certificates on or before October first, after the date of this notice, tax deeds will be issued to the county, granting to and vesting in it, the absolute title in fee to said real property, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and foreclosing all rights of redemption, and all other rights of the owner, mortgagees and lien holders and other persons interested therein, as may appear from the records of the register of deeds and the clerk of the district court of said county. There is given herewith the description of such parcels of real estate, and set opposite each description is the amount which will be required upon the date of the expiration of the period of redemption to redeem such real estate from such original and each subsequent tax sale certificate issued to the county, exclusive of the cost of service of this notice.

Said property is described as follows, with the amount required to redeem set out opposite each description, to wit:

.....  
Given pursuant to authority of law this ..... day of ....., 19.....

County Auditor of ..... county, North Dakota.

**§ 3. Amendment.)** Section 57-28-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-28-07. Form of Notice for Publication.)** The notice of the expiration of the period of redemption to be served by publication shall be substantially in the following form:

I, \_\_\_\_\_, county auditor, of \_\_\_\_\_ county, North Dakota, hereby do give notice that the real estate hereinafter described was sold to the county at the annual tax sale on December \_\_\_\_\_, 19\_\_\_\_\_, for delinquent taxes, that subsequent tax sale certificates have been issued to the county, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, that the same still are the property of this county, and that unless redemption shall be made from such tax sale, on or before October first after the date of this notice, the same will become the absolute property in fee of this county, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and the former owner thereof, mortgagees, lien holders, and other persons interested therein will be forever foreclosed and barred from asserting any further rights to such real estate whatsoever. The following is a list of the real estate sold at such tax sale on which the period of redemption will expire on October first. Opposite each description of such real estate appears the name of the owner of the record title thereof, and the amount which must be paid to redeem from such tax sale before the period of redemption expires. Said sum includes the amount for which said land was sold, together with subsequent delinquent taxes for \_\_\_\_\_ and prior years, and interest, penalties, and cost of service (List descriptions, names of owners and amount necessary to redeem.)

Given pursuant to authority of law this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

§ 4. **Amendment.)** Section 57-28-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-28-08. Effect of Failure to Redeem.)** The failure of the owner or any mortgagee, or other lien holder, to redeem such lands before the period of redemption expires, shall operate:

1. To pass all of the right, title, and interest of the owner, mortgagee, or lien holder in and to said premises, to the county by operation of law subject only to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of the service of the notice of expiration of the period of redemption;
2. To foreclose all rights and equities of redemption; and
3. To waive all errors, irregularities, or omissions which do not affect the substantial rights of the parties, in tax deed proceedings, except jurisdictional defects.



**§ 5. Amendment.)** Section 57-28-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-28-09. Tax Deed To Be Issued.)** After the expiration of the period of redemption, the county auditor shall issue a tax deed to the county, in the usual form, for all real estate which was not redeemed within the period of redemption. Such tax deed shall pass the absolute property in fee to the county, free from all encumbrances whatsoever, except installments of special assessments certified or to be certified to the county auditor or what may become due subsequent to the time of the service of the notice of expiration of the period of redemption; provided that so long as the county holds title under a tax deed to such property, it shall not be liable for the payment of any such installments which may become due unless the board of county commissioners has leased or contracted to sell such property. Such deeds shall be prima facie evidence of the truth of all the facts therein recited and of the regularity of all the proceedings from the assessment and valuation of the land by the assessor up to the execution of the deed.

**§ 6. Amendment.)** Section 57-28-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-28-10. Appraisal for Annual Sale.)** All real estate acquired by tax deed shall be appraised by the board of county commissioners at least thirty days prior to the annual sale provided by this chapter. The appraised price shall be sufficient to cover all general taxes, installments of special assessments, hail indemnity taxes, penalties, interest, and costs, which were extended and due against the property at the time of the service of the notice of expiration of the period of redemption. If the fair market value of such property is less than such total amount, the board shall fix a fair and just minimum sale price for such property.

Approved March 14, 1961.



## CHAPTER 352

S. B. No. 183

(Foss)

ALLOCATION OF TAXES ON CAR LINE AND  
AIR TRANSPORTATION COMPANIES

## AN ACT

To amend and reenact section 57-32-04 of the North Dakota Century Code, relating to the allocation of taxes on car line companies and air transportation companies.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-32-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-32-04. Allocation of Tax.)** The taxes imposed by this chapter upon car line companies and express companies shall be collected by the state treasurer and deposited in the state general fund. The taxes imposed by this chapter upon air transportation companies shall be deposited in the general fund of this state, but within ninety days after receipt thereof, these funds shall be remitted by the state treasurer to the cities or villages where such air transportation companies make regularly scheduled landings upon the basis of the number of regularly scheduled landings made in such municipalities to be used exclusively by such municipalities for airport purposes. It shall be the duty of the tax commissioner to certify to the state treasurer the names of such air transportation companies, the municipalities where such scheduled landings are made, and the number of such scheduled landings in such municipalities.

Approved February 28, 1961.

## CHAPTER 353

S. B. No. 201

(Hystad, Ringsak)

## ALLOCATION OF COOPERATIVE TAXES

## AN ACT

To amend and reenact sections 57-33-05, 57-33-06, and 57-33-07 of the North Dakota Century Code, relating to apportionment and allocation of taxes received from certain cooperatives.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 57-33-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-33-05. Apportionment of Tax.)** The tax commissioner shall apportion the taxes due from each cooperative to each county in which its lines are located in the ratio which the number of miles of its lines in each county bears to the total number of miles of lines of such cooperative, and shall certify to the county auditor of each county the amount of taxes so apportioned, provided that the tax commissioner shall apportion the taxes due from any generating cooperative with less than 200 miles of transmission lines, as follows: eighty-five percent thereof to the county in which such cooperative's generating equipment and plant is located and fifteen percent thereof to the counties in which its transmission lines are located in the ratio in which the number of miles of lines in each county bears to the total number of miles of lines of such cooperative.

§ 2. **Amendment.)** Section 57-33-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-33-06. Duty of County Auditor.)** It shall be the duty of the county auditor to allocate the amount of the taxes due from each cooperative as certified by the tax commissioner to each taxing district in which the lines are located in the ratio which the total number of miles of all kinds of lines in each such district bears to the total number of miles in the county, except that such taxes due from any generating cooperative with less than 200 miles of transmission lines shall be allocated as follows: eighty-five percent to the taxing district in which the generating equipment and plant is situated and fifteen percent to the taxing districts in which its trans-

mission lines are situated in the aforesaid ratio. The county auditor shall certify such taxes to the county treasurer for collection at the time and in the manner in which real and personal property taxes are required to be certified.

§ 3. **Amendment.)** Section 57-33-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-33-07. Allocation of Proceeds of Tax—Duty of County Treasurer.)** Upon receipt by the county treasurer of the amount of tax payable under this chapter, the county treasurer shall apportion and distribute to the state, the county and local taxing districts of the county in which the lines and generating equipment and plant of such cooperative are located, the amount of such tax payment so received by him on the basis on which the general property tax levy is apportioned and distributed.

Approved March 4, 1961.



## CHAPTER 354

S. B. No. 296

(Longmire)

## DECEDENT'S GROSS ESTATE

## AN ACT

To amend and reenact section 57-37-06 of the North Dakota Century Code, relating to inclusion of various joint interests in a decedent's gross estate for estate tax purposes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 57-37-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-37-06. Joint Interest.)** The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants or otherwise with right of survivorship by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: Provided, that where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: Provided further, that where any property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person as joint tenants and their interest are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants. Provided further that when any of the foregoing described interests are in the names of a husband and his wife, it shall be presumed that each contributed equally to the acquisition of such property until the contrary is shown.

Approved March 11, 1961.

