

TAXATION

CHAPTER 382

H. B. No. 854
(Dornacker, Lundene)

LIMITING SALES ASSESSMENT RATIO STUDY

AN ACT

To limit the scope of any sales assessment ratio study which may be made and to provide an effective date for use of it for determination of state payments to county equalization funds.

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

§ 1. Sales Assessment Ratio Study—Contents Not To Be Included.) Any sales assessment ratio study which may be made by the state tax commissioner shall not include the following:

1. Property owned or used by public utilities;
2. Property classified as personal property;
3. A sale where the grantor and the grantee are of the same family or corporate affiliate (if known);
4. A sale which resulted as a settlement of an estate;
5. All sales to or from a government or governmental agency;
6. All forced sales, mortgage foreclosures, and tax sales;
7. All sales to or from religious, charitable, or nonprofit organizations;
8. All sales where there is an indicated change of use by the new owner;
9. All transfer of ownership of property for which is given a quit claim deed;
10. Sales of property not assessable by law;
11. Agricultural lands of less than eighty acres.

§ 2. Review of Sales Ratio Study by State Tax Commissioner—Appeal.) The state tax commissioner shall notify each county board of commissioners of a scheduled hearing of the sales assessment ratio study before him. Such notice shall set

forth the time and date and place of such hearing. After hearing objections to using certain sales in the sales assessment study, the state tax commissioner shall be authorized to withdraw such sales which he deems are not representative sales from the study. Within 30 days after the close of such formal hearing, the state tax commissioner shall notify each county board of commissioners, in writing, as to the action taken as a result of such hearing. Within 10 days after receiving such notice from the state tax commissioner, each board of county commissioners may appeal the decision of the state tax commissioner to the state board of equalization. Such board will review the findings of the state tax commissioner and render its final decision on such appeal.

§ 3. County Equalization Fund Payments — Sales Assessment Ratio — When Effective.) The provisions of section 15-40-18 of the North Dakota Century Code as amended relating to the use of a certification of assessment levels by the state tax commissioner to the superintendent of public instruction for the purpose of adjusting the twenty-one mill county equalization fund is hereby suspended for the years 1965 and 1966 and shall again become effective for the year 1967. The purpose of such suspension is to provide the state supervisor of assessments with more time to develop the sales assessment ratio study.

Approved March 15, 1965.

CHAPTER 383

S. B. No. 286
(Tuff)

MAINTENANCE OF CASH FUND IN TAX DEPARTMENT

AN ACT

To authorize the tax commissioner to maintain a cash fund in the tax department for making necessary change.

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

§ 1. Tax Commissioner's Cash Change Fund Authorized.) For the purpose of promptly and efficiently accommodating taxpayers who make payments of taxes in person to the cashier in the state tax department, the tax commissioner may maintain, out of collections made, a cash fund in the cashier's office in an amount reasonably necessary for making change.

The tax commissioner shall obtain the written approval of the director of accounts and purchases of the amount of money to be maintained in such cash change fund.

Approved March 2, 1965.

CHAPTER 384

H. B. No. 908
(Erickson (Ward))

PREPARATION OF TAX MANUALS

AN ACT

Authorizing the tax commissioner to prepare and distribute for a reasonable charge looseleaf tax manuals, relating to tax laws administered by him.

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

§ 1. Tax Manuals—Distribution.) The state tax commissioner is hereby authorized to prepare a manual or manuals in looseleaf form in which is compiled the provisions of any or several of the tax laws administered by him together with the rules, regulations, opinions and other information relating to the administration of the particular law or laws included in each manual. He shall make each manual available for sale at a charge that will cover the cost of preparing and mailing it and also may prepare and have available for sale, at an amount sufficient to cover all costs, periodic supplements to each manual so as to provide the purchaser with current information relating to the interpretation and administration of the various tax laws he administers.

All moneys received by him from the sale of such manuals and the supplements for them shall be transmitted by him at the end of each month to the state treasurer for deposit by him to the credit of the general fund.

Approved March 15, 1965.

CHAPTER 385

H. B. No. 856
(Glaspey)

TAXPAYER'S HEARING AND APPEAL

AN ACT

Relating to a taxpayer's right to a hearing on and to appeal from the assessment of or determination of tax liability by the tax commissioner.

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

§ 1. Assessment of or Determination of Additional Tax Liability by Tax Commissioner—Hearing—Appeal.) In any case where the provisions of any tax law are administered by the tax commissioner and the tax is collected by him or the amount thereof is certified by him to any other official for collection and the law providing for such tax authorizes the tax commissioner to assess or to determine a tax liability that is in addition to that reported by the taxpayer, the taxpayer shall have a right to a hearing before the tax commissioner on such assessment or determination and shall have a right to appeal to the courts from the decision of the tax commissioner on such hearing and all of the provisions of chapter 28-32 relating to proceedings before an administrative agency, including the right to appeal to the courts from the decision of the tax commissioner in such a proceeding, shall be applicable to and shall govern the notice of hearing, the hearing, and the right of appeal from the tax commissioner's decision thereon. Notwithstanding the provisions of any other law heretofore or hereafter enacted, it is the intent and purpose of this Act to provide that in those circumstances hereinbefore described every taxpayer shall have both the right to a hearing before the tax commissioner and the right to appeal to the courts from the tax commissioner's decision on such hearing in accordance with the provisions of chapter 28-32 unless the provisions of any such law expressly provide that the decision of the tax commissioner shall be final or expressly provide that the provisions of chapter 28-32 shall not be applicable.

Approved March 15, 1965.

CHAPTER 386

H. B. No. 698
(Giffey, Hoffner, Backes)

THE 1965 ACT FOR TAX SIMPLIFICATION AND
EQUALIZATION

AN ACT

Relating to tax equalization and simplification and declaring legislative intent; to amend and reenact section 57-02-04 of the North Dakota Century Code, relating to the definition of real property for property tax purposes; to amend and reenact subsection 20 of section 57-38-01, sections 57-38-06, 57-38-07, 57-38-30, 57-38-31, and 57-38-32 of the North Dakota Century Code and section 57-38-29 of the 1961 Supplement to the North Dakota Century Code, relating to definitions, nonresidents, fiduciaries, filing of returns, and income tax rates for income tax purposes; to amend and reenact section 57-35-02 of the North Dakota Century Code, relating to taxation of banks and trust companies; to amend and reenact subsection 2 of section 57-35.1-01 of the 1963 Supplement to the North Dakota Century Code, relating to taxation of building and loan associations; to amend and reenact subsections 5 and 10 of section 57-39-03, subsections 1, 2, 4, 7, and 8 of section 57-40-01 and subsection 5 of section 57-40-03, all of the North Dakota Century Code, and subsections 1, 2, 3, 5, and 6 of section 57-39-01, sections 57-39-02 and 57-39-06, subsections 5 and 10 of section 57-40-01, subdivision a of subsection 6 of section 57-40-01 and sections 57-40-02, 57-40-17, and 57-40.1-02, all of the 1963 Supplement to the North Dakota Century Code, and all of which relate to definitions, tax rates, exemptions, and contractors' bonds for purposes of retail sales and use or excise taxes; to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to exemption of personal property from assessment and taxation; to create and enact four new sections to chapter 57-38 of the North Dakota Century Code, relating to withholding of taxes from wages, payment of taxes withheld, filing and paying declarations of estimated income taxes and providing for adjustments to taxable income, all relating to administration of the income tax law; to create and enact a new subsection to section 57-39-03, relating to exemptions, a new subdivision to subsection 6 of section 57-40-01, relating to definitions, and a new subsection to section 57-40-01, relating to definitions, all of the North Dakota Century Code; to create and enact a new section to chapter 57-39, and a new section to chapter 57-40 of the North Dakota Century Code and to create and enact a new section to chapter 57-40.1 of the 1963 Supplement to the North Dakota Century Code, to provide for a separate and additional one percent retail sales tax and separate and additional one percent excise or use taxes, to provide for the administration thereof and the appropriation, allocation and distribution of the revenues therefrom; to provide for a separate and additional one percent excise tax on any casual sales or transfers in this state of motor vehicles that may be subjected to any other similar tax imposed by any other provision of law and to provide for the administration thereof and the appropriation, allocation and distribution of the revenues therefrom; to provide for effective dates for amendments to the income tax

law, bank and trust company tax law and building and loan association tax law; to provide the tax commissioner with access to official records of the workmen's compensation bureau and the unemployment compensation division thereof for purposes of administration of the income tax law; and to repeal subsections 9, 10, and 11 of section 57-02-05, sections 18-03-09, 37-01-27, 57-15-23, 57-38-20, 57-38-21, 57-38-22, 57-38-24, 57-38-26, 57-38-27, and 57-38-28 and chapters 57-03 and 57-31 of the North Dakota Century Code and sections 5-03-26, 15-39-23, 57-38-22.1, and 57-38-36 of the 1963 Supplement to the North Dakota Century Code.

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

§ 1. Short Title—Declaration of Legislative Intent.)

1. This Act may be referred to as "The 1965 Act for Tax Simplification and Equalization".

2. It is the intent of the legislative assembly to equalize, in part, taxation by replacing taxes on personal property, to the extent provided in this Act, with taxes on incomes, with privilege taxes on building and loan associations and on banks and trust companies, and with retail sales taxes and excise or use taxes.

It is the further intent of the legislative assembly to simplify the state income tax laws so that every person, including every corporation, required to file a North Dakota income tax return is able to compute the amount of income tax liability, if any, to this state in the easiest and most simple way feasible.

§ 2. Amendment.) Section 57-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-04. "Real Property" Defined.) Real property, for the purpose of taxation, includes the land itself, whether laid out in town lots or otherwise, and, except as otherwise provided, all buildings, structures, and improvements except plowing and trees, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, and quarries in and under the same and shall expressly include all improvements made by persons upon lands held by them under the laws of the United States, all such improvements on land the title to which still is vested in any railroad company and which is not used exclusively for railroad purposes, and the improvements of any other corporation whose property is not subject to the same mode and rule of taxation as other property.

§ 3. Amendment.) Section 57-02-08 of the North Dakota Century Code is hereby amended by creating and enacting a new subsection thereto to read as follows:

All personal property not required to be assessed by the state board of equalization shall become exempt from assessment and taxation in the year 1966 and such property shall not be assessed or taxed for that year or for any year thereafter; provided that this provision shall not apply to any property that is either subjected to a tax which is imposed in lieu of ad valorem taxes or to any particular kind or class of personal property, including mobile homes or house trailers, that is subjected to a tax imposed pursuant to any other provision of law. If any part of this Act is invalidated or disapproved in any way other than by action of the legislative assembly or by the action of any court, this section shall then have no effect.

§ 4. Amendment.) Subsection 20 of section 57-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20. "Taxable income" in the case of individuals, estates, trusts and corporations shall mean the taxable income as computed for an individual, estate, trust or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954 as amended, plus or minus such adjustments as may be provided by this Act and chapter or other provisions of law;

§ 5. Amendment.) Section 57-38-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-06. General Provisions Applicable to Nonresidents.) The provisions of law applicable to the assessment, levy, and collection of income taxes from resident individuals, as to income, taxable income, adjustments to taxable income, and the allocation or proration of any of such items, and all other provisions not inconsistent with the provisions of this chapter especially made applicable to nonresidents, shall govern the levy and collection of income taxes from nonresident individuals.

§ 6. Amendment.) Section 57-38-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-07. Tax Imposed on Fiduciaries—A Charge Against Estate or Trust.) The tax imposed by this chapter shall apply to and become a charge against estates and trusts with respect to their taxable income as defined in this chapter, and the rates shall be the same as those applicable to individuals. The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income

be taxable to the estate or trust or to the beneficiaries thereof. Fiduciaries required to make returns shall be subject to all of the provisions of this chapter which apply to individuals.

§ 7. Amendment.) Section 57-38-29 of the 1961 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-29. Rate of Tax on Individuals, Estates and Trusts.)

A tax is hereby imposed upon every individual, estate and trust, to be levied, collected, and paid annually with respect to the taxable income of such individual, estate or trust as defined in this chapter, computed at the following rates:

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

If any part of this Act is invalidated or disapproved in any way other than by action of the legislative assembly or by the action of any court, this section shall then have no effect.

§ 8. Amendment.) Section 57-38-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-30. Rate of Tax on Corporations.) A tax is hereby imposed upon the taxable income of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which shall be levied, collected and paid annually as in this chapter provided, and which shall be computed at the following rates, except that in no case shall the tax be less than ten dollars:

1. For the first two thousand dollars of taxable income, at the rate of three percent;

2. On all taxable income above two thousand dollars, and not in excess of eight thousand dollars, at the rate of four percent;
3. On all taxable income above eight thousand dollars, at the rate of five percent.

If any part of this Act is invalidated or disapproved in any way other than by action of the legislative assembly or by the action of any court, this section shall then have no effect.

§ 9. Amendment.) Section 57-38-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-31. Duty of Individuals and Fiduciaries to Make Return.)

1. Every resident individual, every fiduciary for a resident individual, estate or trust, and every individual or fiduciary who receives income derived from sources in this state, who is required by the provisions of the United States Internal Revenue Code of 1954, as amended, to file a federal income tax return, shall file an income tax return with the state tax commissioner in such form as he may prescribe. Any person required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, with respect to income that is exempt from taxation under this chapter either because it cannot be constitutionally taxed or because it is exempt by any provision of law shall file a return prescribed by the tax commissioner in such form as will permit computation of the tax liability under this chapter on only that part of the income which is subject to taxation pursuant to the provisions of this chapter, provided such person elects to use that form of return rather than any other form of return that may be prescribed. The return shall be signed by the person required to make it and shall contain a written declaration that it is made and subscribed under penalties of perjury.

2. A husband and wife each having separate income may include their income in a single joint return, or if they have separate income from personal or professional services or from business or property in which the other has no ownership and if they file a joint federal income tax return in which such income is reported, they may file separate returns in which the separate income of each and the deductions and exemptions for themselves or their dependents are reported in the same way that they would have been required to report them in separate federal returns if they had filed separate federal returns.

A husband and wife who have income from property or business in which both have an ownership interest may file a single joint return in which the income of both, along with any other income they may be required to report, is included, or they may file separate returns in the same way as provided in the preceding paragraph, provided that the income from the property or business in which both have an ownership interest shall be allocated between them according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such property or business, pursuant to rules and regulations promulgated by the tax commissioner for the reasonable allocation thereof.

3. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. Every fiduciary subject to taxation under the provisions of this chapter shall make a return for the individual, estate or trust for which he acts, if he is required to make a return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended; the return shall be signed by the person required to make it and shall contain a written declaration that it is made and subscribed under penalties of perjury.

5. The return made by a fiduciary shall state such facts as the tax commissioner may prescribe.

6. A fiduciary required to make a return under this chapter shall be subject to all of the provisions of the chapter which apply to an individual.

7. The return shall be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information on forms furnished and under regulations promulgated by the state tax commissioner if required by the tax commissioner, or a true copy of the federal income tax return of the taxpayer or equivalent information shall be furnished to the tax commissioner by the taxpayer or fiduciary at any time after he has filed the return required by this chapter if so required by the tax commissioner.

§ 10. Amendment.) Section 57-38-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-32. Duty of Corporations to Make Return.) Each corporation that receives income from the sources designated in section 57-38-30 and which is required to file an income tax

return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a return in such form as the tax commissioner may prescribe, stating specifically such facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Any foreign loan and investment company engaged in business in this state, and whose income in this state consists solely of income exempt from taxation under this chapter, need not file an annual report unless specially requested to do so by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this chapter. The return shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act and it and any other declaration, statement or document required to be made shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§ 11. **Amendment.)** Chapter 57-38 is hereby amended by creating and enacting a new section thereto to read as follows:

Withholding Tax on Wages.) 1. Every employer who makes any payment of wages on or after the first day of July, 1965, to a resident of this state or to a nonresident performing services in this state shall deduct and withhold from such payment a percentage or amount of such wages or a percentage of the federal income tax withheld from such wages as determined by the tax commissioner. The amount of tax withheld shall be computed without regard to any other amount withheld from such wages and shall be computed from tables or schedules prescribed from time to time by the tax commissioner but such tables or schedules shall be computed so that the tax withheld shall, as closely as possible, pay any tax liability imposed by this Act.

2. The terms "wages", "employer", "employee", "withholding exemption certificate" and other terms peculiar to an income tax withholding law shall have the same meaning as prescribed for withholding of income taxes on wages by the United States Internal Revenue Code of 1954, as amended; the term "wages" as used in this section specifically excludes wages paid to agricultural labor or to employees performing domestic service.

3. The employee shall be required to file with the tax commissioner an annual return and pay any tax, in addition to that withheld by the employer, which may be due from him, all in accordance with the applicable provisions of this chapter.

If the amount withheld from an employee's wages exceeds the amount of his income tax liability under this chapter, he shall be entitled to a refund of the excess. In order to facilitate issuance of refund checks or warrants to such taxpayers, the tax commissioner and the director of accounts and purchases shall make such arrangements as may be necessary to permit the refund checks or warrants to be prepared by the tax commissioner and mailed by him or by the director of accounts and purchases to the taxpayers entitled thereto.

§ 12. Amendment.) Chapter 57-38 of the North Dakota Century Code is hereby amended by creating and enacting a new section thereto to read as follows:

Employer's Returns and Remittances.)

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all employees during the preceding calendar quarter under the provisions of section 11 of this Act, provided that the tax commissioner may alter the time or period for making reports and payment when in his opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under the provisions of this section which shall show the total amount of wages paid to his employees, the amount of federal income tax deducted and withheld during the period covered by the return, the amount of tax imposed under the provisions of this chapter that was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.

3. Every employer shall make an annual return to the tax commissioner on forms provided and approved by him, summarizing the total compensation paid, the federal income tax deducted and withheld and the state tax deducted and withheld for each employee during the calendar year and shall file the same with the tax commissioner on or before the thirty-first day of January of the year following that for which the report is made. Every employer shall also, in accordance with such regulations as may be prescribed by the tax commissioner, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance

with the provisions of section 11 of this Act, and said statement shall be made available to the employee on or before the thirty-first day of January of the year following that for which the report is made.

4. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 11 of this Act, and the employee shall not thereafter be liable to any person for the amount of such payment. For the purpose of making penalty provisions of this Act applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts he shall be considered the taxpayer.

5. Every employer who deducts and withholds any amounts under the provisions of section 11 of this Act shall hold the same in trust for the state of North Dakota for the payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in section 57-38-40 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.

§ 13. **Amendment.)** Chapter 57-38 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Declaration of Estimated Income—Payment of Estimated Tax—Amendment of Declaration—Effective Date.) 1. Every taxpayer shall, at the time prescribed in this section make a declaration of his estimated tax on taxable income from sources from which no income tax was withheld pursuant to this Act if his tax thereon can reasonably be expected to exceed forty dollars.

2. No later than April fifteenth of the taxable year the taxpayer shall file the declaration of estimated tax and make payment of no less than one-quarter of the amount of tax due thereon with the tax commissioner. If at this time payment of at least one-quarter but less than the entire amount of tax due is made by the taxpayer, the balance of the tax shall then be paid in three equal installments on the fifteenth day of the following months of June, September, and January.

3. Any taxpayer may amend a declaration of estimated income and make the adjusted payments of tax due thereon under the regulations of the tax commissioner.

4. Notwithstanding any other provision of this section, a taxpayer shall not be required to file a declaration of estimated tax if, by compliance with the provisions of the United States Internal Revenue Code of 1954, as amended, such taxpayer does not file a declaration of estimated income for federal income tax purposes.

5. The provisions of this section shall become effective for wages paid and income received after June 30, 1965.

§ 14. Amendment.) Chapter 57-38 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Adjustments to Taxable Income.) The taxable income of an individual, estate, trust or corporation as computed pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall be—

1. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return, provided that the taxpayer elects to use such form of return as may be prescribed by the tax commissioner for the purpose of entering such adjustment;
2. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation because of the provisions of the Constitutions of this state or the United States.