## CHAPTER 355

S. B. No. 209

(Reichert)

## POWER OF APPOINTMENT FOR ESTATE TAX PURPOSES

## AN ACT

To amend and reenact section 57-37-07, relating to treatment of powers of appointment for estate tax purposes, and subdivision f of subsection 2 of section 57-37-11, relating to life estates with power of appointment in the surviving spouse and qualification of such life estates for the marital deduction exemption for estate tax purposes, of the North Dakota Century Code.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 57-37-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-37-07. Powers of Appointment.)** 1. The gross estate of a decedent shall include the value of all property with respect to which the decedent has at the time of his death a general power of appointment or with respect to which the decedent has at any time exercised or released such a power, provided that the conditions under which and the extent to which such property shall be included in the decedent's gross estate shall be determined in accordance with the provisions of section 2041 of the United States Internal Revenue Code of 1954, as amended, except that if the donor of such a power died before the effective date of this Act, the property shall be excluded from the gross estate of the donee if it was included in the gross estate of the donor.

2. For the purposes of this section, the term "United States Internal Revenue Code of 1954, as amended" means the United States Internal Revenue Code of 1954 as amended to and including December 31, 1960.

§ 2. **Amendment.)** Subdivision f of subsection 2 of section 57-37-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- f. In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in



favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse—

- (1) the interest or such portion thereof so passing shall, for purposes of subdivision a of this subsection, be considered as passing to the surviving spouse, and
- (2) no part of the interest so passing shall, for purposes of subdivision b(1) of this subsection, be considered as passing to any person other than the surviving spouse.

This subdivision shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

Approved March 4, 1961.

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## CHAPTER 356

S. B. No. 73  
(Gefreh, Holand)

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### ESTATE TAXES

#### AN ACT

To amend and reenact section 57-37-24 of the North Dakota Century Code, relating to the collection and distribution of estate taxes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-37-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-37-24. Collection and Distribution of Tax—Refunds.)** The county treasurer in the county where the probate is had shall collect the tax levied under this chapter, and shall certify the same to the county auditor at the end of each calendar month. He shall pay over to the state treasurer thirty-five percent of such tax, and shall apportion the remaining sixty-five percent thereof to the respective county treasurers of the counties in which is located the property base of such tax in accordance with the valuation of the property located in each county. Each county's share of the tax thus distributed shall be deposit-



ed to the credit of the general fund of the county. In all cases wherein no county court has jurisdiction, the amount of the tax shall be determined and collected by the tax commissioner, and the state treasurer shall receive the amount collected from the tax commissioner, deposit thirty-five percent of the amount received to the credit of the general fund of the state and apportion the remaining sixty-five percent thereof to the respective county treasurers of the counties in which is located the property base of such tax, each of whom shall deposit the sum so received by him to the general fund of his county. No executor, administrator, or trustee shall be entitled to a final discharge in an estate in settlement of which taxes are due, unless he shall produce a receipt showing the payment of such tax. In case an overpayment of such tax has been made, such overpayment shall be repaid out of any estate tax funds in the hands of the county treasurer, upon an order of the county court approved by the tax commissioner. The county treasurer shall thereupon present and file with the state treasurer a verified claim for thirty-five percent of such overpayment of estate taxes accompanied by a certified copy of the order of the county court for such refund and the approval of the state tax commissioner and a copy of the receipt of such refund by the person or persons to whom such refund was paid. The state treasurer shall present such verified claim to the department of accounts and purchases and the same shall be paid upon approval by the state auditing board. In addition, if a portion of the tax has been distributed to another county and a refund has been made, the county treasurer making the refund shall file with the treasurer of the county to which such distribution has been made a copy of the county court's order for such refund and a verified claim for such portion of the amount refunded as is attributable to property located in such county.

In any case where the state tax commissioner has collected the entire estate tax, a refund of the whole overpayment shall be made by the state treasurer upon receipt of a verified claim by the party making such overpayment accompanied by a certified copy of the order of refund made by the state tax commissioner. The state treasurer thereupon shall file a certified copy of such order with the county treasurer and the county treasurer shall remit to the state treasurer the county's proportionate liability of such refund.

Approved February 28, 1961.

## CHAPTER 357

H. B. No. 842  
(Wheeler, Lynch)

## BUILDING AND LOAN ASSOCIATIONS

## AN ACT

Relating to taxation of building and loan associations, repealing subsection 6 of section 57-38-09 and amending subsection 12 of section 57-02-08 of the North Dakota Century Code, and providing penalties.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Definitions.)** As used in this Act, unless the context or subject matter otherwise requires:

1. "Building and loan association" or "association" means any building and loan association or savings and loan association organized under the laws of the United States or the state of North Dakota, located in and having its principal place of business in this state.
2. "Net income" means gross income less the following deductions:
  - a. Ordinary and necessary expenses paid or incurred in carrying on association business;
  - b. Interest or dividends paid;
  - c. Taxes paid or accrued within the taxable year; and
  - d. Losses incurred during the taxable year not compensated for by insurance or other reimbursement.

**§ 2. Imposition and Basis of Tax.)** An annual tax is hereby imposed upon each building and loan association, for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year, commencing January 1, 1961. This tax is in lieu of all other taxes or impositions, state, county, and local, except taxes upon the real property of any association, and shall be based upon and measured by the net income of each association for the preceding calendar year. The amount of the tax shall be computed by the tax commissioner at the rate of four percent of such net income. Regardless of such computation, the minimum tax assessable hereunder to any association shall be fifty dollars.

**§ 3. Report of Income.)** On or before the first day of March in each year, each association shall file with the state tax commissioner, on forms to be provided by him, a report under



oath showing the net income of the association for the preceding calendar year, including such information as the commissioner may require relating to the computation of such net income. A duplicate original of such report shall be simultaneously filed with the county auditor of the county in which such association is located.

**§ 4. Computation and Certification of Tax.)** On or before the first day of April in each year, the state tax commissioner shall compute the total tax to be assessed under this Act, and shall certify the same to the county auditor of each county in which each taxpaying association is located. The county auditor, after receiving the computation of such tax from the commissioner shall promptly certify the same to the county treasurer for collection.

**§ 5. Tax Payment—Delinquency Penalty.)** The taxes levied and assessed under this Act shall be payable on the fifteenth day of April following the report to the state tax commissioner under section three herein, and shall become delinquent if not paid on or before the fifteenth day of May next following; thereafter a penalty of five percent shall attach and be charged at the rate of three-fourths of one percent per month of the original amount of the tax until the same is paid.

**§ 6. Allocation of Tax.)** Upon receipt by the county treasurer of the tax payable under this Act, he shall apportion and distribute to the state, county, and to the political subdivisions in which the taxpaying association is located, the amount of the tax payment so received by him, on the basis on which the general real estate tax levy is apportioned and distributed.

**§ 7. Reassessment—Access to Records.)** If at any time the tax commissioner has reason to question the correctness of return made to him under this Act, he may investigate the books and records of the association in question. If any additional tax is due and unpaid, it shall be paid by the association to the county treasurer within thirty days after it receives notice thereof from the tax commissioner. If such association is found to have overpaid its tax and to be entitled to a refund, it may deduct the amount of such overpayment from the tax payable by it for the next succeeding taxable year. In enforcing this Act the state tax commissioner shall have access, upon demand, to all books and records of any association subject to this Act, and shall also have access to all records, reports, and information in the office of the state examiner concerning any association. Information obtained from such sources shall not be disclosed by the commissioner or any of his employees or agents, except as may be necessary in the enforcement of the law.



**§ 8. Lien.)** The amount of tax due, from the date of its certification by the tax commissioner to the county auditor, shall constitute a prior lien upon the assets of the association, and no dividend shall be declared or distributed while any tax assessed under this Act remains delinquent and unpaid.

**§ 9. Penalties.)** If any association which has failed to file a report or which has filed an incorrect or insufficient report, and which has been notified by the tax commissioner of its delinquency, refuses or neglects within thirty days after the mailing of such notice to file a proper report, or if it files a fraudulent return, the commissioner shall determine the tax of such association according to his best information and belief, and shall assess the same at not more than double the amount so determined. The commissioner may allow further time for the filing of a report in such case.

Any association which, or any officer thereof who, with intent to violate the provisions of this Act, shall make, render, sign, or verify any false or fraudulent return, report, or statement required under this Act, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars, or by imprisonment for not to exceed one year, or by both such fine and imprisonment.

**§ 10. Amendment.)** Subsection 12 of section 57-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. All personal property of any insurance company, bank or banking association, building and loan association, savings and loan association, or rural electric cooperative, which is subject to a lieu tax upon gross premiums, gross earnings, or net income;

**§ 11. Repeal.)** Subsection 6 of section 57-38-09 of the North Dakota Century Code is hereby repealed.

Approved March 17, 1961.

## CHAPTER 358

H. B. No. 888  
(Annear)

## DIVIDENDS

## AN ACT

To amend section 57-38-21 of the North Dakota Century Code by creating and adding thereto subsection 8, relating to subtraction of certain dividends in computing net income of individuals, estates and trusts; to amend section 57-38-22.1 of the North Dakota Century Code by creating and adding thereto a new subsection relating to deduction of federal income taxes by certain persons who as stockholders in certain corporations have earnings or liquidation dividends of such corporations taxed directly to them for federal income tax purposes; to repeal subdivision c of subsection 2 of section 57-38-22.1 of the North Dakota Century Code; to provide for an effective date; and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-38-21 of the North Dakota Century Code is hereby amended by creating and adding thereto subsection 8 to read as follows:

8. Subtract any dividends or income received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes where the income of such corporation has been assessed and tax paid by the corporation under this chapter and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year, provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted.

**§ 2. Amendment.)** Section \*57-38-22.1 of the North Dakota Century Code is hereby amended by creating and adding thereto a new subsection to read as follows:

In any case where the taxpayer has paid federal income taxes upon income which is not included in his net income for North Dakota income tax purposes in the year in which such taxes were paid because of—

**\*Note:** Section 57-38-22.1 was also amended by section 3 of chapter 360 of the 1961 S. L.

- a. an election allowed and made under the provisions of sections 1371 through 1377 of the Internal Revenue Code of 1954, as amended, to have such income taxed to the individual shareholder rather than to the corporation, or
- b. an election allowed and made under the provisions of sections 331 through 342 of the Internal Revenue Code of 1954, as amended, to have the gain in certain corporate liquidations taxed to the individual shareholder rather than to the corporation,

such shareholder as the taxpayer under this chapter shall be allowed to deduct from his net income, in the year in which such federal income taxes were paid or accrued, the amount of federal income tax on such income or gain of the corporation, except that any federal income tax paid by the shareholder on gain or income of the corporation shall not be deducted under this subsection if it was paid with respect to a dividend that is subtracted under the provisions of subsection 8 of section 57-38-21 as an adjustment in computing the taxpayer's net income.

**§ 3. Repeal.)** Subdivision c of subsection 2 of section 57-38-22.1 of the North Dakota Century Code is hereby repealed.

**§ 4. Effective Date.)** The provisions of this Act shall be effective as to income years beginning after December 31, 1959.

**§ 5. Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 3, 1961.



## CHAPTER 359

H. B. No. 908  
(Lynch, Annear)

## INCOME TAXES

## AN ACT

To amend and reenact subsection 7 of section 57-38-01 to provide for a definition of "taxable year"; subsection 21 of section 57-38-01 and subdivision c of subsection 8 of section 57-38-18 relating to the definition of "Internal Revenue Code of 1954, as amended"; subsection 2 of section 57-38-31 to provide for the filing of separate returns at any time within three years after the due date of the return by a married couple who have previously filed a joint return; section 57-38-29 relating to rates of tax on income of individuals; section 57-38-36 to provide for the acceleration of the payment of quarterly installments where the taxpayer has failed to pay an installment in full on or before the date fixed for its payment; section 57-38-40 to provide for an extension of the period of time within which a taxpayer may apply for a revision of the tax assessed, where the revision has been occasioned by the three-year carry-back of a net operating loss; and to repeal section 57-38-23 and subsection 11 of section 57-38-01; all of the North Dakota Century Code.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsection 7 of section 57-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Income year" and "taxable year" mean the calendar year or the fiscal year ending during such calendar year upon the basis of which the taxable income is computed under this chapter. If no fiscal year has been established, it means the calendar year;

**§ 2. Amendment.)** Subsection 21 of section 57-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21. "Internal Revenue Code of 1954, as amended", means Internal Revenue Code of 1954, as amended to and including December 31, 1960.

**§ 3. Amendment.)** Subdivision c of subsection 8 of section 57-38-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. For the purposes of this subsection the words "Federal Internal Revenue Code of 1954, as amended" shall mean the Federal Internal Revenue Code of 1954, as amended to December 31, 1960.

§ 4. **Amendment.)** Subsection 2 of section 57-38-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If a husband and wife living together have an aggregate net income of fifteen hundred dollars or over, each shall make such a return, unless the income of each is included in a single joint return. If a husband and wife have filed a joint return for a taxable year for which separate returns could have been filed by them under this subsection, and the time prescribed by law for filing returns for such taxable year has expired, such husband and wife may nevertheless, elect to file separate returns for such taxable year, provided that the election to file such returns may not be made after the expiration of three years from the last date prescribed by law for filing returns for such taxable year, such taxable year to be determined without regard to any extension of time granted for filing the joint return;

§ 5. **Amendment.)** Section 57-38-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-38-29. Rate of Tax on Individuals.)** A tax is hereby imposed upon every individual, to be levied, collected, and paid annually with respect to the taxable income of such individual as defined in this chapter, computed at the following rates:

1. On taxable income not in excess of three thousand dollars, a tax of one percent;
2. On taxable income in excess of three thousand dollars and not in excess of four thousand dollars, a tax of two percent;
3. On taxable income in excess of four thousand dollars and not in excess of five thousand dollars, a tax of three percent;
4. On taxable income in excess of five thousand dollars and not in excess of six thousand dollars, a tax of five percent;
5. On taxable income in excess of six thousand dollars and not in excess of eight thousand dollars, a tax of seven and one-half percent;
6. On taxable income in excess of eight thousand dollars and not in excess of fifteen thousand dollars, a tax of ten percent;
7. On taxable income in excess of fifteen thousand dollars, a tax of eleven percent.



**§ 6. Amendment.)** Section 57-38-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-38-36. When Payment of Tax May Be Made in Quarterly Installments.)** If the total tax exceeds one hundred dollars it may be paid in quarterly installments, and if paid in such installments, the first installment shall be paid at the time fixed by this chapter for filing the return, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month after the time fixed by law for filing the return. If a taxpayer elects under the provisions of this section to pay the tax in installments, any installment may be paid prior to the date prescribed for its payment. If an installment is not paid in full on or before the date fixed for its payment the whole amount of the unpaid tax shall be paid upon notice and demand from the tax commissioner, and penalty and interest, as provided in sections 57-38-43 and 57-38-45, shall attach, from and after the time of the failure to make such timely payment, to the whole amount of the unpaid tax.

**§ 7. Amendment.)** Section 57-38-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-38-40. Revision.)** 1. Except as provided in subsection 2 of this section, a taxpayer may apply to the tax commissioner for revision of the tax assessed at any time within three years after the due date of the return, within three years after the return was filed, or within three years after the date of the notice of the assessment of any additional tax as provided in section 57-38-38, whichever period expires latest. The tax commissioner shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts and shall adjust the computation of the tax accordingly. The tax commissioner shall notify the taxpayer of his determination and shall cause to be refunded to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. If the taxpayer has failed, without good cause, to file a return within the time prescribed by law, or has filed a fraudulent return within the time prescribed by law, or has failed, after notice, to file a proper return, the tax commissioner shall not reduce the tax below double the amount for which the taxpayer is found to be properly assessed. Refund claims properly verified and approved by the tax commissioner shall be audited and paid as are other claims against the state.