The tax commissioner is hereby authorized to prescribe rules and regulations to prevent requiring income that had been previously taxed under this chapter from being taxed again because of the provisions of this Act and to prescribe rules and regulations to prevent any income from becoming exempt from taxation because of the provisions of this Act if it would otherwise have been subject to taxation under the provisions of this chapter.

§ 15. Amendment.) Section 57-35-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35-02. Imposition of Tax.) An annual tax is imposed hereby upon every national banking association or corporation and upon every banking corporation or association other than a national bank, and upon every trust company, 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; provided that federal income taxes and taxes

imposed under this chapter, whether paid or accrued, shall not be deducted for the purpose of computing the net income of any such banking association or corporation or of any such trust company.

§ 16. Amendment.) Subsection 2 of section 57-35.1-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, other than federal income taxes and taxes imposed under the provisions of this chapter, paid or accrued within the taxable year; and
 - d. Losses incurred during the taxable year not compensated for by insurance or other reimbursement.

§ 17. Official Records—Availability for Income Tax Purposes.) For the purpose of administration of the income tax laws of this state, the state tax commissioner, notwithstanding any provision of sections 52-01-03 and 65-04-15, is hereby authorized to examine any records, reports, returns and statistical information gathered or maintained by the workmen's compensation bureau and the unemployment compensation division of that bureau. The tax commissioner shall not disclose or make public any information obtained from such records, except that such records or information may be subject to subpoena by the tax commissioner or by any court for use in any proceeding or action to establish the amount of or enforce the collection of any income tax administered by the tax commissioner.

§ 18. Effective Dates.) The provisions of sections 4 through 10, inclusive, of this Act shall apply to all income years of income taxpayers beginning after December 31, 1964. In the case of corporations or associations taxed under the provisions of chapter 57-35 or chapter 57-35.1 the provisions of sections 15 and 16 of this Act shall apply to the returns filed by them in which the net income for the year 1965 and each year thereafter is reported.

§ 19. Amendment.) Subsections 1, 2, 3, 5, and 6 of section 57-39-01 of the 1963 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

***Note:** Subdivision c of subsection 2 of section 57-35.1-01 was also amended by section 1 of chapter 402, 1965 S.L.

- *1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number and shall also include the state of North Dakota or any other state or any subdivision, department, institution or political subdivision of the state of North Dakota or of any other state which furnishes or sells to members of the public in its proprietary capacity any article, service, amusement, accommodation, or any other thing that is subject to taxation under the provisions of this chapter or chapter 57-40 of the North Dakota Century Code;
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 the furnishing of services relating to personal property, the furnishing of personal, business or professional services, the furnishing or sale of advertising, the furnishing of services relating to any property that is attached to a building and thereby becomes real property but which remains distinct from the building to which attached, the furnishing or service of steam, gas, electricity, water, or communication, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin, and 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; provided further that the furnishing of a service shall not include a service furnished to a consumer or user by an employee of the consumer or user; provided further that the words "the furnishing or sale of advertising" shall mean the furnishing or sale of advertising whether by newspapers, magazines, periodicals, radio, television, billboard or otherwise, including charges made by advertising agencies for preparing or placing advertising in media;

***Note:** Subsection 1 of section 57-39-01 was also amended by section 1, chapter 420, 1965 S.L.

- *3. "Retail sale" or "sale at retail" means the sale, including the sale for the purpose of leasing or renting and 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 normally carried in stock by a retailer; the sale of steam, gas, electricity, water, and communication service to retail consumers or users; 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; the sale or furnishing of hotel, motel, or tourist court accommodations, services relating to personal property, the furnishing or sale of personal, business or professional services, the furnishing or sale of advertising, the furnishing or sale of services relating to any property that is attached to a building and thereby becomes real property but which remains distinct from the building to which attached, tickets or admissions to any place of amusement, athletic event or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. 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; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated outside of North Dakota shall not be considered a taxable sale; "retail sale" or "sale at retail" shall not mean the furnishing of a service to a consumer or user by an employee of a consumer or user; as used in this subsection the word "consumer" shall include any hospital, infirmary, sanatorium, nursing home, home for the aged or

***Note:** Subsection 3 of section 57-39-01 was also amended by section 3, chapter 422, 1965 S.L.

similar institution that furnishes services to any patient or occupant;

- *5. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, electricity, water and communication services, or tickets or admissions to places of amusement, entertainment and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or services relating to personal property, or personal, business or professional services, the furnishing or sale of advertising, or services relating to any property that is attached to a building and thereby becomes real property but which remains distinct from the building to which attached, or magazines, or other periodicals; and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in manner provided in this chapter; but "retailer" shall not include an employee of a consumer or user;

***Note:** Subsection 5 of section 57-39-01 was also amended by section 2 of chapter 420, 1965 S.L.

- *6. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, including any excises or taxes that are a part of or added to the price paid or to be paid by the purchaser at retail except retail excise taxes imposed by the United States, 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 further, however, that when tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail

***Note:** Subsection 6 of section 57-39-01 was also amended by section 1, chapter 421, 1965 S.L.

sale taxable under this chapter, if the tangible personal property traded in will be subject to the sales tax imposed by this chapter when sold, the credit or trade-in value allowed by the retailer shall not be regarded as gross receipts. Provided further, 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 fair rental value of leasing or renting of such tangible personal property the transfer of title to which has been subjected to a retail sales tax in this state, provided, however, any person purchasing tangible personal property for the purpose of leasing or renting may credit the actual amount of sales or use tax paid against the tax due on the leasing or rental of such property if adequate records are maintained substantiating such leasing or rental transactions in accordance with such rules and regulations as the tax commissioner shall prescribe. "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;

§ 20. Amendment.) Section 57-39-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39-02. Tax Imposed.) Except as otherwise expressly provided in this chapter, there is hereby imposed, beginning the first day of July, 1965, a tax of two percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as hereinafter provided in this section, within the state of North Dakota of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares, or merchandise, including, but not limited to, liquor,

- beer, wine, tobacco, cigars, cigarettes, cigarette papers, snuff, and oleomargarine;
2. The furnishing or service of steam, gas, electricity, water, or communication services;
 3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment or athletic activity, and including the playing of any machine for amusement or entertainment in response to the use of a coin;
 4. Magazines and other periodicals, including subscriptions thereto;
 5. The leasing or renting of hotel, motel, or tourist court accommodations for periods of less than thirty consecutive calendar days or one month;
 6. Services furnished in repairing, altering, restoring, or cleaning any tangible personal property provided that this subsection shall not apply to the harvesting, including threshing, of any crop;
 7. The purchase of tangible personal property for the purpose of leasing or renting and the fair rental value of the leasing or renting of tangible personal property, provided, however, any person purchasing tangible personal property for the purpose of leasing or renting may credit the actual sales or use tax paid on such personal property against the tax due on the leasing or renting of such property if adequate records are maintained substantiating such leasing or rental transactions in accordance with such rules and regulations as the tax commissioner shall prescribe;
 8. The following personal, business or professional services: legal; accounting, bookkeeping and auditing; title abstracting; architectural; engineering; veterinarian; sign painting and artistic; photographic; photofinishing; printing, mailing and duplicating; appraisal; barber and beautician; credit bureau; collections; brokers or agents of tangible personal property or of real property provided that the value of such services shall not include the price paid to the seller for the property; auctioneering; janitorial and custodian; stenographic, secretarial, including reporting or transcribing; garbage and sewer; parking; storage of personal property; disinfecting and exterminating;

9. The furnishing or sale of advertising of anything, except that the sale or furnishing of advertising which is designed to promote the sale of any product on a national or multistate basis shall not be taxed hereunder if such advertising does not solicit sales for any expressly named or identifiable business in this state; and
10. Services furnished in repairing, altering, restoring or cleaning of any property, which by attachment to a building constitutes real property but which remains distinct from the building to which attached such as furnaces, air conditioning units, water heaters, humidifiers, stoves, ranges, refrigeration units, disposals, dishwashers, awnings, venetian blinds, draperies, carpeting and other like items of a nature that may ordinarily be built in or constitute an accessory to a building but which do not lose their identity as accessories when attached or installed therein.

If any part of this Act is invalidated or disapproved in any way other than by action of the legislative assembly or by the action of any court, this section shall then have no effect.

§ 21. Amendment.) Subsections 5 and 10 of section 57-39-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

- *5. Gross receipts from the sale of books and school supplies to regularly enrolled students when sold at cost by any school board of this state or by any parochial or private nonprofit school conducting courses of study similar to those in public schools in this state;
10. Gross receipts from the sale of gasoline, insurance premiums, or any other article or product upon which the state of North Dakota imposes a special tax except gross receipts from the sale of liquor, beer, wine, cigarettes, cigars, cigarette papers, snuff, other tobacco products, oleomargarine and aircrafts shall not be exempt from the tax imposed by this chapter.

§ 22. Amendment.) Section 57-39-06 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39-06. Tax To Be Added to Purchase Price and Be A Debt.) Retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge and when added such taxes shall constitute a part of such

***Note:** Subsection 5 of section 57-39-03 was also amended by section 1, chapter 422, 1965 S.L.

price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts.

In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:

\$0.01 to \$0.14.....	no tax
.15 to .33.....	1¢ tax
.34 to .67.....	2¢ tax
.68 to 1.00.....	3¢ tax
Each additional \$1.00.....	3¢ additional tax
or each additional 33¢ or fraction thereof	
over \$1.00.....	1¢ additional tax.

§ 23. Amendment.) Section 57-39-03 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new subsection to read as follows:

*Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, home for the aged or similar institution to any patient or occupant.

***Note:** A new subsection identical to section 23, chapter 386, 1965 S.L., was also created by section 2, chapter 422, 1965 S.L.

§ 24. Amendment.) Subsections 1, 2, 4, 7 and 8 of section 57-40-01 of the North Dakota Century Code and subsections 5 and 10 of section 57-40-01 of the 1963 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

*1. "Persons," "sale," "retail sale," "business," "relief agency," "commissioners," "local government unit" each shall have the meaning given to it in section 57-39-01;

***Note:** Subsection 1 of section 57-40-01 was also amended by section 2, chapter 421, 1965 S.L.

*2. "Use" shall mean the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, except that it shall not include processing, or the sale of that property in the regular course of business. "Use" shall also mean the severing of sand or gravel from the soil of this state. "Use" shall also include the purchasing of advertising for dissemination in this state. The words "the purchasing of advertising" shall mean the furnishing or purchase of advertising whether by newspapers,

***Note:** Subsection 2 of section 57-40-01 was also amended by section 1, chapter 432, 1965 S.L.

magazines, periodicals, radio, television, billboards or otherwise, including charges made by advertising agencies for preparing or placing advertising in media;

- *4. "Purchase" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration, including but not limited to the receipt of advertising services and the receipt of services furnished by advertising agencies for preparing or placing advertising in media. "Purchase" shall also mean the severing of sand or gravel from the soil of this state;

***Note:** Subsection 4 of section 57-40-01 was also amended by section 1, chapter 432, 1965 S.L.

- *5. "Purchase price" means the total amount without any deduction for trade-in allowances for which tangible personal property sold, leased, or rented, and includes the total amount for which advertising is sold, or the charges made for preparing or placing advertising in media valued in money, whether paid in money or otherwise, but cash discounts allowed and taken on sales shall not be included. "Purchase price" shall also mean, in those instances where sand and gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it shall be presumed until the contrary is shown by the tax commissioner or by the person severing the sand or gravel that the fair market value of the sand or gravel is eight cents per ton of two thousand pounds. Where records are not kept as to the tonnage of sand or gravel severed from the soil it shall be presumed for the purpose of this chapter that one and one-half tons of sand or gravel of two thousand pounds per ton shall be equal to one cubic yard of sand or gravel;

***Note:** Subsection 5 of section 57-40-01 was also amended by section 1, chapter 432, 1965 S.L., and section 3, chapter 421, 1965 S.L.

- *7. "Retailer" includes every person engaged in the business of selling tangible personal property or advertising service including the preparing or placing advertising in media for use within the meaning of this chapter, every vendor who makes deliveries into this state in his own vehicle or by contract carrier as defined in subsection 9 of section 49-18-01, and every vendor sending catalogs

***Note:** Subsection 7 of section 57-40-01 was also amended by section 1, chapter 434, 1965 S.L.

or other circulars into this state offering merchandise for sale to North Dakota customers but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom he operates or from whom he obtains the tangible personal property or advertising service sold by him, whether he is making sales in his own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard him as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter;

- *8. "Retailer maintaining a place of business in this state", or any like term, shall mean any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, any vendor making deliveries into this state by his own vehicle or by contract carrier as defined in subsection 9 of section 49-18-01, and any vendor sending catalogs or other circulars into this state offering merchandise for sale to North Dakota customers, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state;

***Note:** Subsection 8 of section 57-40-01 was also amended by section 1, chapter 434, 1965 S.L.

- *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 purchase of tangible personal property for the purpose of leasing or renting and the fair rental value of the leasing or renting of tangible personal property, provided, however, any person purchasing tangible personal property for the purpose of leasing or renting may credit the actual amount of sales or use tax paid against the tax due on the leasing or

***Note:** Subsection 10 of section 57-40-01 was also amended by section 1, chapter 432, 1965 S.L.

rental of such property if adequate records are maintained substantiating such leasing or rental transactions in accordance with such rules and regulations as the tax commissioner shall prescribe;

- 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 subscriptions; 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;
- d. The purchase of advertising including the furnishing or purchase of advertising whether by newspapers, magazines, periodicals, radio, television, billboard or otherwise, including charges made by advertising agencies for preparing or placing advertising in media;
- e. The severing of sand or gravel for use in this state.

§ 25. Amendment.) Subdivision a of subsection 6 of section 57-40-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- *a. Tangible goods, wares and merchandise, including but not limited to, liquor, beer, wine, tobacco, cigars, cigarettes, cigarette papers, snuff, and oleomargarine; and gas, electricity, and water, when furnished or delivered to consumers or users within this state;

***Note:** Subdivision a of subsection 6 of section 57-40-01 was also amended by section 1, chapter 432, 1965 S.L.

§ 26. Amendment.) Subsection 6 of section 57-40-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended by creating and enacting a new subdivision to read as follows:

- *Sand or gravel severed from the soil.

***Note:** A new subdivision to subsection 6 of section 57-40-01, designated as subdivision d and identical in language to section 26 of chapter 386, was also created by section 1 of chapter 432, 1965 S.L.

***§ 27. Amendment.)** Section 57-40-01 of the North Dakota Century Code is hereby amended by creating and enacting a new subsection thereto to read as follows:

***Note:** This subsection was also created by section 4, chapter 421, 1965 S.L. The language found in both chapters is identical.

“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.

§ 28. **Amendment.)** Section 57-40-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40-02. Tax Imposed.) Beginning July 1, 1965, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use or consumption in this state, at the rate of two percent of the purchase price of such property. Except as limited by section 57-40-10, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of two percent of the fair market value of such property at the time it was brought into this state. An excise tax is imposed on the use, storage or consumption in this state of advertising of anything, including the preparing or placing of advertising in media, purchased at retail for use in this state, at the rate of two percent of the purchase price of such advertising. Purchase or furnishing of advertising which

is designed to promote the sale of any product on a national or multistate basis shall not be taxed hereunder if such advertising does not solicit sales for any expressly named or identifiable business in this state.

§ 29. Amendment.) Subsection 5 of section 57-40-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Tangible personal property, except for liquor, beer, wine, cigarettes, cigars, cigarette papers, snuff, other tobacco products, oleomargarine, and aircrafts, upon which the state now imposes and collects a special tax, whether in the form of license tax, stamp tax, or otherwise;

§ 30. Amendment.) Section 57-40-17 of the 1963 Supplement to 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 company 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, co-partnership, 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 three percent of the amount of the contract price beginning July 1, 1965.

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.

§ 31. Amendment.) Section 57-40.1-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

***57-40.1-02. Tax Imposed.)** There is hereby imposed beginning July 1, 1965, an excise tax of two percent of the purchase price of any motor vehicle purchased or acquired outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state, and a like rate of tax upon the purchase price of any mobile home purchased or acquired for use in this state.

§ 32. Amendment.) Chapter 57-39 of the North Dakota Century Code is hereby amended by creating and enacting a section thereto to read as follows:

***Note:** Section 57-40.1-02 was also amended by section 10, chapter 431, 1965 S.L.

Separate and Additional Tax on Retail Sales—Collection—Allocation of Revenue—Appropriation.)

1. There is hereby imposed, beginning on July 1, 1965, an additional tax of one percent upon the gross receipts of retailers from all sales at retail that are subject to the tax imposed by section 57-39-02, which additional tax of one percent shall be collected by the tax commissioner in the same way that the tax imposed by section 57-39-02 is collected, and which shall be subject to all of the provisions for definitions, delinquency, enforcement of collection, exemptions, assessments, penalties, refund, notice and appeals to which the tax imposed by section 57-39-02 is subject. If any part of this Act is invalidated or disapproved in any way other than by action of the legislative assembly or by the action of any court, this section shall then have no effect.

2. All moneys collected and received by the tax commissioner pursuant to this section shall be paid into the state treasury and credited to a special fund to be known as the "personal property tax replacement fund". Out of this fund the state treasurer shall first provide for payment of any refunds of the tax that are allowed. The net amount of moneys remaining in said personal property tax replacement fund are hereby appropriated for allocation and distribution annually as follows:

- a. The state tax commissioner, with the aid and assistance of the county auditor of each county, shall determine for each of the years 1962, 1963 and 1964 the cost to the county and to the various political subdivisions in the county of assessing and of equalizing the assessments of all personal property assessed in the county on an ad valorem basis by locally appointed or elected assessors or other officers performing assessment duties and the cost of levying and collecting the taxes levied thereon. The total amount of such costs in each political subdivision in each county for each of the three years then shall be added together and the total divided by three to obtain the average yearly cost of personal property tax administration for the three years in each political subdivision in each county, which amounts shall be certified to the state treasurer by the state tax commissioner.
- b. For the purposes of administration of this subsection 2, the state tax commissioner, with the aid and assistance of the county auditor of each county, shall, on or before the first day of December, 1966, deter-

mine and certify to the auditor of each county the following two kinds of proportions applicable to the county: the first kind of proportion shall be known as "proportion A" and shall be, as to the state, as to each county, and as to each taxing district or part thereof in each county, the proportion of the assessed value of personal property in such taxing district that is exempted from taxation by this Act to the assessed value of all taxable property within the taxing district that is not exempted from taxation by this Act; the second kind of proportion shall be known as "proportion B" and shall be, as to the state, as to each county, and as to each taxing district or part thereof in each county, the proportion of the assessed value of the personal property in such taxing district that is exempted from taxation by this Act to the assessed value of all taxable property within the taxing district; for the purposes of computing these proportions the term "assessed value" shall mean the value at which the assessments were finally equalized in the year 1964. These proportions shall be used in computing the amount to be allocated and distributed to each of the various taxing districts, including the state, in the year 1967 and in each year thereafter until changed by law and shall be calculated to the nearest five place decimal amount.

- c. For the purpose of ascertaining the amount to be allocated and distributed in 1967 and in each year thereafter to the state and its political subdivisions for replacement of taxes on the personal property exempted by this Act, the county auditor shall increase the total of the assessed value of all taxable property in such political subdivision in 1966 and in each year thereafter by proportion A for the political subdivision as determined in subdivision b of this subsection. The county auditor shall then multiply one-half of the assessed value of the political subdivision as so increased by proportion A by the mill rate necessary to raise the amount in dollars of taxes actually levied against such taxable property in the political subdivision for that year; the amount so obtained shall then be multiplied by proportion B to determine the amount allocable to the political subdivision in the following year, which amount for each political subdivision in the county shall be certified to the state treasurer by the auditor of the county.