2. If the claim for refund relates to an overpayment attributable to a net operating loss carry-back, in lieu of the three year period within which a taxpayer may apply to the tax commissioner for revision of the tax assessed as prescribed in this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carry-back.

**§ 8. Repeal.)** Section 57-38-23 and subsection 11 of section 57-38-01 of the North Dakota Century Code are hereby repealed.

Approved March 15, 1961.

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## CHAPTER 360

H. B. No. 904

(Lynch, Annear)

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### TAX CREDITS AND DEDUCTIONS

#### AN ACT

To amend and reenact subsections 2 and 6 of section 57-38-04 of the North Dakota Century Code, relating to the credit against tax allowed in the case of taxes paid to another state or foreign country, and to amend and reenact section 57-38-22.1, relating to deductions of individuals in computing taxable income and to provide for deduction of income taxes paid to foreign countries.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsection 2 of section 57-38-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property shall be assigned to this state. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter if written proof of such payment is furnished to the tax commissioner; provided, that this credit for such tax shall not exceed the difference between (a) the amount of tax that would be due under this chapter if all of the



taxpayer's income had been derived from sources within North Dakota, and (b) the amount of tax that would be due under this chapter if the income from personal or professional services performed outside of North Dakota, together with any federal income taxes paid thereon, were excluded from the computation of the North Dakota income tax;

**§ 2. Amendment.)** Subsection 6 of section 57-38-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and the collection of income and gains therefrom, shall be assigned to this state without regard to the situs of such property.
- b. Income derived from carrying on a trade or business by residents of this state shall be assigned to this state without regard to where such trade or business is conducted. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter if written proof of such payment is furnished to the tax commissioner; provided, that this credit for such tax shall not exceed the difference between (a) the amount of tax that would be due under this chapter if all of the taxpayer's income had been derived from sources within North Dakota, and (b) the amount of tax that would be due under this chapter if the gains, profits or income from property, trade or business outside of North Dakota, together with any expenses, losses or taxes (including federal income taxes) related thereto were excluded from the computation of the North Dakota income tax;

**§ 3. Amendment.)** Section 57-38-22.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**\*57-38-22.1. Deductions—Individuals.)** In computing taxable income of individuals, there shall be deducted from net income the amount of federal income taxes, but not social security and self employment taxes, plus income taxes of

**\*Note:** Section 57-38-22.1 was also amended by section 2 of chapter 358 of the 1961 S. L. by the creation of a new subsection 5.

foreign countries, paid or accrued as the case may be, during the applicable tax year, adjusted by any federal or foreign tax refunds, to the extent that they were paid or accrued upon income which becomes a part of the North Dakota taxable income against which the North Dakota income tax rates are applied; plus (except as otherwise required by subsection 3 of this section) the larger of the amounts defined in subsections 1 and 2 of this section as follows:

1. A standard deduction of five percentum of the net income after the deduction of federal income taxes and income taxes of foreign countries, not to exceed five hundred dollars, or
2. The total of (1) contributions, interest, taxes, child care expense, losses and miscellaneous expenses deductible for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, and (2) all expenses paid during the income year, not compensated for by insurance or otherwise, for medical care, as defined for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, of the taxpayer, his spouse, or a dependent, with the following adjustment:
  - a. Subtract from said total the deduction for North Dakota income taxes.
3. Where married persons filed a joint federal income tax return but separate North Dakota income tax returns, the total of the deductions under subsection 2 of this section shall be divided between them according to law; and where a taxpayer has used an optional standard deduction on his federal return, he shall use the standard deduction provided in this section on his North Dakota return. Where married persons file separate North Dakota income tax returns, both must use the standard deduction if either elects to use it.
4. A taxpayer affected by income allocation provisions of this chapter applicable to persons other than corporations shall, if the standard deduction is not used, be permitted to deduct only such portion of the deductions referred to in this section as is fairly and equitably allocable to North Dakota under rules and regulations prescribed by the state tax commissioner.

Approved March 8, 1961.



## CHAPTER 361

S. B. No. 54

(Luick, Baeverstad, Gefreh, Johnson,)  
(Kee, Thompson, and Yunker)  
(From LRC Study)

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## TAX RECEIPTS

## AN ACT

To amend and reenact section 57-38-37 of the North Dakota Century Code, relating to the issuance of a receipt for the payment of income tax.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-38-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-38-37. Receipt.)** The tax commissioner, as soon as possible after the receipt of the return and remittance, if paid by cash or currency, shall issue a receipt to the taxpayer for the amount of his remittance. Such receipt shall not be a receipt in full for the amount of the tax due, but only for the remittance made by the taxpayer.

Approved February 25, 1961.

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## CHAPTER 362

H. B. No. 890

(Annear)

## AUDIT OF RETURNS AND ASSESSMENT OF TAX

## AN ACT

To amend and reenact section 57-38-38 and section 57-38-44 of the North Dakota Century Code, relating to the period of time within which the tax commissioner may assess income tax, and providing for a longer period of time within which the tax commissioner may assess the tax where a taxpayer has failed to report on his tax return a substantial portion of his income.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-38-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-38-38. Tax Commissioner to Audit Returns and Assess Tax.)** 1. Except as provided in subsections 2, 3 and 4 of this section, the tax commissioner shall proceed to audit the returns of taxpayers and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, assess the tax and, if any additional tax is found due, shall notify the taxpayer in detail as to the reason for the increase;

2. If a taxpayer, other than a corporation, omits from net income an amount properly includible therein which is in excess of 25 percent of the amount of net income stated in the return, or if a corporate taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later;

3. If the taxpayer has failed to file a return of income as required by this chapter, the tax may be assessed, or a proceeding in court for the collection of the tax due may be begun without such assessment, at any time within ten years after the due date of the return; provided that no limitation of time shall apply if at the effective date of this amendment a lien has been filed and recorded pursuant to section 57-38-49;

4. Where false or fraudulent information is given in the return, or where the failure to file a return is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, the time limitations in this section shall not apply, and the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without such assessment, at any time.

**§ 2. Amendment.)** Section 57-38-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-38-44. Tax A Personal Debt.)** Every tax imposed by this chapter, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a personal debt from the person or corporation liable to pay the same to this state.

Approved March 2, 1961.



## CHAPTER 363

S. B. No. 108

(Andre, Baeverstad)

(By request of the Tax Commissioner)

SALES AND USE TAX ON SUBSCRIPTIONS  
TO MAGAZINES

## AN ACT

To amend and reenact subsections 2 and 6 of section 57-39-01, section 57-39-02, and subsections 6 and 10 of section 57-40-01 of the North Dakota Century Code, relating to retail sales taxes and use taxes on subscriptions to magazines and other periodicals.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsections 2 and 6 of section 57-39-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration, and includes sales of subscriptions to magazines and other periodicals regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscription; provided that the words "magazines and other periodicals" as used herein shall not include newspapers nor shall they include magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues;
6. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purposes allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. Provided, however, that on all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty days from the date of sale thereof that only such portion of the sale amount thereof shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the

retailer during each quarterly period as defined herein. "Gross receipts" shall also mean, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only such tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. "Gross receipts" shall also mean, with respect to subscriptions to magazines and other periodicals, the amount of consideration, valued in money, whether received in money or otherwise, received from the sale of such subscriptions regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscription;

**§ 2. Amendment.)** Section 57-39-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-39-02. Tax Imposed.)** There is hereby imposed, beginning the first day of July, 1961, and ending the first day of July, 1963, a tax of two percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this chapter, sold at retail in the state of North Dakota to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of steam, gas, electricity, water and communication service, including the gross receipts from such sales by any municipal corporation furnishing steam, gas, electricity, water and communication service to the public in its proprietary capacity, except as otherwise provided in this chapter, when sold at retail in the state of North Dakota to consumers or users; a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic events and the playing of a record on a vending machine, in response to a coin placed in a slot, except as otherwise provided in this chapter; and a like rate of tax upon the gross receipts from all sales of subscriptions to magazines and other periodicals. The tax herein levied shall be computed and collected as hereinafter provided.

**§ 3. Amendment.)** Subsections 6 and 10 of section 57-40-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. "Tangible personal property" means:

- a. tangible goods, wares, and merchandise, and gas, electricity, and water, when furnished or delivered to consumers or users within this state;



- b. machinery, appliances, apparatus, and other like property when leased for use within this state, or when purchased without this state and used or operated by the owner or lessee thereof within this state;
  - c. subscriptions to magazines and other periodicals regardless of whether or not such magazines and subscriptions are to be delivered in the future and regardless of whether or not they are in existence at the time of the purchase of any subscriptions;
10. "Purchased at retail" shall include, but shall not be limited to:
- a. the completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person;
  - b. the leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state;
  - c. the purchase of subscriptions to magazines or other periodicals regardless of whether or not such magazines or periodicals are to be delivered in the future and regardless of whether or not they are in existence at the time of the sale of any subscription; provided that the words "magazines and other periodicals" as used herein shall not include newspapers nor shall they include magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

Approved March 15, 1961.

## CHAPTER 364

S. B. No. 109

(Andre, Baeverstad)

(By request of the Tax Commissioner)

EXCLUSIONS AND EXEMPTIONS FROM RETAIL SALES  
AND USE TAXES

## AN ACT

To amend and reenact subsection 3 of section 57-39-01 and subsection 3 of section 57-40-01 and to repeal subsections 6 and 7 of section 57-40-03 of the North Dakota Century Code, relating to exclusions and exemptions from retail sales taxes and use taxes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsection 3 of section 57-39-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property and the sale of steam, gas, electricity, water, and communication service to retail consumers or users, and includes the ordering, selecting or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to other real or personal property otherwise exempt from the sales tax shall be considered as a sale of tangible personal property for a purpose other than for processing;

**§ 2. Amendment.)** Subsection 3 of section 57-40-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Property used in "processing", as that term is used in subsection 2, shall mean any tangible personal property including containers which it is intended, by means of



fabrication, compounding, manufacturing, producing or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail;

**§ 3. Repeal.)** Subsections 6 and 7 of section 57-40-03 of the North Dakota Century Code are hereby repealed.

Approved February 28, 1961.

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## CHAPTER 365

S. B. No. 125

(Wartner and Gefreh)

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### SALES TAX PAYMENTS, LIENS

#### AN ACT

To amend and reenact subsection 1 of section 57-39-10 of the North Dakota Century Code, relating to the time retail sales taxes become due and payable, and to amend and reenact section 57-39-11 of the North Dakota Century Code, relating to liens for retail sales taxes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsection 1 of section 57-39-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The tax levied under the provisions of this chapter shall be due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that when there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax shall become due immediately prior to the sale or discontinuance of such business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided in section 57-39-16;

**§ 2. Amendment.)** Section 57-39-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

#### **57-39-11. Lien of Tax—Collection—Action Authorized.)**

1. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal,

belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of his death, the lien shall continue as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest shall be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein;

2. The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied; for the purposes of this provision the words "due" and "due and payable" shall mean the first instant at which the tax becomes due;

3. In order to preserve the aforesaid lien against subsequent mortgages, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the tax commissioner shall file with the register of deeds of the county in which said property is located, a notice of said lien;

4. The register of deeds of each county shall prepare and keep in his office a book known as "Index of Tax Liens," so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

- a. The name of the taxpayer;
- b. The name "State of North Dakota" as claimant;
- c. Time notice of lien was received;
- d. Date of notice;
- e. Amount of lien then due; and
- f. When satisfied.

The register of deeds shall endorse on each notice of lien the day, hour and minute when received and preserve the same, and forthwith shall index said notice in said index book and forthwith shall record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof;

5. The tax commissioner shall pay a recording fee as provided by law for the recording of such lien, or for the satisfaction thereof; provided that the register of deeds shall accept any such lien for filing and recording when it is received whether or not the filing and recording fees are paid at that time;

6. Upon the payment of a tax as to which the tax commissioner has filed notice with the register of deeds, the tax commissioner forthwith shall file with said register of deeds a



satisfaction of said tax and the register of deeds shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid;

7. The attorney general, upon the request of the tax commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action he shall have the assistance of the state's attorney of the county in which the action is pending;

8. It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the tax commissioner or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law;

9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to insure payment of the taxes, including penalties, interest and other costs, are self-explanatory;

10. Remittances on account of tax due under this chapter shall not be deemed or considered payment thereof unless or until the commissioner shall have collected or received the amount due for such tax in cash or equivalent credit.

Approved February 23, 1961.

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## CHAPTER 366

H. B. No. 749

(Hauf)

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### CONTRACTOR'S PERFORMANCE BONDS, USE TAX

#### AN ACT

To amend and reenact section 57-40-17 of the North Dakota Century Code, relating to contractor's performance bonds for payment of use tax, in order to clarify said section.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-40-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-40-17. Contractor's Performance Bonds for Payment of Use Tax.)** For the purposes of this section the term "surety" shall mean a bond or undertaking executed by a surety com-

pany authorized to do business in the state of North Dakota; "surety company" means any person, firm, or corporation executing such surety; "contractor" includes any individual, firm, copartnership, association, corporation, or other group or combination thereof acting as a unit, and the plural as well as the singular number; and "subcontractor" includes any individual, firm, copartnership, association, corporation, or other group or combination thereof acting as a unit, and the plural as well as the singular number, who undertakes to perform all or any part of work covered by the original contract entered into by the contractor, including the furnishing of any supplies, materials, equipment, or any other tangible personal property.

Whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement or repair of real property in this state and the contractor or subcontractor furnishes surety for the faithful performance of such contract, there is hereby imposed the additional obligation upon the surety company to the state of North Dakota that said contractor or subcontractor shall promptly pay all use taxes which may accrue to the state of North Dakota under the provisions of chapter 57-40. In the case of a contractor and his surety company this additional obligation shall include liability to pay to the tax commissioner on purchases made by either the contractor or the subcontractor all such use taxes which have not been paid to a retailer authorized or required to collect such taxes; and the contractor or his surety company is hereby authorized to recover from the subcontractor the amount of any use taxes accruing with respect to purchases made by the subcontractor which the contractor or the surety company may be required to pay to the tax commissioner, or to withhold from the amount due the subcontractor under the subcontract an amount equal to any use taxes accruing with respect to purchases of the subcontractor which have not been paid by the subcontractor to the tax commissioner or to a retailer authorized or required to collect such taxes. Such liability on the part of the surety company shall be limited to two percent of the amount of the contract price.

The surety company within sixty days after executing such surety shall send written notice of the same to the state tax commissioner, which notice shall give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to be performed. After the completion of the contract and the acceptance of the improvement by the owner of the real property improved, the surety company shall give written notice of such completion and acceptance to the state tax commissioner.



Six months after the completion of the contract and the acceptance of the improvement by the owner thereof, the additional obligation imposed upon said surety company shall cease unless written notice, within such period of time, of unpaid use taxes, is given to the surety company by the state tax commissioner.

This section shall not be construed to modify or repeal in any way any of the provisions of sections 48-01-05 and 48-01-06.

Approved March 8, 1961.