- d. The state treasurer, after receiving the certificates provided for in the preceding subdivision and after correcting any errors that may have been made therein, shall transfer from the personal property tax replacement fund to the state general fund ninety-five percent of the total amount allocable to the state pursuant to the preceding subdivision; and of the amount so transferred the part which is allocable to the North Dakota state medical center and the part which is allocable to the Korean veterans adjusted compensation bond principal and interest fund shall be transferred to the credit of those respective funds.
- e. The state treasurer shall allocate and distribute from the personal property tax replacement fund to the treasurer of each county an amount computed as follows: the amount allocated to each taxing district in the county by the county auditor's certificate furnished to the state treasurer pursuant to subdivision c of this subsection shall be reduced by the cost of personal property tax administration for that political subdivision as certified by the state tax commissioner pursuant to subdivision a of this subsection; ninety-five percent of the difference so computed shall be allocated by the state treasurer for the credit of the political subdivision and the total of such amounts for the political subdivisions in the county shall be distributed by the state treasurer to the county treasurer, except that no part of the amount transferred to the state general fund pursuant to the preceding subdivision shall be allocated or distributed to the county. The county treasurer, after receiving the amount distributed by the state treasurer, shall credit to each political subdivision the amount allocated to the political subdivision in the certificate of the state treasurer and the amount so credited shall be apportioned and credited to each of the various funds in the proportion that the actual tax levies made the preceding year by the political subdivision on the taxable property therein is apportioned to the various funds, except that any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1966 for which a tax levy was made in 1966 and in any year thereafter, shall be credited instead to the general fund of the political subdivision.
- f. The formula for allocation and distribution of moneys out of the personal property tax replacement fund

shall be the same for each year after 1967 as that used for the year 1967 until such time as it may be changed by law. The allocation and distribution of moneys out of the personal property tax replacement fund shall be made as soon after January first of 1967 and of each year thereafter as can reasonably be done.

- g. It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1966 or any year thereafter shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by this Act.

§ 33. **Amendment.)** Chapter 57-40 of the North Dakota Century Code is hereby amended by creating and enacting a new section thereto to read as follows:

Separate and Additional Excise Tax—Collection—Allocation of Revenue—Appropriation.) 1. There is hereby imposed, beginning July 1, 1965, an additional tax of one percent upon the storage, use or consumption in this state of all tangible personal property and advertising that is subject to the excise tax imposed by section 57-40-02, which additional tax of one percent shall be collected by the tax commissioner in the same way that the taxes imposed by section 57-40-02 are collected and which shall be subject to all of the provisions for definitions, delinquency, enforcement of collection, exemptions, assessments, penalties, refund, notice and appeals to which the taxes imposed by section 57-40-02 are subject.

2. All moneys collected and received by the tax commissioner pursuant to this section shall be paid into the state treasury and credited to the "personal property tax replacement fund" established by section 32 of this Act and such moneys are hereby appropriated for allocation and distribution in accordance with the provisions of subsection 2 of section 32 of this Act.

§ 34. **Amendment.)** Chapter 57-40.1 of the 1963 Supplement to the North Dakota Century Code is hereby amended by creating and enacting a new section thereto to read as follows:

Separate and Additional Excise Tax—Collection—Allocation of Revenue—Appropriation.) 1. There is hereby imposed, beginning July 1, 1965, an additional excise tax of one percent of the purchase price of any motor vehicle purchased or

acquired for use on the streets and highways of this state and required to be registered under the laws of this state, and a like rate of additional tax upon the purchase price of any mobile home purchased or acquired for use in this state, which additional tax of one percent shall be collected by the motor vehicle registrar in the same way that the taxes imposed by section 57-40.1-02 are collected and which shall be subject to all of the provisions for definitions, exemptions, enforcement of collection, presumptions and penalties to which the taxes imposed by section 57-40.1-02 are subject.

2. All moneys collected and received by the motor vehicle registrar pursuant to this section shall be paid into the state treasury and credited to the "personal property tax replacement fund" established by section 32 of this Act and such moneys are hereby appropriated for allocation and distribution in accordance with the provisions of subsection 2 of section 32 of this Act.

§ 35. Separate and Additional Excise Tax — Collection — Allocation of Revenue — Appropriation.) There is hereby imposed, beginning July 1, 1965, an additional excise tax of one percent of the purchase price of any motor vehicle purchased or acquired in the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state, which additional tax of one percent shall be collected by the motor vehicle registrar in the same way that the tax imposed by House Bill Number 692* of the Thirty-ninth Legislative Assembly is collected and which shall be subject to all of the provisions for definitions, exemptions, enforcement of collection, and penalties to which the tax imposed by said House bill is subject.

2. All moneys collected and received by the motor vehicle registrar pursuant to this section shall be paid into the state treasury and credited to the "personal property tax replacement fund" established by section 32 of this Act and such moneys are hereby appropriated for allocation and distribution in accordance with the provisions of subsection 2 of section 32 of this Act.

§ 36. Repeal.) Subsections 9, 10, and 11 of section 57-02-05, relating to definitions of personal property for property tax purposes, sections 18-03-09, 37-01-27 and 57-15-23, relating to the per capita school tax and exemptions therefrom, sections 57-38-20, 57-38-21, 57-38-22, 57-38-24, 57-38-26, 57-38-27, and 57-38-28, relating to definitions, to the basis for reporting income, and to deductions and exemptions, all for income tax purposes, of the North Dakota Century Code, and section 5-03-26,

*Note: See chapter 431, 1965 S.L.

providing for an excise tax on commodities used in mixed drinks, section 15-39-23, relating to payments from the county equalization fund, and sections 57-38-22.1 and 57-38-36, relating to deductions and to installment payments of tax for income tax purposes, of the 1963 Supplement to the North Dakota Century Code, are hereby repealed.

Chapters 57-03 and 57-31 of the North Dakota Century Code, relating to taxation of grain and to taxation of transient stocks of merchandise, of the North Dakota Century Code are hereby repealed, provided that the repeal of such chapters shall not become effective until January 1, 1966.

§ 37. Appropriation.) There is hereby appropriated on a continuing basis out of any moneys in the general fund the annual amount of two million eight hundred thousand dollars to be transferred and credited on the first day of January, 1967 and of each year thereafter to the personal property tax replacement fund created by this Act, such moneys to be available for allocation and distribution pursuant to the provisions of this Act relating to that fund.

Approved March 19, 1965.

CHAPTER 387

S. B. No. 167

(Ringsak, Torgerson, Becker, Chesrown, Dahlund, Saumur,
(Longmire, Mutch)

DISABLED VETERAN'S HOMESTEAD PROPERTY EXEMPTION

AN ACT

To amend and reenact subsection 20 of section 57-02-08 of the North Dakota Century Code, relating to disabled veteran's homestead general property assessment.

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

§ 1. Amendment.) Subsection 20 of section 57-02-08 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20. Fixtures, buildings and improvements upon lots in any city or village up to a net assessed valuation of ten thousand dollars for paraplegic disabled veterans, and four thousand dollars or in the alternative personal property up to an assessed valuation of four thousand

dollars, used and owned as a homestead, as defined in section 47-18-01, by any other disabled veteran who was discharged under honorable conditions or who has been retired from the armed forces of the United States with a service connected disability greater than fifty percent, or his unremarried widow if such veteran is deceased, provided, however, that such veteran and his wife, or if such veteran is deceased his unremarried widow, do not earn more than three thousand dollars net income exclusive of any pension for service connected disability from the United States government during the calendar year for which such exemption is claimed, and who shall have a certificate from the United States veterans administration, or its successors, certifying the amount of his disability. To obtain such exemption, an affidavit accompanied by such 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 opened to public 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 19, 1965.

CHAPTER 388

H. B. No. 849
(Leer, Meyer)

ASSESSMENT OF LEASED OR RENTED PERSONAL PROPERTY

AN ACT

To create and enact a new subsection to section 57-02-12, relating to the assessment of leased or rented personal property.

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

1. Amendment.) Section 57-02-12 of the North Dakota Century Code is hereby amended by creating and enacting a new subsection thereto to read as follows:

Any item of personal property that is held under a lease or rental agreement shall be assessed in the assessment district where it is ordinarily kept by the person in possession of it but it shall be listed and assessed to its owner unless the person in possession does not disclose to the assessor the name of the owner, in which case it shall be assessed to

the person in possession of it under the lease or rental agreement. Such personal property shall not be assessed as a part of a stock of merchandise held for sale but shall be assessed in such other classification as is appropriate.

Approved March 6, 1965.

CHAPTER 389

H. B. No. 688
(Dornacker)

PERSONAL PROPERTY TAX EXEMPTION OF FARM MACHINERY

AN ACT

To amend and reenact section 57-02-20 of the 1963 Supplement to the North Dakota Century Code, relating to the personal property tax exemption on certain farm machinery.

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

§ 1. **Amendment.)** Section 57-02-20 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-20. Exemption of Farm Machinery for One Year.) The part of the value of farm machinery on which sales or use tax is paid, to be used by the buyer in his farming operations or rented by the buyer for farming purposes, shall be exempt to the buyer from the personal property tax which would be assessed and levied against it in the first year after its purchase were this section not in force. No exemption shall be allowed, however, unless the buyer exhibits to the assessor satisfactory written proof, on a form furnished by the state tax commissioner to retail sales or use tax permit holders only, that the North Dakota sales or use tax has been paid on such farm machinery. A duplicate copy of such form shall be attached to the assessment sheet which is filed with the county auditor. In addition, for each unit of farm machinery with a value exceeding three hundred dollars, if any buyer shall fail or refuse to exhibit such proof of the payment of such sales or use tax, the assessor shall report such fact, together with a description of the farm machinery involved to the tax commissioner on forms to be prescribed by the commissioner. The commissioner shall promptly proceed to determine the amount of any sales or use tax due with respect to the sale or purchase of such farm machinery and shall have

available any of the methods provided in chapter 57-39 or 57-40 to secure collection of the amount due, including the authority to collect from the consumer or user any sales tax due; provided that any assessment made by the assessor on such farm machinery may be abated, and the personal property tax refunded if paid, pursuant to the provisions of chapter 57-23 if the machinery was assessed because sales or use tax was not paid but was thereafter collected from the consumer or user by the retailer or tax commissioner. Any dealer in farm machinery may not claim the exemptions provided for in this section even though farm machinery owned by him is used in farming operations, but this restriction shall not prevent any dealer or person from claiming the exemption as provided in this section if such farm machinery is rented by him in the course of a bonafide rental business where fair rental value is charged.

Approved March 15, 1965.

CHAPTER 390

H. B. No. 837
(Anderson, Bruner)

DEFINITION OF PIPELINE COMPANY AND ASSESSMENT OF PUBLIC UTILITIES

AN ACT

To amend section 57-06-02 of the North Dakota Century Code by creating and enacting a new subsection to it relating to the definition of a pipeline, and to amend and reenact section 57-06-05 of the North Dakota Century Code, relating to annual assessments of the state board of equalization.

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

§ 1. Amendment.) Section 57-06-02 of the North Dakota Century Code is hereby amended by creating and enacting a new subsection thereto to read as follows:

“Pipeline company” means a company owning, holding, or operating under a lease or otherwise, any property in this state for the purpose of transporting crude oil, natural gas, processed gas, manufactured gas, refined petroleum products, or coal and related products for public use.

§ 2. Amendment.) Section 57-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-06-05. Annual Assessment.) The state board of equalization, at its annual meeting in August, shall assess the franchises and all operative property of sleeping car, telephone, telegraph, power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

Approved March 15, 1965.

CHAPTER 391

S. B. No. 243
(Van Horn)

ASSESSMENT OF PUBLIC UTILITIES

AN ACT

To amend and reenact sections 57-06-07 and 57-06-08, subsection 5 of section 57-06-14, and subsection 2 of section 57-06-19 of the North Dakota Century Code, relating to information required from various companies, definition of "mileage", and certification of assessments by tax commissioner, all with respect to companies whose property is assessed by the state board of equalization.

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

§ 1. Amendment.) Section 57-06-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-06-07. Additional Information from Telephone, Telegraph, and Power Companies.) Each telephone, telegraph, and power company shall report further as follows:

1. Number of miles of pole line in each taxing district in each county in the state, separated and classified as to location and character, as the tax commissioner may require;
- *4. Cost of construction of such lines fully equipped, together with the present value per mile of such lines in each taxing district in each county.

§ 2. Amendment.) Section 57-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

***Note:** The designation of subsection 4 of section 57-06-07 is incorrect since subsections 2 and 3 were deleted by amendment. Subsection 4 of section 57-06-07 will be designated as subsection 2 in the 1965 Supplement to the North Dakota Century Code.

57-06-08. Additional Information from Gas Companies.)

Each gas and pipeline company shall report further as follows:

1. The number of miles of pipeline in each taxing district in each county in the state, separated and classified as to location, size and character as may be required by the tax commissioner;
- *3. The cost of construction of such lines, fully equipped, together with the present value per mile of such lines in each taxing district in each county.

§3. Amendment.) Subsection 5 of section 57-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. In the case of a telephone or telegraph company, the term "mileage" shall mean miles of pole line or cable; and

§ 4. Amendment.) Subsection 2 of section 57-06-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The number of miles of line, valuation per mile, and total valuation of any property constituting a single and continuous line within each taxing district in each county.

Approved March 15, 1965.

***Note:** In section 57-06-08 the designation of subsection 3 is in error since subsection 2 was deleted by amendment. Subsection 3 of section 57-06-08 will be designated as subsection 2 in the 1965 Supplement to the North Dakota Century Code.

CHAPTER 392

H. B. No. 682

(Belquist, Frank, Linderman, Staven)

APPEALS TO AND HEARINGS BEFORE STATE BOARD
OF EQUALIZATION

AN ACT

To create and enact a new subsection to section 57-12-06 of the 1963 Supplement to the North Dakota Century Code, providing a right of appeal to the state board of equalization from any assessment as equalized by a county board of equalization, and to amend and reenact sections 57-13-04 and 57-13-05 of the North Dakota Century Code, relating to the duties and powers of the state board of equalization and the right to a hearing before such board.

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

§ 1. Amendment.) Section 57-12-06 of the 1963 Supplement to the North Dakota Century Code is hereby amended by creating and enacting a new subsection thereto to read as follows:

The owner of any separate piece or parcel of real estate that has been assessed and any person to whom any particular item or classification of personal property has been assessed may appeal the assessment thereon to the state board of equalization as provided in subdivision a of subsection 4 of section 57-13-04; provided, however, that such owner or person has first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county board of equalization of the county in which the property was assessed.

§ 2. Amendment.) Section 57-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-13-04. General Duties and Powers of Board.) The state board of equalization shall equalize the valuation and assessment of property throughout the state, and shall have power to equalize the assessment of property in this state between assessment districts of the same county, and between the different counties of the state. It shall:

1. Equalize the assessment of land by adding to the aggregate value thereof in any assessment district in a county and in every county in the state in which the board may

believe the valuation too low, such rate percent as will raise the same to its proper relative value, and by deducting from the aggregate assessed value thereof, in any assessment district in a county and in every county in the state in which the board may believe the value too high, such percent as will reduce the same to its proper relative value. Village and city lots shall be equalized in the manner provided for equalizing other lands;

2. Equalize the assessment of personal property by adding to the aggregate assessed value of any class of personal property in any assessment district in a county and in every county in the state in which it believes such valuation to be too low, such rate percent as will raise the same to its proper relative value, and by deducting from the aggregate assessed value of any class of personal property in any assessment district in a county and in every county in the state in which the board may believe the valuation to be too high, such percent as will reduce the same to its proper relative value;
3. In making such equalization, add to or deduct from the aggregate assessed valuation of lands, village or city lots, or any class of personal property throughout the state, such percent as may be deemed by the board to be equitable and just, but in all cases of addition to or deduction from the assessed valuation of any class of property in the several assessment districts in each county and in the several counties of the state, or throughout the state, the rate percent of addition or deduction shall be even and not fractional; and
4. In equalizing individual assessments:
 - a. The board may, if it believes an assessment to be too high, reduce the assessment on any separate piece or parcel of real estate or the assessment to any person of any particular item or classification of personal property if the taxpayer has appealed such assessment to the board either by appearing personally or by a representative before the board or by mail or other communication to the board in which his reasons for asking for the reduction are made known to the board; provided, however, that the board shall not have authority to reduce an assessment until the taxpayer has established to the satisfaction of the board that he had first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county

board of equalization of the county in which the property was assessed;

- b. The board may, if it believes an assessment to be too low, increase the assessment on any separate piece or parcel of real estate or the assessment to any person of any particular item or classification of personal property; the secretary of the board shall, by mail send to the last known address of the owner or person to whom the property was assessed, notify such person of the amount of increase made by the board in such assessment;
- c. The percentage of reduction or increase made by the board under this subsection in any assessment shall be even and not fractional.

§ 3. **Amendment.)** Section 57-13-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-13-05. Hearing Before State Board of Equalization.) The board of county commissioners of any of the several counties, or any representative thereof in its place or stead, or any city council or board of city commissioners or any representative thereof, any board of village trustees or township supervisors, or representative groups of taxpayers or taxpayers' associations, or any individual representing the same, may appear before the state board of equalization to be heard for the purpose of opposing any unreasonable or unjust increase or decrease in the valuation of the taxable property of the county, city, village or township represented as equalized by the county board of equalization, or of opposing any increase or decrease in such valuation as proposed by the state board of equalization, to the end that all valuations of like taxable property may be uniform and equal throughout the state.

Approved March 15, 1965.

CHAPTER 393

S. B. No. 198

(Hernett, Trenbeath, Reichert)

NOTICE OF INCREASE OF ASSESSMENT

AN ACT

To provide written notice to a real estate owner by the assessor that his assessment has been increased.

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

§ 1. Written Notice of Increased Assessment to Real Estate Owner.) When any assessor or county board of equalization has increased the assessed valuation of any lot or tract of land by more than fifteen percent of the last assessment on any lot or tract of real estate on which no taxable improvements had been made since the last assessment of it, written notice of the amount of increase over the last assessment and the amount of the last assessment shall be given by him to the property owner at his last known address. The tax commissioner shall prescribe suitable forms for this notice and such notice shall be mailed at county expense.

Approved March 15, 1965.

CHAPTER 394

H. B. No. 621

(Borstad, Bruner, Wastvedt)

REASSESSMENT OF PROPERTY

AN ACT

To amend and reenact subsection 1 of section 57-14-08 of the North Dakota Century Code, relating to reassessment of property.

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

§ 1. Amendment.) Subsection 1 of section 57-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Upon the filing of a petition signed by not less than ten freeholders in any political subdivision, or by the governing body of any such subdivision, requesting a reassess-

ment of property in such subdivision or upon investigation by the board of county commissioners, the board of county commissioners, in its discretion, before October first, may order a reassessment of any class of property, or of all property, located within such subdivision or within any subdivision if, in its opinion, taxable property located within such subdivision has escaped assessment in whole or in part, or has been assessed unfairly, or has not been assessed according to law;

Approved March 2, 1965.

CHAPTER 395

H. B. No. 616
(Montplaisir, Sanstead, Stockman)

TAX EXEMPTIONS

AN ACT

To amend and reenact subsection 3 of section 57-15-14 of the North Dakota Century Code, relating to tax limitations on tax districts.

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

§ 1. Amendment.) Subsection 3 of section 57-15-14 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any school district giving four years of standard high school work may levy taxes not to exceed twenty-seven mills; provided that there shall be no limitation upon the taxes which may be levied by any school district having a total population in excess of four thousand according to the last federal decennial census if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted and approved by a majority of the electors voting at any regular or special election upon such question. In the event such election is held in a reorganized district it shall be conducted and approved or disapproved in the same manner and subject to the same conditions as provided in section 15-53-14 for elections for approval of school district reorganization plans. Thereafter, the question of authorizing or discontinuing such unlimited taxing authority in any school district shall be submitted to the electorate at the next regular election upon the filing with the school board of a petition containing

the signatures of not less than five percent of the electors of the district as determined by the number voting in such school district at the most recent regular school district election. The election shall be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing an unlimited mill levy;

Approved March 10, 1965.