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## CHAPTER 367

S. B. No. 215

(Nesvig, Hernett)

(By request of State Tax Commissioner)

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### USE TAX, PENALTY, LIEN

#### AN ACT

To amend chapter 57-40 of the North Dakota Century Code by creating and adding thereto two new sections providing for penalties for failure to pay the tax imposed by section 57-40-02 and for failure to comply with other provisions of chapter 57-40, and providing for a lien for such tax and penalties thereon.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Chapter 57-40 of the North Dakota Century Code is hereby amended by creating and adding thereto the following section:

**Penalties—Offenses.)** 1. Any person failing to file a return or corrected return or to pay any tax imposed pursuant to section 57-40-02, within the time required by this chapter, shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due. The commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commissioner and disposed of in the same manner as the tax with respect to which it attached. Unpaid penalties may be enforced in the same manner as is the tax;

2. Any person required to make, render, sign or verify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the assess-

ment required by law to be made, shall be guilty of a misdemeanor and, for each such offense, shall be fined not to exceed five hundred dollars or shall be imprisoned in the county jail not exceeding one year, or shall be subject to both a fine and imprisonment, in the discretion of the court;

3. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof;

4. Except as provided in section 57-40-12, any person failing to comply with any of the provisions of this chapter, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to the tax imposed under the provisions of section 57-40-02, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months or by a fine of not exceeding five hundred dollars, or by both such fine and imprisonment, in the discretion of the court. This criminal liability shall be cumulative and in addition to the civil liability for penalties hereinbefore provided.

**§ 2. Amendment.)** Chapter 57-40 of the North Dakota Century Code is hereby amended by creating and adding thereto the following section:

**Lien of Tax—Collection—Action Authorized.)** 1. Whenever any person liable for payment to the tax commissioner of the tax imposed by section 57-40-02 or for any penalties in respect thereto refuses or neglects to pay the same the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of his death, the lien shall continue as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest shall be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein;

2. The lien aforesaid shall attach at the time the tax first becomes payable, as provided by section 57-40-06, and shall continue until the liability for such amount is satisfied;

3. In order to preserve the aforesaid lien against subsequent mortgages, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a



county, the tax commissioner shall file with the register of deeds of the county in which said property is located, a notice of said lien;

4. The register of deeds of each county shall prepare and keep in his office a book known as "Index of Tax Liens", so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically;

- a. The name of the taxpayer;
- b. The name "State of North Dakota" as claimant;
- c. Time notice of lien was received;
- d. Date of notice;
- e. Amount of lien then due; and
- f. When satisfied.

The register of deeds shall endorse on each notice of lien the day, hour and minute when received and preserve the same, and forthwith shall index said notice in said index book and forthwith shall record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof;

5. The tax commissioner shall pay a recording fee as provided by law for the recording of such lien, or for the satisfaction thereof; provided that the register of deeds shall accept any such lien for filing and recording when it is received whether or not the filing and recording fees are paid at that time;

6. Upon the payment of a tax as to which the tax commissioner has filed notice with the register of deeds, the tax commissioner forthwith shall file with said register of deeds a satisfaction of said tax and the register of deeds shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid;

7. The attorney general, upon the request of the tax commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action he shall have the assistance of the state's attorney of the county in which the action is pending;

8. It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the tax commissioner or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law;

9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to insure payment of the taxes, including penalties, interest and other costs, are self-explanatory;

10. Remittances on account of tax due under this chapter shall not be deemed or considered payment thereof unless or until the commissioner shall have collected or received the amount due for such tax in cash or equivalent credit.

Approved March 1, 1961.

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## CHAPTER 368

S. B. No. 93  
(Trenbeath, Mutch, Miller, Johnson)

### MOTOR VEHICLE FUEL TAX REFUNDS

#### AN ACT

To amend and reenact sections 57-50-03 and 57-50-05 of the North Dakota Century Code, relating to motor vehicle fuel tax refunds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. **Amendment.)** Section 57-50-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-50-03. Claim for Refund—Limitation on Filing.)** Such claim for refund must be filed for all purchases during a calendar year of such motor vehicle fuel on or before March 31 of the year next following, or the claim for refund shall be barred.

§ 2. **Amendment.)** Section 57-50-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-50-05. Refund to State or Political Subdivision.)** When any construction, reconstruction or maintenance of a public road, highway, street or airport is undertaken by the state or any county, city, village, township, park district or other municipality in the state and where public funds of the state, county, city, village, township, park district or other municipality are directly used for the purchasing of motor vehicle fuel to be used in publicly owned vehicles for such construction, reconstruction or maintenance, such motor vehicle fuel shall be subject to a refund of the tax paid thereon as provided for in this chapter and under the same terms and conditions.



No tax refund shall be paid to any person, firm or private corporation on any motor vehicle fuel used, except that liquefied petroleum gas used for heating purposes, which is paid for from public funds.

Approved March 15, 1961.

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## CHAPTER 369

H. B. No. 597

(Johnson of Barnes, Bier, Winge, Loder)

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### SPECIAL FUELS TAX

#### AN ACT

To create and to enact subsection 8 of section 57-52-03 and to amend and reenact section 57-52-10 of the North Dakota Century Code, relating to the special fuels tax.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) Subsection 8 of section 57-52-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

8. "Highway purposes" means any use of special fuels in any motor vehicle or in any phase of construction, reconstruction, repair or maintenance of highways as defined in subsection 2, and shall include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing, except that special fuel known as liquefied petroleum gas used for heating purposes.

§ 2. **Amendment.)** Section 57-52-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-52-10. Monthly Returns and Payments.)** For the purpose of determining the amount of his liability for the tax herein imposed each special fuel dealer shall file with the state auditor on forms prescribed by the auditor, a monthly tax return. Such returns shall contain a sworn statement to the effect that the statements and claims contained therein are true and are made under the penalties of perjury. The return shall show, with reference to each location at which special fuel is sold, delivered or placed by such dealer, such information as the state auditor may reasonably require for the proper administration and enforcement of this chapter. The

special fuel dealer shall file such return on or before the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the state auditor and postmarked before midnight of the final filing date. The state auditor may, for good cause, grant a taxpayer a reasonable extension of time for filing such returns. The tax imposed by this chapter shall be computed by each special fuel dealer by multiplying the rate of tax per gallon provided in this chapter by the number of gallons of special fuel sold or delivered by him to special fuel users. The monthly tax return shall be accompanied by remittance covering the tax due hereunder on special fuels sold or delivered to special fuel users during the preceding month.

Approved March 8, 1961.

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## CHAPTER 370

H. B. No. 700

(Trom, Christopher, Boe)

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### DISTRIBUTION OF SPECIAL FUELS TAXES

#### AN ACT

To amend and reenact section 57-52-11 of the North Dakota Century Code, relating to the distribution of money collected under the provisions of chapter 57-52 of the North Dakota Century Code.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Section 57-52-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-52-11. Distribution of Tax.)** All money collected by the state auditor under the provisions of this chapter shall be transferred to the state treasurer who shall credit seventy-nine per cent of all such money so received to the state highway department construction fund and such moneys are hereby appropriated for use by the state highway department in the construction and reconstruction of highways, roads, streets, and bridges of this state under the jurisdiction of the state highway department.

From and after July 1, 1961, the balance of the money so received by the state treasurer shall be distributed as follows:



1. An amount equal to the sum credited and transferred to the county highway aid fund from the imposition and collection of such tax for the fiscal year which ended June 30, 1960, shall be credited by the state treasurer to the county highway aid fund and be distributed to the counties on or before the first day of August each year in the manner, and for the purpose provided for in section 57-54-15 of the North Dakota Century Code; provided, however, that in no event, shall any county receive, under the provisions of this subsection, an amount in excess of the sum dispersed to it during the fiscal year ending June 30, 1960; and,
2. All money in excess of the amount referred to in subsection 1 of this Act shall be distributed as follows:
  - a. Fifty percent of such excess shall be credited by the state treasurer to the county highway aid fund and distributed to the counties on or before the first day of August of each year in the manner set forth in subsection 1 of this Act; and
  - b. The balance of such excess is hereby appropriated and shall be distributed by the state treasurer on or before the first day of August of each year on a per capita basis to the incorporated cities and villages of this state, to be used by such incorporated cities and villages solely for construction, reconstruction, repair and maintenance of public streets and highways, the allocation to be based upon the population of each incorporated city and village according to the last official regular or special federal or state census, or the census taken in accordance with the provisions of chapter 40-02 of the North Dakota Century Code in case of a city or village incorporated subsequent to the last such federal or state census, and warrants shall be drawn payable to the treasurers of such cities and villages.

Approved March 7, 1961.

## CHAPTER 371

S. B. No. 91

(Trenbeath, Mutch, Miller, Johnson)

## LIQUEFIED PETROLEUM GAS DEALERS

## AN ACT

To create and enact subsection 7 of section 57-53-01 of the North Dakota Century Code, and to create and enact section 57-53-10 of the North Dakota Century Code, relating to the special fuel tax on special fuel sold for heating, agricultural or railroad purposes and providing for the licensing of special fuel wholesale dealers in liquefied petroleum gas, and the issuance of permits to retail dealers in liquefied petroleum gas, and providing for the administration thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) Subsection 7 of section 57-53-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

7. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

§ 2.) Section 57-53-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

**57-53-10. License—Fee—Permits and Bond.)** It shall be unlawful for any person to act as a wholesale dealer in special fuel known as liquefied petroleum gas in this state unless such person is a holder of an uncanceled special liquefied petroleum gas dealer's license issued to him by the state auditor, in addition to complying with all other provisions of this chapter. Application for such license shall be made to the state auditor and a separate license shall be required for each separate place of business or location where such liquefied petroleum gas is regularly sold, delivered or placed into tanks of bulk supply vehicles for delivery into supply tanks of retail liquefied petroleum gas dealers or users. The cost of this license shall be ten dollars, which amount shall accompany each application, upon a form prepared and furnished by the state auditor, containing such information as the state auditor in his discretion shall deem necessary, together with a surety bond in such form and amount as the state auditor shall require, but not less than the amount of five hundred dollars.

Whenever any person deals only in the retail selling of liquefied petroleum gas, the provisions of sections 57-53-04 and



57-53-05 shall not apply, but in lieu thereof each liquefied petroleum gas retail dealer shall be required to make application to the state auditor for a liquefied petroleum gas retail dealer's permit. The cost of such permit issued by the state auditor shall be one dollar and shall expire June 30 of every odd numbered year. Each liquefied petroleum gas retail dealer shall be required to make collections of the special fuels excise tax levied under the provisions of section 57-53-02, and shall transmit all taxes collected by him to the state auditor quarterly. The state auditor shall furnish report forms requiring such information as he deems necessary for the efficient administration of this section, such report to accompany the transmittal of all taxes collected by liquefied petroleum gas retail dealers.

Approved February 28, 1961.

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## CHAPTER 372

S. B. No. 92

(Mutch, Miller, Trenbeath, Johnson)

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### CONSOLIDATION OF CERTAIN MOTOR VEHICLE FUELS TAX LAWS

#### AN ACT

To create and enact chapter 57-54 of the North Dakota Century Code, imposing a tax on motor vehicle fuels, providing for the administration and enforcement thereof, providing a penalty, and repealing chapters 57-41, 57-43 and 57-48 of the North Dakota Century Code.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) Chapter 57-54 of the North Dakota Century Code is hereby created and enacted to read as follows:

#### **Chapter 57-54** **Motor Vehicle Fuel Tax**

**57-54-01. Title.)** This Act may be cited as the "Motor Vehicle Fuel Tax Act".

**57-54-02. Statement of Purpose.)** The purpose of this Act is to consolidate the motor vehicle fuel tax as found in chapters 57-41, 57-43 and 57-48 of the North Dakota Century Code.

**57-54-03. Definitions.)** As used in this Act, unless the context otherwise requires:

1. "Motor vehicles" means all vehicles, engines, or machines, movable or immovable, which are operated in whole or in part by internal combustion of one or more of the motor vehicle fuels defined in this chapter;
2. "Motor vehicle fuels" includes all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naptha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade);
3. "Dealer" means any person, firm, association, or corporation importing or causing to be imported from any other state or country any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the same reaches the state of North Dakota, and any person, firm, association, or corporation producing, refining, manufacturing, or compounding any motor vehicle fuel in this state for use, distribution or sale therein;
4. "Original package" means any tank car, barrel, or other package which is in the form and condition in which the same was imported into the state;
5. "Person" shall include every individual, partnership, society, incorporated association, joint stock company, corporation, trustee, executor, administrator, or guardian;
6. "Auditor" shall mean the state auditor of this state; and
7. "Wholesale dealer" means the same as is stated in subsection 3, with the added qualification in that it shall mean those selling or delivering motor vehicle fuel to retail dealers.

**57-54-04. Dealer Required to Secure License.)** No person shall engage in business in this state as a dealer in motor vehicle fuel unless he holds an unrevoked license issued by the state auditor authorizing him to engage in such business.

**57-54-05. Form and Contents of Application for Dealer's License—Fee—Bond.)** To procure a license as a dealer in motor vehicle fuel, an applicant shall file with the state auditor



an application upon a form prescribed and furnished by the state auditor. Such application shall contain:

1. The name under which the applicant intends to transact business;
2. If a partnership, the name and address of each of the several persons constituting the firm;
3. If a domestic corporation, the corporate name, the date of incorporation, and the names of the directors and corporate officers;
4. If a foreign corporation, the corporate name, the state where and the time when incorporated, the name of the resident agent, the location of each place of business, and the date on which such business was established; and
5. Any other information the state auditor may require.

Such application shall be signed and verified by the owner of the business, if an individual, partnership, or unincorporated association, and by any authorized officer, if a corporation. At the time of applying for a license, the applicant shall pay to the state auditor as a license fee the sum of two dollars. Such fee shall be paid into the state treasury and credited to the general fund. The state auditor, if he deems it necessary, may require a dealer, as a condition precedent to the issuance of a license, to furnish a bond guaranteeing the payment of the motor fuel tax collected by the dealer in an amount not less than one thousand dollars. Such bond shall be subject to approval by the state auditor.

**57-54-06. License—Contents—Authority Conferred.)** Upon the filing of an application for a license to engage in business as a dealer in motor vehicle fuel, and the payment of the fee therefor, the state auditor shall issue to the applicant a license which shall authorize him to engage in business in this state as a dealer, as defined in section 57-54-03, until the thirtieth day of June of the odd-numbered year following the date of issuance of the license, unless the license shall be revoked within that period by the state auditor as provided by law.

**57-54-07. Report by Dealer to State Auditor.)** Each dealer in motor vehicle fuel who shall engage, in his own name, or in the name of any other person, in this state, in the sale or use of motor vehicle fuel, not later than the twenty-fifth day of each calendar month, shall render to the state auditor, on the form prescribed, prepared, and furnished by the state auditor a statement witnessed by two witnesses, of the number of gallons of motor vehicle fuel sold, used, received and delivered by him during the preceding calendar month. If the dealer is a domestic corporation, the statement shall be signed by the

president or secretary, and if a foreign corporation, by the resident general agent, attorney-in-fact, or by a chief accountant or officer. If the dealer is a firm, or an association of individuals, the statement shall be made by the managing agent or owner. Such report shall contain a statement of the quantities of motor vehicle fuel sold, used, received and delivered within this state from the dealer's place of business, and if any such motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement shall show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom the same was sold and delivered.