CHAPTER 396

H. B. No. 925

(Unruh, Hertz, Johnson (Barnes), Schoenwald)

EMERGENCY TAX LEVIES

AN ACT

Providing for a tax levy for emergency purposes by municipal corporations.

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

§ 1. Tax Levy for Emergency Purposes.) The governing body of any municipal corporation by a two-thirds vote may levy a tax annually for snow removal, natural disaster, or other emergency conditions not in excess of one mill on the net taxable assessed valuation of property within such municipal corporation, which levy shall be in addition to and not restricted by the levy limitations prescribed by law. No city shall make such levy after the amount of the unexpended funds raised by such levy shall equal three dollars per capita.

Approved March 19, 1965.

CHAPTER 397

S. B. No. 256
(Larson)

CANCELLATION OF TAXES

AN ACT

To amend and reenact sections 57-22-11 and 57-28-21 of the North Dakota Century Code, relating to furnishing of notices of cancellations of taxes to state director of accounts and purchases.

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

§ 1. Amendment.) Section 57-22-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-11. Cancellation of Uncollectible Taxes.) At its regular meeting in January of each year, the board of county commissioners shall examine the sheriff's report on personal property taxes and compare the same with the tax lists of the auditor and treasurer, and, upon such report, may cancel such taxes as the board is satisfied cannot be collected. The items of tax so canceled shall be noted on the tax lists of the treasurer and auditor, and the auditor forthwith shall make a report to the sheriff of the tax items canceled and also shall certify to the director of the state department of accounts and purchases the amount of state taxes canceled, and the same shall be credited to the county.

§ 2. Amendment.) Section 57-28-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-21. Cancellation of Taxes.) After any real estate has been sold for cash or upon a contract for deed which has been fully performed and a deed has been issued and delivered to the purchaser thereof, the board of county commissioners, by general resolution, shall provide for the cancellation of all general taxes, hail indemnity taxes, and special assessments remaining of record against the premises sold at the date of such sale. It shall be the duty of the county auditor immediately to send a copy of the said resolution to the state hail insurance department and the state department of accounts and purchases and to notify the county treasurer of the cancellation of such taxes.

Approved March 15, 1965.

CHAPTER 398

H. B. No. 828
(Shablow, Bowles)

ABATEMENTS AND REFUNDS

AN ACT

To amend and reenact section 57-23-03 of the 1963 Supplement to the North Dakota Century Code, and sections 57-23-06 and 57-23-08 of the North Dakota Century Code, relating to abatements and refunds of taxes.

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

§ 1. **Amendment.)** Section 57-23-03 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-03. Abatement of Invalid, Inequitable, or Unjust Assessments.) When the board of county commissioners is satisfied beyond a doubt that the assessment of real or personal property described in an application for abatement is invalid, inequitable, or unjust, the board, if application is filed on or before the first day of November in the year in which such taxes become delinquent, may abate any part thereof in excess of a just, fair, and equitable assessment if such application for correction complies with requirements of this chapter. Any person aggrieved by any decision of said board of county commissioners may appeal to the district court in the manner provided by law.

An application for refund of taxes paid with respect to any part of an assessment abated under this section shall be granted regardless of whether or not such taxes were paid under protest, oral or written.

§ 2. **Amendment.)** Section 57-23-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-06. Hearing on Application.) At the next regular meeting of the board of county commissioners following the filing of an application for abatement, the applicant may appear, in person or by his representative or attorney, and may present such evidence as may bear on the application. He shall furnish any additional information or evidence requested by the board of county commissioners. Any abatement or refund of any special assessment must be approved by the governing body of the municipality in which the special assess-

ment was made and such abatement or refund shall be effective when approved by the board of county commissioners. The recommendations of the governing body of the municipality in which such assessed property is located shall be endorsed upon or attached to every application for an abatement or refund, and the board of county commissioners shall give consideration to such recommendations. The board of county commissioners, by a majority vote, either shall approve or reject the application, in whole or in part. If rejected, a statement of the reasons for such rejection, signed by the chairman of the board, shall be attached to the application, and a copy thereof shall be mailed by the county auditor to the applicant at the post office address specified in the application.

§ 3. Amendment.) Section 57-23-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-08. When Action Effective.) Except as hereinafter provided the granting of any application for abatement or refund shall be effective when approved by the state tax commissioner, and when so approved the county auditor shall correct all tax lists in accordance with the order of abatement, and the applicant shall be relieved of further liability for the tax abated. The following applications for abatement or refund, however, need not be approved by the tax commissioner and they shall become effective when approved by the board of county commissioners:

1. An abatement or refund of any special assessment;
2. An abatement or refund with respect to a reduction of not more than one hundred dollars of net assessed valuation.

Approved March 6, 1965.

CHAPTER 399

H. B. No. 944
(Lundene, Opedahl, Lang)
(Committee on Delayed Bills)

TAXATION OF RURAL ELECTRIC COOPERATIVES
BY CITY OR VILLAGE

AN ACT

To amend and reenact section 57-33-04 of the North Dakota Century Code, relating to taxation of rural electric cooperatives and to the imposition of a privilege tax by a city or village on a rural electric distribution cooperative.

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

§ 1. Amendment.) Section 57-33-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-33-04. Tax Imposed in Lieu of Personal Property Tax—
Privilege Tax Imposed by City or Village.)**

1. The tax commissioner shall levy on each cooperative a tax upon its gross receipts for the preceding calendar year. Each year for the first five years during which such cooperative is engaged in business the tax shall be one percent and thereafter the tax shall be two percent of its gross receipts. For the purpose of determining when the two percent rate shall be applied, the first year the cooperative is engaged in business shall be the first year in which the cooperative was engaged in business prior to April first of that year. The tax hereby imposed shall be in lieu of any other taxes levied on the personal property of such cooperatives.
2. a. In addition to and notwithstanding any other provisions of this chapter, the governing body of any incorporated city or village in which electric power is furnished to consumers in the city or village by a rural electric distribution cooperative may, by ordinance, elect to impose an annual tax upon the rural electric distribution cooperative for the privilege of distributing and furnishing such power to consumers within the city or village. The amount of such tax shall be measured and limited in the manner hereinafter provided.

- b. The assessing officer responsible for the local ad valorem assessment of property in the city or village shall annually determine the value of the distribution system within the geographic limits of the incorporated city or village that is operated by the rural electric distribution cooperative and is reasonably necessary for the distribution by it of electric power to consumers in the city or village. As used in this subdivision and subsection the term "distribution system" shall not include buildings, equipment, tools and supplies that are necessary and are used in the operation of the entire rural electric cooperative system, both within and outside the incorporated limits of the city or village. The assessing officer in determining such valuation may request the aid and assistance of personnel in the office of the state tax commissioner who are charged with the duty of assembling and evaluating the information that is used by the tax commissioner in making tentative valuations pursuant to the provisions of chapter 57-06. In determining such valuation, the assessing officer shall value it at an amount that is, insofar as reasonably possible, equal to the amount at which it would be valued pursuant to the provisions of chapter 57-06 if it were subject to assessment thereunder.
- c. After the assessing officer has determined the value of such property of the cooperative, he shall send by mail to the cooperative a notice in which the amount of such valuation is stated and in which a day approved by the governing body of the city or village is specified on which the representatives of the cooperative may appear and present information relating to the amount and value of the property of the cooperative that is valued for the purposes of this subsection. The notice shall be mailed at least ten days prior to the day prescribed by law for the governing body to convene as a board of equalization. After considering such information as may be presented by the representatives of the cooperative and by the assessing officer, the governing body shall, within ten days after the day specified in the notice, approve or adjust the valuation made by the assessing officer and shall immediately notify the cooperative by mail of the amount of valuation determined by it. If such cooperative is dissatisfied with the valuation set by the governing body, it may bring an action for review of the valuation in district court of the county in which the city or village is located, provided such

action is brought before the privilege tax imposed pursuant to this subsection becomes due.

- d. The governing body of the city or village shall, on or before the first day of December of each year, compute and assess the amount of the privilege tax due from the cooperative by multiplying one-half of the valuation of the cooperative's property as determined by it by the total amount of mills levied by it for all purposes on other property in the city or village that is assessed and taxed pursuant to the ad valorem property tax laws of this state; from such amount there shall then be subtracted that amount of tax levied on the cooperative pursuant to the provisions of section 57-33-04 that is allocable and distributable to the city or village pursuant to section 57-33-07; and the difference then remaining shall be the amount of tax levied on the cooperative by the governing body of the city or village for the privilege of distributing and furnishing electric power to consumers in the city or village. The county auditor, when requested, shall notify the governing body of the city or village of the amount of tax allocated by him to the city or village pursuant to section 57-33-06. The tax shall be paid by the cooperative to the treasurer of the city or village which levies the tax and shall be credited to its general fund.
 - e. The provisions of this subsection shall not be construed as subjecting the cooperative to the jurisdiction of the public service commission nor as classifying such cooperative as a public utility company.
3. All of the provisions of law with respect to the due date, the date of delinquency, interest rate, penalty, and enforcement of collection of personal property taxes, generally shall be equally applicable to any tax provided for in this chapter.

Approved March 19, 1965.

CHAPTER 400

S. B. No. 42

(Becker, Hernet, Holand, Kisse, Van Horn)
(From LRC Study)

TAXATION OF ELECTRIC GENERATING PLANTS

AN ACT

To provide for the taxation of electric generating plants with a generating capacity of over one hundred thousand kilowatts, and transmission lines of 230 kilovolts or larger capacity, owned or operated by nonprofit cooperative corporations, providing for reports by said cooperative corporations, computation of taxes due and notice thereof, providing a due date for payment of taxes, providing for enforcement of payment, the deposit and allocation of revenues received, duties of the state and county treasurers, promulgation of rules, appeals, and penalties, and to amend section 57-33-01 of the North Dakota Century Code to exclude large electric generating cooperatives from the provisions thereof.

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 clearly requires:

1. "Cooperative" or "cooperatives" shall mean nonprofit corporations owning or operating an electrical generation plant or plants located within this state;
2. "Gross receipts" shall mean all revenue valued in money, whether received in money or otherwise, derived by a cooperative subject to the provisions of this Act from the sale of electrical energy generated by an electrical energy generation plant, and shall further include, but not be limited to, the fair market value of all electrical energy from such plant or plants traded by a cooperative subject to the provisions of this Act, to any person, firm, corporation, association, or other organization whether or not subject to the provisions of this Act, and, in addition shall include the fair market value of electrical energy generated and consumed by the generating plant or cooperative;
3. "Generating capacity" shall mean the actual amount of electrical energy measured in kilowatts an electrical energy generating plant is capable of generating, and not necessarily the generation or name plate rating placed upon generation equipment by its manufacturer;

4. "Electrical energy generating or generation plant" shall mean all buildings, fixtures, machinery, tools, appliances, or all other things, located within a confined site in the state of North Dakota, used, useful, or necessary in the generation of electrical energy and which has at least one single electrical energy generation unit with a capacity of one hundred thousand kilowatts or more; which property and any transmission lines with a carrying capacity of two hundred thirty kilovolts or larger and related substations owned by cooperatives subject to the provisions of this Act and carrying energy the gross receipts of which are subject to the tax imposed by subsection 1 of section 2 of this Act, shall be classified as personal property; and
5. "Commissioner" shall mean the state tax commissioner.

§ 2. Imposition of Taxes—In Lieu of Ad Valorem Taxes.)

Each cooperative operating an electrical energy generating plant shall pay an annual franchise tax for the privilege of operating such plant, which shall be computed and determined according to the following procedures:

1. Each year for the first two years during which a cooperative operates an electrical energy generating plant the tax commissioner, on or before April fifteenth, shall levy a tax of one percent upon the gross receipts derived from the operation of such electrical energy generating plant or plants for the preceding calendar year and thereafter the tax imposed shall be levied upon the gross receipts derived from the operation of such plant or plants at the rate of two percent of the gross receipts. The taxes levied by this subsection shall be in lieu of any ad valorem taxes upon personal property, except transmission lines, of an electrical energy generating plant the gross receipts of which have been subjected to such tax, and the procedures relating to the ad valorem method of levying property taxes shall not be applicable to the taxation of such electrical energy generating plants. For the purpose of determining when the two percent rate shall be applied, the first calendar year in which a cooperative is operating an electrical energy generating plant shall be the first year in which such plant earns gross receipts.
2. In addition to the tax imposed under subsection 1, the tax commissioner shall levy a tax upon transmission lines of two hundred thirty kilovolts or larger, owned by cooperatives subject to the provisions of this Act and carrying electrical energy the gross receipts of

which have been subjected to the tax imposed by subsection 1, at the rate of one hundred fifty dollars per mile or fraction thereof of such lines located in this state. The tax imposed by this subsection shall be in lieu of any property tax on such lines and any substation used in delivering electrical energy, the gross receipts of which have been subjected to the tax imposed by subsection 1. The proceeds derived from the taxing of transmission lines shall be allocated to each county in which such transmission lines are located in the proportion that the miles of such lines in a county bear to the total miles of such transmission lines located within this state. Revenues received by each county shall be deposited in the county general fund.

§ 3. Report.) Each cooperative annually on or before April first in each year shall file a report with the tax commissioner in such form and containing such information as the commissioner may prescribe and demand. Such report shall state the total amount of gross receipts derived by such cooperative from each electrical energy generating plant it may own or operate during the preceding calendar year and the total miles of transmission lines of two hundred thirty kilovolts or larger, owned by such cooperative and carrying electrical energy the gross receipts of which are subject to the tax imposed by subsection 1 of section 2 of this Act, located within this state and within each county of this state. Gross receipts derived from electrical energy traded or consumed shall be listed separately and the value thereof shall be determined by each cooperative by applying the fair market value to the power at such time as it was traded or consumed. The determination of the fair market value of power traded or consumed shall be reviewed by the tax commissioner and shall be subject to change by him if found to be unreasonable.

§ 4. Notification of Tax Liability—Appeal to Commissioner.) On or before May first of each year the tax commissioner shall notify in writing each cooperative whose electrical generating plant or plants and transmission lines are to be taxed under the provisions of this Act of the amount of tax levied against each plant and the transmission lines. Any cooperative aggrieved by the amount of tax levied against its plant or plants or transmission lines may make application in writing within fifteen days of its notification to the tax commissioner for an abatement hearing which shall be granted not later than fifteen days after the receipt of the application. The tax commissioner may grant or reject in whole or in part any plea for abatement and upon conclusion of the hearing shall proceed to make a final levy against the applicant.

§ 5. Date When Taxes Due—Payable to Tax Commissioner—Penalties.) The taxes levied under the provisions of this Act shall become due and payable to the tax commissioner on the fifteenth day of June following the year in which such taxes were levied. Such taxes shall become delinquent on the first day of July following and, if not paid on or before such date, shall be subject to a penalty of one percent, and on August first following an additional penalty of one percent, and on September first following an additional penalty of one percent, and for every month thereafter of the year in which such taxes are due and payable an additional penalty of two percent shall be levied. From and after January first of the year following the year in which the taxes become due and payable, simple interest at the rate of six percent per annum upon the principal of the unpaid taxes shall be charged until such taxes and penalties are paid, with such interest charges to be prorated to the nearest full month for a fractional year of delinquency.

§ 6. Lien for Tax.) The tax herein provided for shall, at all times, be and constitute a first and paramount lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer and such lien may be foreclosed in the same manner provided for mortgages on real or personal property.

§ 7. Moneys To Be Deposited with State Treasurer.) It shall be the duty of the commissioner to immediately deposit with the state treasurer all moneys collected by him under this Act and to accompany each remittance with the necessary information to allow the state treasurer to allocate the moneys received as provided by this Act.

§ 8. Allocation by State Treasurer.) The state treasurer, on or before July fifteenth of each year, shall allocate all moneys received under the provisions of this Act in the following manner:

1. During the first two years during which a cooperative operates an electrical energy generating plant, all of the annual revenue received from the taxation thereof in each county shall be allocated to that county.
2. Thereafter, the first fifty thousand dollars of annual revenue received from the taxation of electrical energy generation plants located in each county, pursuant to subsection 1 of section 2 of this Act, shall be allocated one hundred percent to that county. The second fifty thousand dollars of annual revenue received from the taxation of electrical energy generation plants, pursuant to subsection 1 of section 2 of this Act, located in each

county shall be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue in excess of \$100,000 received from the taxation of electrical energy generation plants, pursuant to subsection 1 of section 2 of this Act, located in each county shall be allocated twenty-five percent to that county and seventy-five percent to the state general fund.

3. All revenue derived from the taxation of transmission lines shall be allocated as provided in subsection 2 of section 2.

§ 9. Duty of County Treasurer—Allocation to Political Subdivisions.) Moneys received by counties under the provisions of subsection 1 of section 8 of this Act shall be apportioned as follows:

1. Fifteen percent of all revenues allocated to any county shall be paid by the county treasurer to the incorporated cities and villages of the county based upon the population of each incorporated city and village according to the last official decennial federal census;
2. Forty percent of the revenues allocated to any county shall be deposited by the county treasurer in the county general fund to be used for general governmental purposes; and
3. Forty-five percent of all revenues allocated to any county shall be apportioned by the county treasurer to school districts within the county on the average daily attendance distribution basis, as certified to him by the county superintendent of schools.

§ 10. Rules and Regulations — Bond — Reports — Actions.) The commissioner is hereby authorized and empowered to prescribe and promulgate all necessary rules and regulations for the purpose of making and filing of all reports required hereunder and otherwise necessary to the enforcement of this Act; and may, at his option and discretion, require a sufficient bond from any cooperative charged with the making and filing of reports and the payment of the taxes herein imposed; and said bond shall run to the state of North Dakota and shall be conditioned upon the making and filing of reports as required by law or regulation, and for the prompt payment, by the principal therein, of all taxes justly due the state by virtue of the provisions of this Act. When any reports required have not been filed, or may be insufficient to furnish all the information required by the commissioner, he may institute any necessary action or proceedings in the courts having jurisdiction, to enjoin such person from continuing operations

until such reports have been filed as required, and in all proper cases, injunction shall issue without bond from the state of North Dakota. Upon showing that the state is in danger of losing its claims or the property is mismanaged, dissipated, or concealed, a receiver shall be appointed at the suit of the state.

§ 11. Appeals from Decision of Tax Commissioner.) Any person aggrieved because of any action or decision of the tax commissioner under the provisions of this Act may appeal therefrom to the district court of Burleigh County in accordance with the provisions of chapter 28-32.

§ 12. Penalty.) Any person who willfully fails to comply with the provisions of this Act or willfully delivers or makes a false statement of a material fact to the tax commissioner is guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

§ 13. Amendment.) Section 57-33-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-33-01. Cooperatives Subject to Taxation—Classification.) Cooperatives subject to taxation under the provisions of this chapter shall be nonprofit cooperative corporations engaged in the distribution or transmission of electric energy primarily for consumption in rural areas, and nonprofit cooperative corporations engaged in the generation of electric energy primarily for consumption in rural areas, provided, however, that any electrical energy generation plant which has at least one, single electrical energy generation unit with a generating capacity in excess of one hundred thousand kilowatts, owned or operated by a nonprofit cooperative corporation, and the gross receipts from such plant shall not be taxable pursuant to the provisions of this chapter but shall be taxed pursuant to section 2 of this Act. The property of nonprofit cooperative corporations engaged in the distribution, transmission, or generation of electrical energy primarily for consumption in rural areas and to be taxed under the provisions of this chapter is hereby expressly classified as personal property for the purpose of taxation. Such corporations are hereinafter referred to as "cooperatives".

Approved March 19, 1965.

CHAPTER 401

H. B. No. 533

(Davis, Dornacker, Giffey, Hauf, Knudsen, Shablow, Wilkie)
(From LRC Study)

RURAL TELEPHONE ASSOCIATION TAXATION

AN ACT

To create and enact section 57-34-12 and to amend and reenact sections 57-34-01, 57-34-02, 57-34-03, 57-34-05, 57-34-06, 57-34-10, and 57-34-11 of the North Dakota Century Code, relating to the taxation of mutual and cooperative telephone associations and private or commercial telephone companies exclusively engaged in providing telephone service to rural areas and cities and villages with a population of five hundred persons or less, and to repeal sections 57-34-07 and 57-34-09 of the North Dakota Century Code, relating to reports to county auditors and distribution of funds within taxing districts, and providing an effective date.

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

§ 1. Amendment.) Section 57-34-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-01. Definitions.) As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "A telephone company" means all mutual associations and cooperative organizations or cooperative corporations engaged in the business of furnishing communication by telephone, and shall further mean all other persons, firms, corporations, or other organizations which are engaged in the business of furnishing means of communication by telephone within this state exclusively to rural areas or to rural areas and cities and villages provided that each city or village served has a population of five hundred persons or less; and
2. "Telephone operating receipts" shall consist of all revenue received, including but not limited to assessments collected from members of mutual associations, or organizations, in place of rentals less switching charges and tolls paid to other companies; and
3. "Station" shall mean a telephone station located in this state with a distinct call number designation or distinct extension number designation.

§ 2. **Amendment.)** Section 57-34-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-02. Reports of Telephone Companies.) Each telephone company required to be assessed under the provisions of this chapter, annually, under oath of the president, secretary, or other official of such company, shall make and file with the tax commissioner, on or before May first, on such form as the tax commissioner may prescribe, a report containing a statement of its telephone operating receipts in this state during the preceding calendar year, the number of stations in service on December thirty-first preceding, the number of miles of telephone line operated in providing telephone service, and such other information as the tax commissioner may require. Each report shall contain a statement of the number of stations located in each county served and each school district within such counties and the number of stations maintained per mile of telephone line in this state. Each telephone company subject to the provisions of this chapter, at the time of submitting its report to the tax commissioner, shall forward a copy of such report to the county auditor of each county in which it maintains a station or stations.

§ 3. **Amendment.)** Section 57-34-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-03. Computation of Taxes by Tax Commissioner.) On or before August first of each year, the tax commissioner shall compute the total tax to be assessed against each telephone company in this state in the following manner:

1. Telephone companies maintaining an average of one and twenty-five hundredths telephone stations or less per mile of telephone line operated in this state shall be taxed at the rate of one-half of one percent of their telephone operating receipts;
2. Telephone companies maintaining an average of not less than one and twenty-six hundredths and not more than one and seventy-five hundredths telephone stations per mile of telephone line operated in this state shall be taxed at the rate of one percent of their operating receipts;
3. Telephone companies maintaining an average of not less than one and seventy-six hundredths and not more than two and twenty-five hundredths telephone stations per mile of telephone line operated in this state shall be taxed at the rate of one and one-half of one percent of their operating receipts.

4. Telephone companies maintaining an average of more than two and twenty-five hundredths stations per mile of telephone line operated in this state shall be taxed at the rate of two percent of their operating receipts.

Notwithstanding the provisions of subsections 1 through 4 of this section, if the tax due from any telephone company taxed under the provisions of this chapter shall be less than fifty cents per station maintained in this state, such company shall be subject to a tax of fifty cents per station.

§ 4. **Amendment.)** Section 57-34-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-05. Certification of Tax—Allocation to Counties.) The tax commissioner shall certify to the county auditor of each county in which the company assessed maintains a telephone station or stations, the gross receipts of the company, the number of telephone stations within the county and the number within each school district of the county belonging to the said company and the amount of tax to be collected from said company.

The tax commissioner shall allocate the tax to be collected from each telephone company, as determined by the state board of equalization, to the counties upon a pro rata basis to be determined according to the proportion that each company's stations in a county bear to the total number of stations maintained by such company.

§ 5. **Amendment.)** Section 57-34-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-06. Duties of County Auditor.) It shall be the duty of the county auditor after receiving such statement from the tax commissioner to certify such taxes to the county treasurer for collection at the time that real and personal property taxes are required to be certified. Such certification shall give the amount allocated to each school district in which the company maintains a station or stations. The county auditor shall make such allocation and pay such funds to the various school districts upon a pro rata basis according to the proportion that each company's stations in a school district bear to the total number of stations of such company in the county.

§ 6. **Amendment.)** Section 57-34-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-10. Penalty for Failure to Furnish Statement.) In case any company refuses or neglects to make the reports

required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall inform himself as best he may on the facts necessary to be known in order to discharge his duties with respect to the taxation of the property of such company, and the tax shall be imposed upon the basis of such information, and the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report, which shall be collected as a part of the tax.

§ 7. Amendment.) Section 57-34-11 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-34-11. Exemption from Other Taxation.) The taxes imposed by this chapter shall be in lieu of all real and personal property taxes levied by the state or any of its political subdivisions upon real or personal property directly used by any telephone company subject to the provisions of this chapter in its telephone operations and in lieu of real and personal property taxes on property leased or rented to any other person or company when the revenue derived from such leases or rentals is included in the telephone operating receipts of the company deriving the revenue. Real and personal property directly used by a telephone company subject to the provisions of this chapter and owned by any other person or company shall not be assessed or taxed under the provisions of this chapter; provided that any such property held under a contract for the purchase thereof by any telephone company subject to the provisions of this chapter shall be considered for all purposes of taxation as property owned by that telephone company.

§ 8.) Section 57-34-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-34-12. Rules and Regulations—Appeals.) 1. The state tax commissioner may promulgate any rules and regulations that are necessary to carry out the provisions of this chapter. The provisions of chapter 28-32 shall govern the promulgation of all rules and regulations, the holding of hearings thereon, and the appeal therefrom. All such appeals shall be taken to the district court of Burleigh County.

2. Any person aggrieved by a decision of the state board of equalization may appeal to the district court of Burleigh County after the hearing provided for in section 57-34-04.

§ 9. Repeal.) Sections 57-34-07 and 57-34-09 of the North Dakota Century Code are hereby repealed.

§ 10. **Effective Date.**) The provisions of this Act shall become effective on and after January 1, 1966, provided that taxes levied and certified to the county treasurer in 1965 for collection in 1966 shall be collected pursuant to such certification.

Approved February 26, 1965.

CHAPTER 402

H. B. No. 794
(Whittlesey, Boustead)

BUILDING AND LOAN ASSOCIATION TAX

AN ACT

To amend and reenact subdivision c of subsection 2 of section 57-35.1-01 and sections 57-35.1-02, 57-35.1-03, 57-35.1-04, and 57-35.1-05 of the 1963 Supplement to the North Dakota Century Code, relating to the definition of "net income" for taxation purposes of building and loan associations and relating to the changing of time for reporting income for taxation of building and loan associations, and declaring an emergency.

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

§ 1. **Amendment.**) Subdivision c of subsection 2 of section 57-35.1-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- *c. Taxes, other than taxes imposed under this chapter, paid or accrued within the taxable year; and

§ 2. **Amendment.**) Section 57-35.1-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35.1-02. 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

***Note:** Subdivision c of subsection 2 of section 57-35.1-01 was also amended by section 16, chapter 386, 1965 S.L.

of four percent of such net income. Regardless of such computation, the minimum tax assessable hereunder to any association shall be fifty dollars. The liability for the tax imposed by this chapter shall arise upon the first day of each calendar year following the year for which the net income is used as the base for measuring the tax.

§ 3. Amendment.) Section 57-35.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35.1-03. Report of Income.) On or before the fifteenth 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. Amendment.) Section 57-35.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35.1-04. Computation and Certification of Tax.) On or before the first day of August in each year, the state tax commissioner shall compute the total tax to be assessed under this chapter, 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. Amendment.) Section 57-35.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35.1-05. Tax Payment—Delinquency Penalty.) The taxes levied and assessed under this chapter shall be payable on the thirty-first day of December following the report to the state tax commissioner under section 57-35.1-03, and shall become delinquent if not paid on or before the first day of March 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. 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 19, 1965.

CHAPTER 403

H. B. No. 671
(Aamoth, Olienyk, Stenhjem)

TOBACCO TAXES

AN ACT

To provide for an excise tax on the wholesale price of snuff and to amend and reenact sections 57-36-01, 57-36-02, 57-36-06, 57-36-07, 57-36-08, 57-36-09, 57-36-11, 57-36-12, 57-36-13, 57-36-14, 57-36-17, 57-36-20, 57-36-24, 57-36-25, and 57-36-26 of the North Dakota Century Code; to create and enact sections 57-36-09.1, 57-36-09.2, 57-36-27, 57-36-28, 57-36-29, 57-36-30, and 57-36-31 of the North Dakota Century Code; to repeal sections 57-36-15, 57-36-16, 57-36-22, and 57-36-23 of the North Dakota Century Code; all of which sections relate to excise taxes imposed with respect to the sale or use of cigarettes and snuff; to the licensing of dealers therein and distributors thereof, and to the administration of the provisions relating to such tax impositions and licensing and providing for penalties.

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

§ 1. **Amendment.)** Section 57-36-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-01. Definitions.) As used in this chapter, unless the context or subject matter otherwise requires:

1. "Person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;
2. "Distributor" shall include any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers;
3. "Licensed distributor" shall mean a distributor licensed under the provisions of this chapter;
4. "Dealer" shall include any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, snuff, or other tobacco products;
5. "Licensed dealer" shall mean a dealer licensed under the provisions of this chapter;

6. "Sale" or "sell" shall apply to gifts, exchanges, and barter;
7. "Stamp" shall mean the stamps prepared by the tax commissioner as provided in section 57-36-08;
8. "Insignia" shall include or mean the impression or mark made on the cigarettes, or the package containing the same, approved by the tax commissioner, as provided in section 57-36-11;
9. "Cigar" means any roll of tobacco wrapped in tobacco;
10. "Other tobacco products" means any product except cigarettes, cigarette papers, cigars, or snuff which is made up or composed of tobacco, in whole or in part;
11. "Consumer" means any person who has title to or possession of cigarettes, snuff, cigars or other tobacco products in storage, for use or other consumption in this state;
12. "Storage" means any keeping or retention of cigarettes, snuff, cigars or other tobacco products for use or consumption in this state; and
13. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, snuff, cigars or other tobacco products.

§ 2. Amendment.) Section 57-36-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-02. Distributors and Dealers To Be Licensed.) Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including any distributor or dealer, shall secure a license from the attorney general before engaging in such business or continuing to engage therein. A separate application and license shall be required for each distributor at each outlet or place of business within the state, and a separate dealer's license shall be required for each retail outlet when a person shall own or control more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer shall be granted a distributor's license except a retailer who also performs, in the usual course of business, a distributor's or wholesaler's function, and has performed such functions for at least one year prior to filing application for said license. Such license shall be issued by the attorney general on applications stating, on a form prescribed by him, the name and address of the applicant, the address and place of business

at which it is proposed to engage in such business, the type of business, and such other information as may be required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license shall be accompanied by a fee of fifteen dollars and a surety bond to be approved by the attorney general in the sum of not less than one thousand dollars or more than five thousand dollars. Each application for a dealer's outlet license shall be accompanied by a fee of ten dollars. Stamps or insignia provided for in this chapter shall be sold to and affixed by licensed distributors only. Licensed dealers may sell or buy or have in their possession only cigarettes upon which such stamps or insignia have been previously affixed. A distributor's license does not authorize the holder thereof to make sales at retail. Each license issued shall be prominently displayed on the premises covered by the license.

§ 3. Amendment.) Section 57-36-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-06. Cigarettes—Amount of Tax.) There are levied and assessed, and there shall be collected and paid to the state tax commissioner, upon all cigarettes sold in this state, the following excise taxes, payment thereof to be made prior to the time of the sale and delivery thereof:

1. Class A. On cigarettes weighing not more than three pounds per thousand, three and one-half mills on each such cigarette;
2. Class B. On cigarettes weighing more than three pounds per thousand, four mills on each such cigarette.

§ 4. Amendment.) Section 57-36-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-07. Packaging — Presumption from Possession — Stamps To Be Affixed.) Cigarettes shall be packaged and stamped as follows:

1. All cigarettes sold in this state shall be put up in packages containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each.
2. Immediately upon receipt by the licensee, each package of cigarettes, except as otherwise provided in this chapter, shall have affixed thereto securely a suitable stamp denoting the tax thereon, and such stamp shall be properly canceled prior to sale or removal for con-

sumption, under such regulations as the tax commissioner shall prescribe.

3. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers or otherwise, within or upon the premises from which sale thereof may be made to consumers shall be presumed conclusively to be intended for sale to consumers and to be displayed, exhibited, stored, or possessed for such purpose, and each package of cigarettes, at the time the same is displayed, exhibited, stored, or possessed upon such premises, except as hereinafter provided, shall have affixed thereto securely a suitable stamp, or stamps, denoting the tax thereon. Such stamp or stamps shall be canceled as provided in this chapter, and the possession of any unstamped package of cigarettes, within or upon any premises, shall be prima facie evidence of a violation of this chapter.

§ 5. Amendment.) Section 57-36-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-08. Stamps Prepared by Commissioner.) The tax commissioner shall prepare and have suitable stamps for use on each kind of package prescribed in this chapter, and shall keep an accurate record of all stamps delivered, and a further accurate record of all stamps coming into and leaving his hands. The tax commissioner shall sell the stamps herein provided for only to dealers holding a "distributor's license", issued as provided in this chapter, but wholesale distributors of cigarettes located outside of this state, may apply for and receive a "distributor's license", as provided in section 57-36-02, and may purchase stamps from the tax commissioner and affix the same on cigarettes to be sold in this state, and shall cancel the same in the manner prescribed by the regulations of the tax commissioner. In such case, the purchaser within this state receiving such stamped cigarettes will not be required to purchase and affix stamps thereon.

§ 6. Amendment.) Section 57-36-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-09. Records To Be Kept by Distributors and Reports Made—Penalty.) Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, snuff, cigars or other tobacco products made by them, and shall be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, snuff, cigars or other tobacco products, shall keep and preserve for one year all invoices of cigarettes, cigarette papers, snuff, cigars or other tobacco products purchased by him, together with all receipts issued by the state for stamps purchased by him, and shall permit the state tax commissioner, his assistants, authorized agents, or representatives, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, his assistants, authorized agents, or representatives, in ascertaining whether the stamps required by this chapter have been purchased and used, or in determining the amount of such tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, snuff, cigars or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale;
2. On or before the tenth day of January, April, July, and October of each year, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to such officer all purchases and sales of cigarettes, cigarette papers, snuff, cigars or other tobacco products made from or to any persons either within or without this state during the preceding three months, provided, however, that the tax commissioner shall have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with any remittance which might be due shall be filed before the tenth day of the month following the month for which the returns are filed, showing the names and addresses of the seller and of the buyer, the date of such sale or purchase, and the quantity and make of all cigarettes, cigarette papers, snuff, cigars or other tobacco products;
3. Any person violating any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. The attorney general at the request of the state tax commissioner may revoke any license if the licensee does not make the report herein provided for.

§ 7. Amendment.) Section 57-36-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-11. Tax Meter Machines.) 1. The tax commissioner, in lieu of selling stamps, may authorize any manufacturer or distributor located within or without the state to stamp cigarettes with a tax meter machine, and, under such regulations as he shall prescribe, may provide for the leasing of a tax meter machine to any such manufacturer or distributor, and for supervising and checking the operation thereof. In such case, the tax commissioner shall collect and receive the tax prescribed by this chapter on all cigarettes sold in or delivered to dealers in the state for sale, barter, gifts, or any other purpose, and any cigarette so stamped with a tax meter machine need not have affixed thereon stamps prescribed in this chapter, and the same may be possessed lawfully and sold by any wholesale or retail dealer in this state. Any manufacturer or distributor who stamps cigarettes with a tax meter machine, pursuant to the provisions of this section, shall be entitled to the discount provided for in section 57-36-10.

2. The tax commissioner may designate the county auditor of any county of this state as his representative for the setting of tax meter machines for any particular distributor and for the collection of the cigarette tax due upon each such setting. Any county auditor so designated shall transmit each amount of tax collected and report each meter machine setting to the tax commissioner on or before the next business day, provided that a business day shall not include Saturday; he shall perform such duties in accordance with the procedure prescribed by the tax commissioner. The duties of the county auditor pursuant to this section shall be within the coverage of his official bond. Any county auditor when designated by the tax commissioner pursuant to this section shall receive from the distributor for his services for setting a meter machine a fee of two dollars for each meter setting and all such fees received by the county auditor shall be payable to him personally for his services and shall not be credited to any county fund or to any other public fund.

§ 8. Amendment.) Section 57-36-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-12. Distributors May Not Sell Stamps.) No distributor or wholesale dealer shall resell to any other distributor or dealer any stamps purchased by him from the tax commissioner, and any distributor who has on hand any unused and canceled stamps at the time of discontinuing the business of selling cigarettes may return such stamps to the tax commissioner and receive ninety-five percent of the face value thereof.

§ 9. Amendment.) Section 57-36-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-13. Unlawful to Transport Unstamped Cigarettes.) It shall be unlawful for any person to transport into, receive, carry, or move from place to place in this state, by automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation, except in the course of interstate commerce, any unstamped cigarettes, and any such automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation in which any cigarettes are transported or carried in violation of this chapter, and any cigarettes and other equipment or personal property used as an incident to such transportation and found in such means of transportation, shall be subject to seizure by the tax commissioner, or by any sheriff or other police officer, with or without process, and shall be subject to forfeiture in the manner provided in section 57-36-14.

§ 10. Amendment.) Section 57-36-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-14. Procedure in Case of Seizure — Determination — Judgment.) The procedure in case of seizure of cigarettes or equipment as provided in section 57-36-13, or any other product taxed pursuant to this chapter, shall be as follows:

1. Upon the seizure of any cigarettes and within two days thereafter, the officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and shall file a copy thereof with the tax commissioner;
2. Within ten days after the date of the service of such inventory, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may file a demand for a judicial determination of the question as to whether such property was, or lawfully is, subject to seizure and forfeiture. Thereupon the tax commissioner, within thirty days, shall institute an action in the district court of the county where such seizure was made to determine the issue of forfeiture. Such action shall be brought in the name of the state of North Dakota, and shall be prosecuted by the state's attorney, the tax commissioner, or by the attorney general. The district court shall hear such action as a court case, and shall try and determine the issues of law and fact involved;

3. In case a judgment of forfeiture is entered, the tax commissioner, unless such judgment is stayed pending an appeal to the supreme court, as soon as convenient, shall sell such forfeited property and cover the proceeds, less court costs, into the common school fund of the state;
4. In case a demand for a judicial determination is made and no action is commenced as provided in this section, such property shall be released by the tax commissioner and redelivered to the person entitled thereto;
5. In the event that no demand for judicial determination is made, such seized property shall be deemed, forfeited to the state by operation of law, and the tax commissioner thereupon may sell the same;
6. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation pursuant to the provisions of this chapter, the officer making the seizure shall file an inventory, and upon a demand for a judicial determination as provided in this section, the tax commissioner, within thirty days thereafter, shall commence an action in the district court of the county where such seizure was made to declare a forfeiture of such vehicle or other means of transportation, and such action shall be heard and determined as other forfeiture actions instituted under this chapter; and
7. Whenever the tax commissioner is satisfied that any person from whom property is seized was acting in good faith and without intent to evade the revenue provisions of this chapter, he shall release the property seized without further legal proceedings.