**57-54-08. Tax Imposed on Motor Vehicle Fuels.)** There is hereby imposed a tax of six cents per gallon on all motor vehicle fuel sold or used in this state. The tax imposed by this section shall be collected by the dealer from the consumer on all sales. Sales of fuel in the original package may be made to a licensed dealer and he shall have the option of collecting the tax of six cents per gallon imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer shall be liable for the tax thereon.

**57-54-09. Sale in Original Package — Invoice — Delivery of Copies.)** Whenever a dealer in motor vehicle fuel makes a sale in the original package in which the fuel was imported, he shall deliver to the purchaser thereof an invoice of such fuel, stating the name and address of the purchaser, the quantity and kind of fuel sold and delivered, and whether or not the dealer has collected the tax on such fuel. Such dealer shall transmit to the state auditor, at the time that the statement required by section 57-54-07 is rendered, duplicate copies of all invoices issued and delivered by him to purchasers during the period covered by the statement.

**57-54-10. Tax Chargeable to Consumer.)** Every dealer who is required to collect the motor vehicle fuel tax imposed by this chapter shall charge and collect the tax of six cents per gallon on all motor vehicle fuel sold by him, except as provided in section 57-54-09, as a part of the selling price thereof.

**57-54-11. Failure to File Report — Revocation of License — Excuse for Delay.)** If the holder of a license to sell motor fuel at any time shall refuse or neglect to file the monthly report required to be filed, and to pay the full amount of the tax as required by this chapter, the state auditor forthwith shall revoke such license and shall notify the holder thereof promptly by a notice sent by registered or certified mail to the post-office address of such holder as the same appears in the state



auditor's records. However, if such report is filed and the tax paid within ten days after the date it becomes due and if it is established under oath that the delay was due to accident or justifiable oversight, then the state auditor may continue such license in full force and effect.

**57-54-12. Conditions Precedent to Reinstatement of License.)**

If the license of a dealer has been revoked, he, before another license will be issued to him, must pay to the state auditor the amount of the delinquent tax, with penalties and costs remaining unpaid by such dealer, and must file with the state auditor a surety bond upon which such dealer shall be the obligor. Such bond must be in such amount as the state auditor shall determine but not to exceed three times the amount of the state tax on all gasoline sold by such dealer during the preceding month, and not less than two thousand dollars. The bond shall run to the state of North Dakota and shall be conditioned for the prompt filing of true reports and the payment of the full amount of the tax at the times, in the manner, and at the place required under the provisions of this chapter. If any such dealer shall fail to file the monthly report required promptly and to pay the full amount of the tax due after having filed a surety bond as in this section provided, the state auditor may require such dealer to furnish such other and further bond as shall be deemed necessary, conditioned to secure at all times the payment of any tax due to the state under the provisions of this chapter. Upon the failure to file such additional bond the state auditor forthwith shall revoke the license of such dealer.

**57-54-13. Payment of Tax.)** The tax collected upon motor vehicle fuel in any calendar month shall be remitted by the dealer when the statement required in section 57-54-07 is rendered only on that fuel sold or used during such calendar month. The state auditor shall receipt to the dealer therefor, and forthwith shall pay over all of the money thus received to the state treasurer.

**57-54-14. Allocation of Five-Sixths of Fuel Tax.)** The state treasurer shall credit to the state highway department promptly, five-sixths of the motor fuel tax collected under the provisions of this chapter. The money so credited is hereby appropriated to be used by such highway department for the construction, reconstruction, maintenance, or repair of highways or roads under the jurisdiction of the state highway department.

**57-54-15. Allocation of One-Sixth of Motor Fuel Tax for County Highways—Disbursement.)** One-sixth of the motor fuel tax received by the state treasurer shall be credited to a

"county highway aid fund". During the months of January, April, July and October of each year, the state treasurer upon warrant of the state auditor shall apportion and disburse all of the moneys of such county highway aid fund not previously disbursed, including interest received thereon, to the various counties of the state in the proportion which the number of motor vehicles registered in each county shall bear to the total number of motor vehicles registered in all of the counties of the state during the entire preceding calendar year as shown by the certificate of the registrar of motor vehicles. The moneys so received by each county shall be set aside in a separate fund under the jurisdiction and control of the board of county commissioners and shall be appropriated and applied solely by such counties in the construction, reconstruction, maintenance, and repair of the county highways, bridges, and culverts thereon, and city streets leading up to and connecting with federal aid and state aid highways.

**57-54-16. Deduction of Cost of Collecting.)** On making payments to the state auditor as is provided in this chapter, the dealer first shall deduct from the amount of tax due two percent thereof to cover the cost of collecting the tax and transmitting the same to the state auditor.

**57-54-17. Records of Dealer Subject to Inspection.)** The records of all purchases, receipts, sales, distribution and use of motor vehicle fuel of every dealer, shall be retained for a period of three years, and shall be open to inspection by the state auditor or by any agent or employee authorized by him during business hours.

**57-54-18. Sale to Consumer in Original Package — Invoice Required.)** No person shall purchase, receive or accept any motor vehicle fuel from any dealer in the original package as the same was imported into the state under the provisions of section 57-54-07, unless the invoice therefor prescribed in section 57-54-09 is delivered to the purchaser by the dealer at the time of the purchase or receipt of such motor vehicle fuel.

**57-54-19. Motor Fuel and Other Motor Vehicle Taxes To Be Used for Highway Purposes.)** After deducting from state motor vehicle registration fees, license fees, motor fuel taxes, and other special taxes imposed on motor vehicle owners and operators, other than drivers' license fees, the cost of administration and collection authorized by legislative appropriation only, the proceeds remaining shall be used for the construction, improvement, and maintenance of highways and the expenses of administration in connection therewith and for no other purpose, except the proceeds remaining as revenue from aviation gasoline taxes and unclaimed aviation motor fuel



refunds and other aviation motor fuel excise and license taxation used by aircraft.

**57-54-20. State Auditor May Formulate Rules.)** The state auditor may formulate such reasonable rules and regulations as he may deem necessary for the administration and enforcement of motor vehicle fuel tax law, and also motor fuel use tax law as found in chapter 57-52.

**57-54-21. Losses — Deductions Allowed to Dealer — Remedies.)** Each dealer of motor vehicle fuel shall be allowed to deduct the actual shrinkage of the total gallonage of motor fuel received by him during each calendar month from the statement submitted by him required in section 57-54-07, but such allowance shall not exceed one percent of the total received by him during such month. For the purpose of this Act, it shall be presumed that all motor vehicle fuel received by each dealer over and above the one percent allowance herein provided, not otherwise accounted for, but not that gallonage shown as inventory at the end of every calendar month, and other allowances provided in this chapter, has been sold, delivered or used and the dealer shall be liable for the amount of the motor vehicle fuel tax on each gallon of motor vehicle fuel not accounted for. For purposes of this Act, motor fuel refined at a refinery in this state and placed in storage thereat, and motor fuel brought into the state by pipeline and placed in storage at a pipeline terminal, shall not be deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.

**57-54-22. Sales of Motor Vehicle Fuels to Retail Dealers in Motor Vehicle Fuels.)** Whenever a wholesale dealer in motor vehicle fuels makes a sale to a retail dealer he shall credit the retail dealer with one percent of the total state motor vehicle fuel tax applied to the gallonage sold on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retailer's cost of collection of the tax. On making payments to the state auditor as provided in this chapter the dealer shall deduct the total credit allowance granted on sales to retail dealers in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of the tax due.

**57-54-23. Penalty.)** Any dealer, purchaser, or other person who makes any false statement or report, or who collects or causes to be repaid to him or to any other person, any tax to which he is not entitled, or who violates any other provision

of this chapter, is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

**2. Repeal.)** Chapters 57-41, 57-43, and 57-48 of the North Dakota Century Code are hereby repealed.

Approved March 15, 1961.