§ 11. **Amendment.)** Section 57-36-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-17. Hearing—Appeals from Decision of the Tax Commissioner.) Except as provided in section 57-36-14, any person aggrieved because of any action or decision of the tax commissioner under the provisions of this chapter shall have the right to a hearing by the tax commissioner and shall have the right to appeal from the decision of the tax commissioner on such hearing, all in accordance with the provisions of chapter 28-32 of the title Judicial Procedure, Civil.

§ 12. **Amendment.)** Section 57-36-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-20. Penalties for Violation of Chapter.) Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter shall be punished by a fine of not less than one hundred dollars nor more than three hundred dollars and shall be committed to the county jail until such fine and the costs of prosecution are paid, but for a period not exceeding six months, and all cigarettes, cigarette papers, snuff, cigars or other tobacco products in his possession or in his place of business shall be confiscated and forfeited to the state;
2. Any consumer who purchases any package of cigarettes which does not bear the stamp or insignia placed thereon pursuant to the provisions of this chapter, and any person who shall use or consume within this state any cigarette, unless the same shall be taken from a package or container having attached thereto the stamp or insignia required by this chapter, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars and not more than three hundred dollars, and the costs of prosecution, and shall be committed to the county jail until such fine and costs are paid, but for a period not exceeding six months;
3. Any person violating any provision of this chapter, or maintaining a place where cigarettes, cigarette papers, snuff, cigars or other tobacco products are sold, or kept with intent to sell the same, in violation of the provisions of this chapter, is guilty of keeping and maintaining a nuisance, and the building or place used for the sale or keeping for sale of cigarettes, cigarette papers, snuff, cigars or other tobacco products in violation of such provisions, shall be deemed to be a nuisance, and the maintenance of such place and the keeping and sale of any such items therein shall be enjoined, and such building or place shall be abated as a nuisance.

§ 13. Amendment.) Section 57-36-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-24. Exemptions.) All gift cigarettes, snuff, cigars and other tobacco products, not for resale, which are given to the North Dakota soldiers' home or the North Dakota state hospital for distribution to the occupants thereof, and which are exempt from the excise taxes levied under the provisions of this chapter.

§ 14. Amendment.) Section 56-36-25 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-25. Cigars, Snuff and Other Tobacco Products—Excise Tax on Wholesale Purchase Price—Penalty—Reports—Collection—Allocation of Revenue.)

1. There is hereby levied and assessed upon all cigars, snuff and other tobacco products, sold in this state an excise tax at the rate of eleven percent of the wholesale purchase price at which such cigars, snuff and other tobacco products are purchased by distributors. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.
2. Any person failing to file any prescribed forms of return or to pay any tax within the time required or permitted by this section shall be subject to a penalty of three percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof excepting the portion of the month within which such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
3. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasury at the end of each month and deposited in the state treasury to the credit of the general fund.
4. All the provisions of this chapter, specifically including the penalties prescribed by subsection 1 and 2 of section 57-36-20 not in conflict with the provisions of this section

shall govern the administration of the taxes levied in this section.

§ 15. **Amendment.)** Section 57-36-26 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-26. Cigars, Snuff and Other Tobacco Products—Excise Tax Payable by Dealers — Reports — Penalties — Collection — Allocation of Revenue.)

1. There is hereby levied and assessed upon all cigars, snuff and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of eleven percent of the wholesale purchase price at the time such products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff or other tobacco products to a distributor exclusive of any discount or other reduction, provided that the dealer may elect to report and remit the tax on his cost price of such products rather than on the wholesale purchase price. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which it is paid.
2. If cigars or snuff or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section shall apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in such other state is ten percent of the wholesale purchase price or more, then no tax shall be due on such article. The provisions of this subsection shall apply only if such other state allows a tax credit with respect to the excise tax on cigars, snuff and other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section shall be subject to a penalty of three percent of the amount of tax due, plus one percent of such

tax for each month of delay or fraction thereof excepting the month within which such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

4. All moneys received by the tax commissioner under the provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.
5. All the provisions of this chapter, specifically including the penalties prescribed by subsections 1 and 2 of section 57-36-20 not in conflict with the provisions of this section shall govern the administration of the taxes levied in this section.

§ 16.) Section 57-36-09.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-36-09.1. Warehouse — Record of Deliveries and Shipments.) Records of all deliveries of shipments of cigarettes and snuff from a licensed public warehouse to persons within this state shall be kept by the warehouse and be available to the tax commissioner for inspection. They shall show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars or other tobacco products delivered, and such other information as the tax commissioner may require. These records shall be preserved for one year from the date of delivery of the cigarettes, snuff, cigars or other tobacco products.

§ 17.) Section 57-36-09.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-36-09.2. Examination and Correction of Returns—Collection of Taxes.) 1. As soon as practicable after any return required by this chapter is filed, the tax commissioner shall examine the return and correct it, if necessary, according to his best judgment and information. The return, together with the tax commissioner's corrections, if any, shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein. Proof of any such correction by the tax commissioner may be made at any hearing before him or in any legal proceeding by a copy of the pertinent record of the tax commissioner under the certificate of the custodian of the original official record. Such a certified copy shall, without further proof, be admitted into evidence before the tax commissioner or in any legal proceeding and

shall be prima facie proof of the correctness of the amount of tax due, as shown therein. If the tax commissioner finds that any amount of tax is due under this chapter from any person and is unpaid, he shall notify such person of the deficiency, stating that he proposes to assess the amount due together with interest and penalties as hereinafter provided. If a deficiency disclosed by the tax commissioner's examination cannot be allocated by him to a particular month or months, he shall notify such person of the deficiency, stating his intention to assess the amount due for a given period without allocating it to any particular month or months, together with the penalty provided in the case of other corrected returns. If any person making any return shall die or shall become incompetent at any time before the tax commissioner issues his notice that he proposes to assess an amount due, that notice shall be issued to the administrator, executor, or other legal representative, as such, of that person.

2. If, within fifteen days after mailing of notice of the proposed assessment, the person to whom such notice is sent or his legal representative shall file a written protest to said proposed assessment and request a hearing thereon, the tax commissioner shall give notice to such person or legal representative of the time and place fixed for the hearing. Such notice of hearing and the hearing, together with any appeal therefrom, shall be governed by the provisions of chapter 28-32.

3. The tax commissioner may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action.

§ 18.) Section 57-36-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-36-27. Consumer's Use Tax—Cigarettes—Reports—Remittances.)

1. A tax is hereby imposed upon the use or storage by consumers of cigarettes in this state, and upon such consumers, at the following rates:
 - a. On cigarettes weighing not more than three pounds per thousand, three and one-half mills on each such cigarette.
 - b. On cigarettes weighing more than three pounds per thousand, four mills on each such cigarette.
2. This tax shall not apply if the tax imposed by section 57-36-06 has been paid.
3. This tax shall not apply to the use or storage of cigarettes in quantities of two hundred or less in the possession of

any one consumer nor to cigarettes exempt pursuant to section 57-36-24.

4. On or before the tenth day of each calendar quarter, every consumer who during the preceding calendar quarter has acquired title or possession of cigarettes for use or storage in this state, upon which cigarettes the tax imposed by section 57-36-06 has not been paid, shall file a return with the tax commissioner showing the quantity of cigarettes so acquired. The return shall be made upon a form furnished and prescribed by the tax commissioner and shall contain such other information as the tax commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.
5. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to his best judgment and information.
6. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner shall have the authority to make an assessment of tax against him according to the commissioner's best judgment and information.
7. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes, shall be applicable to consumers under this section in like manner as though set out in full herein.

§ 19.) Section 57-36-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-36-28. Consumer's Use Tax — Cigars, Snuff and Other Tobacco Products—Reports—Remittances.)

1. A tax is hereby imposed upon the use or storage by consumers of cigars, snuff and other tobacco products in this state, and upon such consumers, at the rate of eleven percent of the cost to the consumer of such products.
2. This tax shall not apply if the tax imposed by section 14 or section 15 has been paid nor shall it apply to cigars, snuff or other tobacco products exempt pursuant to section 57-36-24.

3. On or before the tenth day of each calendar quarter, every consumer who during the preceding calendar quarter has acquired title to or possession of cigars, snuff or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 14 or section 15 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. The return shall be made upon a form furnished and prescribed by the tax commissioner and shall contain such other information as the tax commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to his best judgment and information.
5. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner shall have authority to make an assessment of tax against him according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties and collections of taxes, shall be applicable to consumers under this section in like manner as though set out in full herein.

§ 20.) Section 57-36-29 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-36-29. Correction of Errors.)

1. If it shall appear that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount shall become due under this chapter, and the amount shall be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund shall be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

§ 21.) Section 57-36-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-36-30. Issuance of Credit or Refund.) Whenever by any provisions of this chapter a credit or refund is authorized, the tax commissioner shall issue a credit applicable to future obligations under this chapter or certify the amount of the refund, the reason therefor and the name of the payee to the director of the department of accounts and purchases, who shall thereupon draw a warrant on the fund to which the payment had been credited in the amount specified payable to the named payee.

§ 22.) Section 57-36-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-36-31. Transfer and Allocation of Revenues.)

1. All moneys received by the tax commissioner under the provisions of this chapter shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund, except as hereinafter provided.
2. All moneys received from the levy and assessment of one mill on each of the classes of cigarettes provided in this chapter are hereby appropriated and shall be distributed on or before the thirtieth day of June and the thirty-first day of December of each year on a per capita basis to the incorporated cities and villages for such purposes as are now or may be hereafter authorized by law, the allocation to be based upon the population of each incorporated city and village according to the last official federal census, or the census taken in accordance with the provisions of chapter 40-02 in the case of a city or village incorporated subsequent to the last federal census, and warrants shall be drawn payable to the treasurers of such cities and villages.

§ 23. **Repeal.)** Sections 57-36-15, 57-36-16, and 57-36-22 of the North Dakota Century Code and section 57-36-23 of the 1963 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 19, 1965.

CHAPTER 404

H. B. No. 697
(Giffey, Hoffner, Backes)

DISCOUNTS ON CIGARETTE STAMPS

AN ACT

To amend and reenact section 57-36-10 of the North Dakota Century Code, relating to the discount on the sales of cigarette stamps by the tax commissioner.

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

§ 1. Amendment.) Section 57-36-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-10. Stamps May Be Purchased at Discount.) Any licensed distributor located within or without this state may purchase stamps at a discount of five percent of the face value thereof for the first \$100,000.00 of such purchases each fiscal year, and at a discount of four percent of the face value thereof for purchases exceeding that amount each fiscal year, and the tax commissioner may allow such discount in the settlement of the account of such wholesale distributor upon the payment to him of any moneys which may be or become due to the state by reason of the sale, delivery, or consignment to such distributor of such stamps.

Approved March 19, 1965.

CHAPTER 405

H. B. No. 695
(Giffey, Hoffner, Backes)

TAXATION OF CIGARETTES

AN ACT

To levy and collect a separate and additional tax of one-half mill per cigarette for crediting to the general fund.

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

§ 1. Separate and Additional Tax on the Sale of Cigarettes — Collection — Allocation of Revenue — Tax Avoidance Prohibited—Penalty.) There is hereby levied and assessed and

there shall be collected by the proper officer and paid to the state treasurer for crediting to the general fund, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of one-half mill on each such cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures.

No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying such tax thereon to the state treasurer.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor.

Approved March 2, 1965.

CHAPTER 406

H. B. No. 929
(Hardmeyer)

GROSS ESTATES FOR TAX PURPOSES

AN ACT

To amend and reenact subsection 4 of section 57-37-02 of the North Dakota Century Code, relating to the inclusion of life insurance proceeds within the gross estate of a resident decedent for estate tax purposes.

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

§ 1. Amendment.) Subsection 4 of section 57-37-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The net proceeds of all life insurance carried by the decedent at the time of his death in excess of twenty-five thousand dollars, whether made payable to his estate, the widow, heirs, individuals, or trusts. For the purpose of determining whether life insurance was carried by the decedent, the words "net proceeds of all life insurance carried by the decedent at the time of his death" shall include the proceeds of any policy with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person; provided

that for the purposes of this sentence the term "incident of ownership" includes a reversionary interest, whether arising by the express terms of the policy or other instrument or by operation of law, only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this subsection, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined, without regard to the fact of the decedent's death, by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the tax commissioner. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.

Approved March 10, 1965.

CHAPTER 407

S. B. No. 261
(Reichert)

POWERS OF APPOINTMENT

AN ACT

To amend and reenact subsection 2 of section 57-37-07 of the 1963 Supplement to the North Dakota Century Code, relating to the definition of powers of appointment for estate tax purposes.

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

§ 1. Amendment.) Subsection 2 of section 57-37-07 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, 1964.

Approved March 6, 1965.

CHAPTER 408

H. B. No. 838
(Anderson, Bruner)

ESTATE TAX PAID ON PRIOR ESTATE

AN ACT

To amend and reenact section 57-37-09 of the North Dakota Century Code, relating to credit for estate tax paid in the prior gross estate of a decedent on property that is included again in the gross estate of a second decedent.

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

§ 1. Amendment.) Section 57-37-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-09. Property Previously Taxed.) Whenever property can be identified as having been received by a decedent by gift, bequest, devise, or inheritance within five years prior to decedent's death, or can be identified as having been acquired in exchange for property so received, a credit for any transfer taxes paid pursuant to the provisions of this chapter within five years upon such property shall be allowed upon the transfer tax at his death, but this credit shall not exceed the tax due under the present appraisalment of such property for transfer tax purposes.

Approved February 25, 1965.

CHAPTER 409

H. B. No. 930
(Hardmeyer)

SURVIVING SPOUSE EXEMPTION

AN ACT

To amend and reenact subdivision h of subsection 2 of section 57-37-11 of the North Dakota Century Code, relating to an exemption to a surviving spouse for estate tax purposes.

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

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

- h. The aggregate amount of the deductions allowed under this subsection, computed without regard to this subdivision, shall not exceed fifty per centum of the value of the adjusted gross estate or twenty thousand dollars, whichever is the larger. The adjusted gross estate shall, for the purposes of this subdivision, be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by subsections three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, and fourteen of this section.

Approved March 10, 1965.

CHAPTER 410

S. B. No. 322
(Holand)

APPRAISALS FOR ESTATE TAX PURPOSES

AN ACT

To amend and reenact section 57-37-21 of the North Dakota Century Code, relating to the basis of appraisals for estate tax purposes.

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

§ 1. Amendment.) Section 57-37-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-21. Basis of Appraisal—Alternate Valuation Date.)

1. The value of the gross estate of the decedent shall be determined by including to the extent provided in this chapter, the value at the time of his death of all property, real or personal, tangible or intangible.

2. In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

3. a. As an alternate method of valuation, the value of the gross estate may be determined, if the executor, administrator, trustee, or other person responsible for obtaining a determination of the tax imposed by this chapter, so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within one year after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within one year after the decedent's death such property shall be valued as of the date one year after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death, instead of the later date, with adjustment for any difference in its value as of the later date not due to mere lapse of time.

b. Special rules for valuing property under the alternate method are: No deduction under this chapter of any item shall be allowed if allowance for such item is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of

such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then

- (1) For the purposes of the deductions provided in subsection 3 of section 57-37-11, any bequest, legacy, devise, or transfer enumerated therein, and
 - (2) For the purpose of the marital deduction, the exemption provided in subsection 2 of section 57-37-11, any interest in property passing to the surviving spouse, shall be valued as of the date of the decedent's death with adjustment for any difference in value, not due to mere lapse of time or the occurrence or nonoccurrence of a contingency, of the property as of the date one year after the decedent's death, substituting, in the case of property distributed by the executor, administrator, or trustee, or sold, exchanged, or otherwise disposed of, during such one year period, the date thereof.
- c. The election provided for in this subsection shall be exercised by the executor, administrator, trustee, or other person responsible for obtaining a determination of the tax imposed by this chapter, on his return if filed within the time the tax imposed by this chapter becomes due and payable.

Approved March 19, 1965.

CHAPTER 411

H. B. No. 830
(Linderman, Wilkie)

LIENS FOR ESTATE TAX PURPOSES

AN ACT

To amend and reenact section 57-37-23 of the North Dakota Century Code, relating to liens for estate tax purposes and the prorating, to beneficiaries, of the amount of the estate tax.

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

§ 1. Amendment.) Section 57-37-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-23. Lien for Taxes—Beneficiaries to Share Burden of Tax.) 1. Any taxes imposed by this chapter shall be and shall remain a lien upon the property transferred, and upon all property acquired by the executor, administrator, or trustee in substitution therefor, for a period of ten years from the date of death of the decedent or until the taxes are paid or a bond is given for their payment, whichever occurs first, but such lien shall not affect any tangible or intangible personal property after it has passed to a bona fide purchaser for value; except that nothing herein contained shall give the owner of any securities the right to have the same transferred to him by the corporation, association, company, or trust issuing the same, until a permit from the county court shall have been filed.

2. The lien charged upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due on said real estate or separate parcel, or by the filing and acceptance of a bond for their payment, or by an order of the county court transferring such lien to other real estate owned by the person to whom said real estate or any separate parcel thereof passes.

3. The beneficiary shall be personally liable for the tax on such real estate, as well as the executor, administrator, or trustee, and if the executor, administrator, or trustee pays such tax, he, unless the same is made an expense of administration by the will or other instrument shall have the right to recover such tax or any other tax from the beneficiary acquiring such real estate. In case of a resident decedent, beneficiaries shall share the burden of the tax in proportion to benefits received, unless otherwise provided by will. If a resident decedent leaves property outside of this state, beneficiaries shall share the aggregate burden of the estate tax payable in this state and transfer taxes payable in other states in proportion to aggregate benefits received here and elsewhere, unless otherwise provided by will.

4. If a nonresident decedent leaves property in this state, the entire tax imposed by this state shall be enforceable against any property of the estate, but the court, in its discretion, may make such order or orders as may be best calculated to distribute the aggregate burden equitably in proportion to benefits received. Any unpaid taxes imposed by this chapter prior to the effective date of this section shall be and remain a lien upon the property transferred, and upon all property acquired by the executor, administrator, or trustee in substitution therefor, for a period of ten years from the date of death of the decedent or one year after the effective date of this section, whichever event is the latest in the point of time.

5. Any liens which may have attached to real property pursuant to the provisions of any of the various inheritance tax laws or death tax transfer laws that were in effect prior to the enactment of the provisions of this chapter shall terminate upon July 1, 1965.

Approved February 25, 1965.

CHAPTER 412

H. B. No. 701

(Hardmeyer, Boustead, Aamoth, Shorma)

COLLECTION AND DISTRIBUTION OF ESTATE TAXES

AN ACT

To amend and reenact section 57-37-24 of the 1963 Supplement to the North Dakota Century Code, relating to collection and distribution of estate tax and refunds.

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

§ 1. Amendment.) Section 57-37-24 of the 1963 Supplement to 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 the balance of sixty-five percent of such tax is hereby appropriated and shall be distributed by the county treasurer collecting the same among the counties, cities or villages in which any part of the decedent's property was located at the time of his death. If any part of decedent's property was located within the limits of a city or village the share of tax based on such property shall be divided between city or village and the county in proportion to their respective total mill levies, except school levies. If any part of decedent's property was located outside the limits of a city or village, the share of tax based on said property shall go entirely to the county. Real property and tangible personal property shall be deemed located where it has its actual situs at the time of decedent's death, and all other property shall be deemed located at decedent's residence. The share of a city, village or county of the tax shall be deposited to the credit of its general fund. 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, who in turn shall then distribute the tax received in the same manner and amounts as if the tax had been originally collected by said county treasurer, to the county, city or village, as the case may be. 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, or a city or a village, and a refund has been made, the county treasurer making the refund shall file with the treasurer of the county, city or village 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 other county, city or village.

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 of the county, city or village which had received any of said tax and the county, city or village treasurer as the case may be shall remit to the state treasurer the city, village or the county's proportionate liability of such refund.

Approved March 18, 1965.

CHAPTER 413

S. B. No. 303
(Reichert, Holand)

TAX DETERMINATION WITHOUT PROBATE

AN ACT

To amend and reenact section 57-37-27 of the North Dakota Century Code, relating to the determination of estate tax on estates when there is no probate proceeding within this state.

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

§ 1. Amendment.) Section 57-37-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-27. Determination of Tax on Estate When There Is No Probate Proceeding Within the State.) 1. In the absence of administration in this state upon the estate of a nonresident, the tax commissioner, at the request of an executor or administrator duly appointed and qualified in the state of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished by such executor, administrator, or grantee, or otherwise, may determine whether or not any property of said decedent within this state is subject to taxation under the provisions of this chapter, and if so, may determine the amount of the tax payable and may adjust the same with such executor, administrator, or grantee. For that purpose the tax commissioner may appoint an appraiser to appraise said property and the expenses of such appraisal shall be charged against such property in addition to the taxes. The tax commissioner's certificate as to the amount of such tax and his receipt for the amount therein certified may be filed in the probate office in the county where the property is located, and when so filed shall be conclusive evidence of the payment of the tax upon the said property. Whenever in such case the tax is not adjusted within four months after the death of the decedent, the proper county court, upon application of the tax commissioner, shall appoint an administrator in this state.

2. If property of any deceased resident is subject to taxation under the provisions of this chapter, and when, for any reason, no administration of said decedent's estate is being had, or likely to be had, within this state, the county court which would have jurisdiction of said property if an administration was being had shall, upon its own motion or upon the

application of any interested party, proceed to make determination of any tax liability in the same manner and with the same effect as if the determination were made in connection with an administration or determination of heirship. Provided, further, that if the circumstances render it impractical or impossible to determine values by the usual practice of three appointed appraisers, the court may hear such proof as is available and make its findings of value in lieu of an appraisal.

Approved March 1, 1965.

CHAPTER 414

H. B. No. 673
(Ganser, Burk)

RELEASE OF MONEYS IN JOINT ACCOUNTS

AN ACT

To amend and reenact section 57-37-29 of the North Dakota Century Code, relating to the release of moneys in joint accounts in cases where one of the joint holders dies.

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

§ 1. **Amendment.**) Section 57-37-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-29. Depositories—Attention of Securities—Exemption, How Secured.) No safe deposit company, trust company, corporation, bank, or other institution or person having possession, control, custody, or partial control or custody of any securities, deposits, or other assets, including shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank, or other institution, standing in the name of a resident or nonresident decedent, or belonging to or standing in the joint name of such decedent and one or more other persons, shall deliver or transfer the same to the executor, administrator, or other legal representative, agent, deputy, attorney, trustee, legatee, heir, surviving joint owner, or any other successor in interest of such decedent, without retaining a sufficient amount of such assets to pay any tax which thereafter may be assessed thereon under this chapter, unless notice of the time and place of a proposed delivery or transfer of the assets is filed in the county court at least thirty days prior to delivery. In the case of joint bank or

savings accounts, or joint building and loan or savings and loan association share or savings accounts, the amount of assets required to be retained under this provision need in no event exceed an amount equal to the total amount of the deposit or shares divided by the number of joint owners. Such bank or building and loan or savings and loan association may and shall, upon demand, pay the remainder of such account or shares to the surviving joint owners and shall thereafter be absolved of any liability to the state for any amount so paid or any tax assessed under this chapter in excess of the amount required to be retained. The county court, however, by order, may direct a delivery of such assets, and such order shall relieve such safe deposit company, trust company, corporation, bank, or other institution or person from the obligation of retaining any portion of such assets and of giving notice of the delivery thereof. The county court may appoint appraisers as provided in section 57-37-17 to examine and appraise such assets at the time of the delivery thereof. Provided, however, in the case of bank or savings accounts, or building and loan shares standing in the name of one or more persons, no fine, penalty or tax liability shall be assessed on account of any excess payment thereof to the survivor or survivors unless it is shown that such payment was knowingly and willfully made in violation of the terms and provisions hereof.

Approved March 2, 1965.

CHAPTER 415

H. B. No. 857
(Glaspey)

INCOME TAX DEFINITIONS

AN ACT

To create and enact new subsections to section 57-38-01 of the 1963 Supplement to the North Dakota Century Code, relating to definitions for income tax purposes.

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

§ 1. Amendment.) Section 57-38-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended by creating and enacting new subsections to read as follows:

“Employer” means any person including, individuals, fiduciaries, estates, trusts, partnerships and corporations

transacting business in or deriving any income from sources within the state of North Dakota for whom an individual performs or performed any services, of whatever nature, and who has control of the payment of wages for such services, or an officer, agent or employee of the person or organization having control of the payment of wages. The term includes the United States, the state and all political subdivisions thereof and all agencies or instrumentalities of any of them. The term employer as used in this chapter shall also mean taxpayer as used in this chapter.

“Employee” means and includes any resident individual performing services for an employer, either within or without, or both within and without the state of North Dakota, and every nonresident individual performing services within the state of North Dakota, the performance of which services constitutes, establishes and determines the relationship between the parties as that of employer and employee; and includes officers of corporations, individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof, or the state of North Dakota or any county, city, municipality or political subdivision thereof.

“Wages” means wages as defined in the United States Internal Revenue Code of 1954, as amended, for the purpose of collection of income tax at the source, on wages.

“Calendar quarter” means the period of three consecutive months ending March 31, June 30, September 30 or December 31.

“Payroll period” means a period for which a payment of wages is ordinarily made to the employee, whether weekly, biweekly, semimonthly, quarterly or daily or any other fixed period.

Approved March 15, 1965.

CHAPTER 416

H. B. No. 615
(Meschke)

DEFINITION OF INTERNAL REVENUE CODE

AN ACT

To amend and reenact subsection 21 of section 57-38-01 of the 1963 Supplement to the North Dakota Century Code, relating to income tax definitions, and declaring an emergency.

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

§ 1. Amendment.) Subsection 21 of section 57-38-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21. a. "Federal Internal Revenue Code of 1954, as amended," "United States Internal Revenue Code of 1954, as amended" and "Internal Revenue Code of 1954, as amended," mean the United States Internal Revenue Code of 1954, as amended to and including December 31, 1964.
- b. Those provisions of the United States Internal Revenue Code of 1954, as amended, which are adopted for the purposes of this chapter and which apply to returns required to be filed under that code for the calendar year 1964 and for fiscal years ended during 1964 shall also apply to returns required to be filed under the provisions of this chapter for the same periods.

§ 2. 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 February 25, 1965.

CHAPTER 417

H. B. No. 853
(Glaspey)

TAX COMMISSIONER EXEMPT FROM FEES

AN ACT

To amend and reenact section 57-38-49 and 57-38-50 of the North Dakota Century Code, exempting the tax commissioner from paying filing and recording fees for the filing and recording of notices of income tax liens and satisfactions thereof.

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

§ 1. Amendment.) Section 57-38-49 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-49. Preservation of Lien.) In order to preserve the lien provided in section 57-38-48 against subsequent mortgages, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in any 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. The register of deeds of each county shall prepare and keep in his office a book to be known as index of tax liens, so ruled as to show in appropriate columns the following data, under the names of taxpayers arranged alphabetically:

1. The name of the taxpayer;
2. The name "State of North Dakota" as claimant;
3. Time notice of lien was received;
4. Date of notice;
5. Amount of lien then due;
6. When satisfied.

The register of deeds shall endorse on each notice of lien the day, hour, and minute when received and shall preserve the same, and forthwith shall index said notice in the index book and shall record the lien in the manner provided for recording real estate mortgages. Such lien shall be effective as against subsequent creditors, purchasers, and encumbrancers from the time of the recording thereof. The register of deeds shall accept any such lien for filing and recording when it is received with no payment of fees or costs to be made on behalf of the tax commissioner.

§ 2. **Amendment.**) Section 57-38-50 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-50. Satisfaction of Lien.) Upon the payment of a tax, together with any penalties and interest attached, as to which the tax commissioner has filed a notice of lien with the register of deeds, the tax commissioner forthwith shall file with said register of deeds a satisfaction of such tax and lien and the register of deeds shall enter such satisfaction on the notice on file in his office and shall indicate that fact on the index with no payment of fees or costs to be made on behalf of the tax commissioner.

Approved February 25, 1965.

CHAPTER 418

H. B. No. 829
(Linderman, Wilkie)

INCOME TAX COLLECTIONS AND REFUNDS

AN ACT

Relating to limitation of income tax refunds to amounts over one dollar and income tax assessments and collections to amounts over one dollar; application of refunds and credits to delinquent income taxes; provide for an effective date.

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

§ 1. **Minimum Refunds and Collections.**)

1. No income tax refunds shall be made by the tax commissioner to any taxpayer unless the amount to be refunded shall exceed one dollar.

2. No remittance of income tax need be made nor any assessment or collection of tax should be made unless the amount exceeds one dollar, including penalties and interest.

§ 2. **Application of Refunds and Credits.**) All refunds and credits for overpayment to any taxpayer may be applied to payment of taxpayer's delinquent income taxes or delayed until taxpayer's delinquent returns have been filed.

§ 3.) The provisions of this section to be effective for all returns filed after December 31, 1964.

Approved March 15, 1965.

CHAPTER 419

S. B. No. 306
(Becker, Solberg)

UNIFORM DIVISION OF INCOME TAX ACT

AN ACT

To provide for a uniform division of income for tax purposes for taxpayers engaged in multistate business activities.

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

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

1. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;
2. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;
3. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;
4. "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company;
5. "Nonbusiness income" means all income other than business income;
6. "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas;
7. "Sales" means all gross receipts of the taxpayer not allocated under sections 4 through 8 of this Act; and

8. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

§ 2. Taxpayers—Applicability.) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Act.

§ 3. Nonresident Taxpayer.) For purposes of allocation and apportionment of income under this Act, a taxpayer is taxable in another state if:

1. In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

2. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

§ 4. Certain Items—Allocation.) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in sections 5 through 8 of this Act.

§ 5. Rent and Royalties.) 1. Net rents and royalties from real property located in this state are allocable to this state.

2. Net rents and royalties from tangible personal property are allocable to this state:

a. If and to the extent that the property is utilized in this state; or

b. In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

3. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by

the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

§ 6. Property—Capital Gains and Losses.) 1. Capital gains and losses from sales of real property located in this state are allocable to this state.

2. Capital gains and losses from sales of tangible personal property are allocable to this state if:

- a. The property had a situs in this state at the time of the sale; or
- b. The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

3. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

§ 7. Interest and Dividends.) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

§ 8. Patents and Copyrights.) 1. Patent and copyright royalties are allocable to this state:

- a. If and to the extent that the patent or copyright is utilized by the payer in this state; or
- b. If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

2. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

3. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

§ 9. Business Income.) All business income shall be apportioned to this state by multiplying the income by a fraction, the

numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

§ 10. Property Factor.) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

§ 11. Property Owned and Rented.) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

§ 12. Average Value of Property.) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax commissioner may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

§ 13. Payroll Factor.) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

§ 14. Compensation.) Compensation is paid in this state if:

1. The individual's service is performed entirely within the state; or
2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
3. Some of the service is performed in the state and:
 - a. The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or
 - b. The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

§ 15. Sales Factor.) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this

state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

§ 16. Local Tangible Personal Property Sales.) Sales of tangible personal property are in this state if:

1. The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or
2. The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:
 - a. The purchaser is the United States government; or
 - b. The taxpayer is not taxable in the state of the purchaser.

§ 17. Other Sales.) Sales, other than sales of tangible personal property, are in this state if:

1. The income-producing activity is performed in this state; or
2. The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

§ 18. Additional Methods of Determining Business Situs.) If the allocation and apportionment provisions of this Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

1. Separate accounting;
2. The exclusion of any one or more of the factors;
3. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
4. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

§ 19. Purpose.) This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 20. Citation of Act.) This Act may be cited as the "Uniform Division of Income for Tax Purposes Act".

§ 21. Effective Date.) The provisions of this Act shall apply to all income accruing after January 1, 1965, for taxpayers operating on a calendar year basis, and shall apply to income accruing in 1965 after the beginning of their fiscal year for taxpayers operating on a fiscal year basis.

Approved March 15, 1965.

CHAPTER 420

H. B. No. 862

(Wilkie, Larson (Richland), Linderman)

SALES TAX DEFINITIONS

AN ACT

To amend and reenact subsection 1 of section 57-39-01 of the 1963 Supplement to the North Dakota Century Code and subsection 5 of section 57-39-01 of the 1963 Supplement to the North Dakota Century Code, relating to the definition of the terms "person" and "retailer" for sales tax purposes.

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

§ 1. Amendment.) Subsection 1 of section *57-39-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number and shall also include the state of North Dakota or any other state or any subdivision, department, institution or political subdivision of the state of North Dakota or of any other state which furnishes or sells to members of the public in its proprietary capacity any article, service, amusement, accommodation, or any other thing that is subject to taxation under the provisions of this chapter or chapter 57-40 of the North Dakota Century Code;

§ 2. Amendment.) Subsection 5 of section *57-39-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accom-

***Note:** The provisions of chapter 420 were also amended by section 19, chapter 386, 1965 S.L.

modations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, electricity, water and communication services, or tickets or admissions to places of amusement, entertainment and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or services relating to personal property, or magazines, or other periodicals; and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in manner provided in this chapter;

Approved March 6, 1965.

CHAPTER 421

H. B. No. 809
(Dornacker)

SALES AND USE TAX DEFINITIONS

AN ACT

To amend and reenact subsection 6 of section 57-39-01 of the 1963 Supplement to the North Dakota Century Code, subsection 1 of section 57-40-01 of the North Dakota Century Code, subsection 5 of section 57-40-01 of the 1963 Supplement to the North Dakota Century Code, and to create and enact subsection 11 of section 57-40-01, all relating to definitions for sales and use tax purposes.

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

§ 1. **Amendment.**) Subsection 6 of section 57-39-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

*6. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money

***Note:** Subsection 6 of section 57-39-01 was also amended by section 19, chapter 386, 1965 S.L.

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 when tangible personal property is taken in trade or in a series of trades as a credit or part payment on a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to the sales tax imposed by this chapter when sold, the credit or trade-in value allowed by the retailer shall not be regarded as gross receipts. Provided further, 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.) Subsection 1 of section 57-40-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- *1. "Persons," "sale," "retail sale," "business," "relief agency," "commissioner," "local government unit," each shall have the meaning given to it in section 57-39-01;

§ 3. Amendment.) Subsection 5 of section 57-40-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

***Note:** Subsection 1 of section 57-40-01 was also amended by section 24, chapter 386, 1965 S.L.

- *5. "Purchase price" means the total amount without any deduction for trade-in allowances for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts allowed and taken on sales shall not be included. "Purchase price" shall also mean, in those instances where sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it shall be presumed until the contrary is shown by the tax commissioner or by the person severing the sand or gravel that the fair market value of the sand or gravel is eight cents per ton of two thousand pounds. Where records are not kept as to the tonnage of sand or gravel severed from the soil it shall be presumed for the purpose of this chapter that one and one-half tons of sand or gravel of two thousand pounds per ton shall be equal to one cubic yard of sand or gravel;

***Note:** Subsection 5 of section 57-40-01 was also amended by section 24, chapter 386, 1965 S.L., and section 1, chapter 432, 1965 S.L.

§ 4.) Subsection 11 of section 57-40-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

- *11. "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

***Note:** Subsection 11 was also created by section 27, chapter 386, 1965 S.L.

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.

Approved March 19, 1965.

CHAPTER 422

S. B. No. 348
(Kisse)

SALES TAX DEFINITIONS AND EXEMPTIONS

AN ACT

To amend and reenact subsection 5 of section 57-39-03 of the North Dakota Century Code, relating to the exemption of gross receipts from sales of books and school supplies by public school boards, parochial or private nonprofit schools to create and enact a new subsection to section 57-39-03 of the North Dakota Century Code, to provide an exemption of gross receipts of hospitals, infirmaries, sanatoriums, nursing homes, homes for the aged and like institutions from sales of services to patients or occupants; and to amend and reenact subsection 3 of section 57-39-01 of the 1963 Supplement to the North Dakota Century Code, relating to definition of "retail sale".

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

§ 1. Amendment.) Subsection 5 of section 57-39-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- *5. Gross receipts from the sale of books and school supplies to regularly enrolled students when sold at cost by any school board of this state or by any parochial or private nonprofit school conducting courses of study similar to those in public schools in this state;

§ 2. Amendment.) Section 57-39-03 of the North Dakota Century Code is hereby amended by creating and enacting a new subsection thereto to read as follows:

*Note: Subsection 5 of section 57-39-03 was also amended by section 21, chapter 386, 1965 S.L.

*Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, home for the aged or similar institution to any patient or occupant.

***Note:** A new subsection identical to section 2, chapter 422, 1965 S.L., was also created by section 23, chapter 386, 1965 S.L.

§ 3. Amendment.) Subsection 3 of section 57-39-01 of the 1963 Supplement to 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; the sale of steam, gas, electricity, water and communication service to retail consumers or users; 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; the sale or furnishing of hotel, motel, or tourist court accommodations, services relating to personal property, tickets or admissions to any place of amusement, athletic event or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. 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; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated outside of North Dakota shall not be considered a taxable sale. As used in this subsection the word "consumer" shall include any hospital, infirmary, sanatorium, nursing home, home for

***Note:** Subsection 3 of section 57-39-01 was also amended by section 19, chapter 386, 1965 S.L.

the aged or similar institution that furnishes services to any patient or occupant;

Approved March 15, 1965.

CHAPTER 423

H. B. No. 631

(Kvasager, Bergman, Unruh)

SALES TAX EXEMPTIONS OF GOVERNMENTAL BODIES

AN ACT

To amend and reenact subsection 6 of section 57-39-03 of the North Dakota Century Code, relating to the exemption of gross receipts from all sales to the United States, and states thereof, including institutions, departments or political subdivisions thereof.

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

§ 1. Amendment.) Subsection 6 of section 57-39-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Gross receipts from all sales otherwise taxable under this chapter made to the United States or any state thereof, including the state of North Dakota, or any of the subdivisions, departments, agencies or institutions thereof;

Approved February 26, 1965.

CHAPTER 424

S. B. No. 117

(Berube, Walz, Tuff, Kadlec, Bopp)

SALES TAX EXEMPTION FOR AGRICULTURAL FEED

AN ACT

To create and enact a subsection of section 57-39-03 of the North Dakota Century Code providing an exemption for livestock and poultry feed for sales tax purposes.

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

§ 1.) Section 57-39-03 of the North Dakota Century Code is hereby amended by creating and enacting a new subsection, to read as follows:

Gross receipts from the sale of feed which is fed to poultry or livestock, including breeding stock and wool bearing stock, for the purpose of producing eggs, milk, meat, fibers or other products for human consumption and the gross receipts from the sale of feed purchased for the purpose of being fed to draft or fur bearing animals. The word "feed" as used herein shall be construed to mean and include only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone, molasses, beet pulp, meat and bone scraps, meal and other generally recognized animal feeds. The term "feed" does not include drugs, medicants, disinfectants, wormers, tonics and like items.

Approved March 6, 1965.

CHAPTER 425

H. B. No. 921

(Obie, Larsen (Grand Forks), Stockman, Froeschle, Hilleboe,
(Ruddy, Kvasager, Olafson, Aamoth, Whittlesey, Duncan)

NONRESIDENT SALES TAX EXEMPTION

AN ACT

To create and enact a new subsection to section 57-39-03 of the North Dakota Century Code, relating to exemptions from sales taxes.

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

§ 1.) Section 57-39-03 of the North Dakota Century Code is hereby amended by creating and enacting a new subsection to read as follows:

Gross receipts from all sales otherwise taxable under this chapter when made to persons who are residents of adjoining states which do not impose or levy a retail sales tax; provided that such persons are in the state of North Dakota for the express purpose of making such purchases, and not as tourists; and provided further that any such person furnish to the North Dakota retailer a certificate signed by him in such form as the tax commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless such certificate is furnished it shall be presumed, until the contrary is shown, that such person was not in the state of North Dakota for the express purpose of making such purchases; provided further that this exemption shall not apply to any sale to any person if the sales price is ten dollars or less. The deduction for this exemption shall not exceed one and one-half of the amount of the deduction for exempt sales in interstate commerce which the retailer was legally entitled to deduct on his sales tax returns for the calendar year 1964. If no deduction was taken for interstate commerce sales on returns filed for the calendar year 1964 or if no returns were required to be filed for the calendar year 1964, the deduction for this exemption shall not exceed the average interstate commerce deduction legally allowed by retailers conducting similar business, as determined by the tax commissioner.

Approved March 6, 1965.

CHAPTER 426

H. B. No. 676

(Stenhjem, Aamoth, Lundene, Obie, Elkin, Krenz)

SALES TAX CREDITS AND REFUNDS

AN ACT

To amend and reenact sections 57-39-04 and 47-40-16 of the North Dakota Century Code, relating to credits and refunds for sales or use taxes paid on worthless accounts and repossessed merchandise.

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

§ 1. **Amendment.**) Section 57-39-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39-04. Credit or Refund for Taxes Paid on Worthless Accounts and Repossessions.) 1. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax shall be paid upon the amount so collected.

2. If a retailer has remitted the sales tax due on the full amount of an installment sales contract rather than on only the installment payments received as provided in subsection 6 of section 57-39-01, he may deduct as a credit against his sales tax liability on the next return that he is required to file the amount of sales tax he paid on the installment contract payments which were not made by the purchaser of the merchandise sold under such contract; such credit may be deducted by the retailer regardless of whether or not said retailer has assigned the contract, provided, however, that if the retailer has assigned the contract he must have assigned it subject to an agreement to repurchase the contract in the event of default by the purchaser under the contract or subject to a guarantee that the payments under the contract would be made. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess shall be allowed as credit against future sales tax due from the retailer. If in any case the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

§ 2. **Amendment.)** Section 57-40-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40-16. Provisions of Sales Tax Law Applicable.) The provisions of chapter 57-39, pertaining to the administration of the retail sales tax, including provisions for refund or credit provided therein, not in conflict with the provisions of this chapter, shall govern the administration of the tax levied in this chapter.

Approved March 6, 1965.

CHAPTER 427

H. B. No. 534

(Backes, Davis, Dornacker, Giffey, Hauf, Knudsen,
(Miller, Shablow, Wilkie)
(From LRC Study)

SALES TAX ADMINISTRATION

AN ACT

To amend and reenact subsection 2 of section 57-39-09, sections 57-39-12 and 57-39-13, subsection 1 of section 57-39-14, subsection 1 of section 57-39-16, subsection 5 of section 57-40-06, and subsection 1 of 57-40-18 of the North Dakota Century Code, relating to the administration of and hearings upon sales and use tax returns, the issuance and fees for sales tax permits, and civil penalties for failure to file returns or pay taxes due within the proper time.

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

§ 1. **Amendment.)** Subsection 2 of section 57-39-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner, if he deems it necessary or advisable in order to insure the payment of the tax imposed by this chapter, or if he deems it practical, may require returns and payment of the tax to be made for annual periods or other than quarterly periods, the provisions of chapter 57-39 to the contrary notwithstanding; and

§ 2. **Amendment.)** Section 57-39-12 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39-12.) Permits—Application Fee for Reissuance.) 1. No person shall engage in or transact business as a retailer within

this state unless a permit or permits shall have been issued to him as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority;

2. Upon determining that each applicant for a sales tax permit is a bona fide retailer the commissioner shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued. Any transient merchant who is in the business of soliciting or making sales at retail to consumers shall, before soliciting such a sale from a consumer, exhibit to the consumer or prospective consumer the retail sales tax permit required by this section; for the purposes of this sentence the term "transient merchant" shall include any person, individual, co-partnership, or corporation, either as principal or agent, who solicits, engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares, and merchandise, who does not intend to become and does not become a permanent merchant of such place, and who, for the purpose of carrying on such business, hires, leases, occupies, or uses, a building, structure, lot, tract, railroad car, motor vehicle, or display case or sample case of any kind for the exhibition and sale of such goods, wares, and merchandise.

3. Permits issued under the provisions of this section shall be valid and effective until revoked by the commissioner;

4. Whenever the holder of a permit fails to comply with any of the provisions of this chapter or any rules or regulations prescribed by the commissioner and adopted under this chapter, or whenever the holder of a permit shall file returns showing no tax due for four consecutive quarters, the commissioner upon hearing after giving ten days' notice of the time and place of the hearing to show cause why his permit should

not be revoked, may revoke the permit. The commissioner also shall have the power to restore licenses after such revocation.

5. The commissioner shall charge a fee of five dollars for the issuance of a permit to a retailer whose permit has been previously revoked; and

6. All permits in effect at the time this chapter takes effect are hereby continued and shall remain in full force and effect unless revoked as herein provided; provided that the commissioner may issue a new form of permit to replace, at no charge to the permit holders, all permits previously granted and issued that have not been revoked or surrendered.

§ 3. Amendment.) Section 57-39-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39-13. Failure to File Return—Incorrect Return.) If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient the commissioner shall determine the amount of tax due from such information as he may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and other factors. The commissioner shall give notice of such determination to the person liable for the tax. Such determination shall fix the tax finally and irrevocably unless the person against whom it is assessed, within fifteen days after the giving of notice of such determination, shall apply to the commissioner for a hearing or unless the commissioner of his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the commissioner shall give notice of his decision to the person liable for the tax.

§ 4. Amendment.) Subsection 1 of section 57-39-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An appeal may be taken by the taxpayer to the district court of the county in which he resides, or in which his principal place of business is located, within thirty days after he shall have received notice from the commissioner of his determination as provided for in section 57-39-13;

§ 5. Amendment.) Subsection 1 of section 57-39-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person failing to file a return or corrected return or to pay any tax within the time required by this chapter,

shall be subject to a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, 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 the five dollar or five percent penalty, whichever was imposed. Such penalty shall be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter;

§ 6. Amendment.) Subsection 5 of section 57-40-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The retailer, on or before the last day of the month following the close of the first quarterly period as defined in subsection 4 of this section, and on or before the last day of the month following each subsequent quarterly period of three months, shall make out a return for the preceding quarterly period in such form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by such return, and such further information as the tax commissioner may require to enable him correctly to compute and collect such tax, but the tax commissioner, upon receipt of a proper showing by any retailer of the necessity therefor, may grant unto such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any retailer, the time in which he is required to make payment shall be extended for the same period. The commissioner, if he deems it necessary or advisable in order to insure the payment of the tax, or if he deems it practical, may require returns and payment of the tax to be made for annual periods or other than quarterly periods, the provisions of this chapter to the contrary notwithstanding. A return shall be signed by the taxpayer or his duly authorized agent and must be verified by oath;

§ 7. Amendment.) Subsection 1 of section 57-40-18 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 or of five dollars,

whichever is greater, 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 the five dollar or five percent penalty, whichever was imposed. 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;

Approved March 1, 1965.

CHAPTER 428

H. B. No. 904
(Stenhjem, Ivesdahl)

BONDS REQUIRED BY TAX COMMISSIONER

AN ACT

To amend and reenact subsection 3 of section 57-39-10, subsection 3 of section 57-39-19, and subsection 3 of section 57-39-20, and section 57-39-24 of the 1963 Supplement to the North Dakota Century Code, relating to bonds to secure collection of tax, general powers of the tax commissioner, and bonds for officers, agents and employees of the tax commissioner.

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

§ 1. **Amendment.**) Subsection 3 of section 57-39-10 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The commissioner, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this chapter, may require any person subject to such tax to file with him a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility in such amount as the commissioner may fix, to secure the payment of any tax and penalties due or which may become due from such person. In lieu of such bond, securities approved by the commissioner in such amounts as he may prescribe, may be deposited with him, which securities shall be kept in the custody of the commissioner and may be sold by him at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax and penalties due. All moneys deposited as security with the state

tax commissioner under the provisions of this subsection shall be paid by the state tax commissioner to the state treasurer and shall be credited by the state treasurer into a special fund to be known as the "Retail Sales and Use Tax Security Trust Fund". If any tax, penalty or costs imposed by this chapter are not paid when due, by the person depositing moneys with the state tax commissioner as security for the payment of tax, penalty or costs imposed by this chapter, the state tax commissioner shall certify that information to the director of accounts and purchases who shall transmit the money to the tax commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the tax and penalties due. The state tax commissioner, when in his judgment it is no longer necessary to require the deposit to be maintained by the person, shall certify that information to the director of accounts and purchases who shall pay the unused money to the person entitled thereto.

§ 2. Amendment.) Subsection 3 of section 57-39-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The fees and mileage to be paid witnesses and taxed as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be taxed in the manner provided by law in proceedings in civil cases. Where the costs are taxed to the taxpayer, they shall be added to the taxes assessed against said taxpayer and shall be collected in the same manner. Costs taxed to the state shall be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of said costs;

§ 3. Amendment.) Subsection 3 of section 57-39-20 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The commissioner may require such of the officers, agents, and employees as he may designate to give bond for the faithful performance of the duties in such sum and such sureties as he may determine and the state shall pay the premiums on such bonds;

§ 4. Amendment.) Section 57-39-24 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39-24. Allocation of Revenue.) All moneys collected and received under this chapter shall be paid into the state treasury and shall be credited by the state treasurer to the general fund. Moneys deposited with the tax commissioner as security for the payment of tax, penalties or costs due shall be

deposited and accounted for as provided in subsection 3 of section 57-39-10.

Approved March 10, 1965.

CHAPTER 429

S. B. No. 242
(Van Horn)

TAX COMMISSIONER EXEMPT FROM FILING FEES

AN ACT

To amend and reenact subsection 5 of section 57-39-11 and subsection 5 of section 57-40-19 of the 1963 Supplement to the North Dakota Century Code to exempt the state tax commissioner from paying filing and recording fees for the filing and recording of notices of sales and use tax liens and satisfactions thereof.

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

§ 1. **Amendment.)** Subsection 5 of section 57-39-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The tax commissioner shall be exempt from the payment of the recording and filing fees as otherwise provided by law for the recording and filing of such lien, or for the satisfaction thereof;

§ 2. **Amendment.)** Subsection 5 of section 57-40-19 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The tax commissioner shall be exempt from the payment of the recording and filing fees as otherwise provided by law for the recording and filing of such lien, or for the satisfaction thereof;

Approved February 26, 1965.

CHAPTER 430

S. B. No. 247
(Tuff)

DEPOSIT OF FEES AND PENALTIES

AN ACT

To amend and reenact section 57-39-18 of the 1963 Supplement to the North Dakota Century Code, relating to the payment of sales taxes, penalties and other charges to the state tax commissioner and provides for the disposition of funds collected.

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

§ 1. Amendment.) Section 57-39-18 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39-18. Tax, Penalties and Other Charges Paid to Commissioner—Disposition.) All fees, taxes, penalties and other charges imposed and collected under this chapter shall be paid to the commissioner in the form of a remittance payable to the commissioner who shall transmit each payment monthly to the state treasury to be deposited in the state treasury to the credit of the general fund.

Approved March 1, 1965.

CHAPTER 431

H. B. No. 692
(Giffey, Hoffner, Backes)

MOTOR VEHICLE EXCISE TAX

AN ACT

Relating to the imposition of an excise tax on motor vehicles acquired in the state of North Dakota upon which retail sales tax has not been paid; providing a penalty, and to amend and reenact section 57-40.1-02 of the 1963 Supplement to the North Dakota Century Code, relating to the imposition of an excise tax on motor vehicles.

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

§ 1. Definitions.) The following words, terms and phrases, when used in this Act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

1. "Motor vehicle" shall include every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and every trailer and semitrailer for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, but not including house trailers or mobile homes;
2. "Sale", "sells", "selling", "purchase", "purchased" or "acquired" shall include any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration except that these terms shall not include acquisition by inheritance from, or by bequest of, a decedent who owned it; nor shall these terms include the transfer of a motor vehicle which was previously titled or licensed in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; nor shall these terms include the transfer of a motor vehicle by way of gift between a husband and wife or parent and child;
3. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number;
4. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise, provided, however, that when a motor vehicle is taken in trade as a credit or as part payment on a motor vehicle taxable under this Act, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller shall constitute the purchase price of the motor vehicle accepted as a trade-in. "Purchase price", in those instances where the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration, shall also include the average value of similar motor vehicles, established by standards and guides as determined by the motor vehicle registrar, provided, however, that the term "purchase price" shall not include the transfer of a motor vehicle by way of gift between a husband and wife or parent and child;
5. "Motor vehicle registrar" shall mean the registrar of motor vehicles who is the officer in charge of the motor vehicle department of this state;

6. "Use" shall mean the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle except that it shall not include the sale or holding for sale by a licensed motor vehicle dealer in this state of such a vehicle in the regular course of business.

§ 2. Tax on the Sale of Motor Vehicles.) There is hereby imposed an excise tax of 2% of the purchase price of any motor vehicle purchased or acquired in the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state.

§ 3. Purchaser to Furnish "Motor Vehicle Purchaser's Certificate" to Motor Vehicle Registrar.) Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife or from a parent or child shall complete a "Motor Vehicle Purchaser's Certificate" in such form and manner as may be prescribed by the motor vehicle registrar, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance, if any, whether the vehicle was the subject of a gift, and any other information that the motor vehicle registrar may require.

§ 4. Presentation of "Motor Vehicle Purchaser's Certificate" to Motor Vehicle Registrar.) No title or license registration shall be issued by the motor vehicle registrar for a motor vehicle purchased in this state or acquired by way of gift from a husband or wife or from a parent or child unless and until the applicant therefor shall attach a properly executed "Motor Vehicle Purchaser's Certificate" to the application for title or license registration. If a license application is made for a motor vehicle that has been previously licensed in this state and the applicant for license is the same person in whose name the license registration had previously been issued the "Motor Vehicle Purchaser's Certificate" need not be submitted to the motor vehicle registrar.

§ 5. Exemptions.) There are specifically exempted from the provisions of this Act and from the computation of the amount of tax imposed by it, any motor vehicle upon the sale of which the retail sales tax imposed by the provisions of chapter 57-39 has been paid, provided that this exemption shall not be allowed unless the person making application for title or license registration shall furnish to the motor vehicle registrar a certificate from a retailer in the state of North Dakota, upon a form furnished by the motor vehicle registrar, certifying that such retailer has paid the retail sales tax prescribed by the provisions of chapter 57-39.

§ 6. Title or License Registration Not To Be Issued Unless Tax Imposed by This Act or Certification That the Tax Imposed by Chapter 57-39 of the North Dakota Century Code Has Been Paid.) No title or license registration shall be issued by the motor vehicle registrar for the ownership or operation of any motor vehicle purchased in this state to any applicant for title or license registration other than for those vehicles which have been previously licensed and the applicant for license registration is the same person in whose name the license registration had previously been issued or other than for those vehicles transferred by way of gift between a husband and wife or parent and child unless the tax imposed by section 1 of this Act shall be paid by the applicant to the motor vehicle registrar, or unless and until the tax upon the sale and purchase of such vehicle as provided by chapter 57-39 of the North Dakota Century Code has been paid and certification of such payment is furnished to the motor vehicle registrar as provided in this Act.

§ 7. Penalties.) 1. Any person who shall complete or submit a false or fraudulent "Motor Vehicle Purchaser's Certificate" with intent to defeat or evade the tax imposed under this Act 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 to exceed one year, or shall be subject to both such fine and imprisonment, in the discretion of the court.

2. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than twenty days nor more than thirty days, or both such fine and imprisonment.

§ 8. Motor Vehicle Registrar to Administer Act.) The motor vehicle registrar is hereby charged with the administration of this Act and the taxes imposed thereby. The motor vehicle registrar may prescribe all rules and regulations not inconsistent with the provisions of this Act, necessary and advisable for its detailed administration.

§ 9. Allocation of Revenue.) All moneys collected and received under this chapter shall be transmitted monthly by the motor vehicle registrar to the state treasurer and shall be credited by the state treasurer to the general fund.

§ 10. Amendment.) Section 57-40.1-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

***57-40.1-02. Tax Imposed.)** There is hereby imposed an excise tax of two percent of the purchase price of any motor vehicle purchased or acquired outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state, and a like rate of tax upon the purchase price of any mobile home purchased or acquired for use in this state.

Approved March 6, 1965.

***Note:** Section 57-40.1-02 was also amended by section 31, chapter 386, 1965 S.L.

Note: See section 35, chapter 386, 1965 S.L.

CHAPTER 432

S. B. No. 266
(Tuff)

USE TAX DEFINITIONS

AN ACT

To amend and reenact subsections 2, 4, 5, 6, and 10 of section 57-40-01 of the North Dakota Century Code, relating to definitions for use tax purposes, and declaring an emergency.

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

§ 1. Amendment.) Subsections 2, 4, 5, 6, and 10 of section 57-40-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

- *2. "Use" shall mean the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, except that it shall not include processing, or the sale of that property in the regular course of business. "Use" shall also mean the severing of sand or gravel from the soil of this state;
- *4. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" shall also mean the severing of sand or gravel from the soil of this state;

***Note:** Subsections 2 and 4 of section 57-40-01 were also amended by section 24, chapter 386, 1965 S.L.

- *5. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts allowed and taken on sales shall not be included. "Purchase price" shall also mean, in those instances where sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it shall be presumed until the contrary is shown by the tax commissioner or by the person severing the sand or gravel that the fair market value of the sand or gravel is eight cents per ton of two thousand pounds. Where records are not kept as to the tonnage of sand or gravel severed from the soil it shall be presumed for the purpose of this chapter that one and one-half tons of sand or gravel of two thousand pounds per ton shall be equal to one cubic yard of sand or gravel;

***Note:** Subsection 5 of section 57-40-01 was also amended by section 24, chapter 386, 1965 S.L., and section 3, chapter 421, 1965 S.L.

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;

***Note:** Subdivision a of subsection 6 of section 57-40-01 was also amended by section 25, chapter 386, 1965 S.L.

- 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;

- *d. Sand or gravel severed from the soil;

***Note:** Section 26, chapter 386, 1965 S.L., also provides for a new subdivision for subsection 6 of section 57-40-01, the text of which is identical to subdivision d of subsection 10 of section 57-40-01 as found in this chapter.

- *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 subscriptions; 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;
 - d. The severing of sand or gravel for use in this state.

§ 2. **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 19, 1965.

*Note: Subsection 10 of section 57-40-01 was also amended by section 24, chapter 386, 1965 S.L.

CHAPTER 433

H. B. No. 846
(Leer, Meyer)

USE TAX DEFINITION OF TERM "PROCESSING"

AN ACT

To amend and reenact subsection 3 of section 57-40-01 of the 1963 Supplement to the North Dakota Century Code, relating to the definition of "processing" as that term is used for use tax purposes.

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

§ 1. **Amendment.)** Subsection 3 of section 57-40-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40-01. Definitions.) In this chapter, unless the context and subject matter otherwise require:

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. The purchase 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 or use tax laws of the state of North Dakota shall be considered as a purchase of tangible personal property for a purpose other than for processing;

Approved February 25, 1965.

CHAPTER 434

H. B. No. 536

(Backes, Davis, Dornacker, Giffey, Hauf, Knudsen,)

(Miller, Shablow, Wilkie)

(From LRC Study)

DEFINITION OF RETAILER

AN ACT

To amend and reenact subsections 7 and 8 of section 57-40-01 of the North Dakota Century Code, relating to the definition of "retailer" and "retailer maintaining a place of business in this state" for use tax purposes.

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

§ 1. Amendment.) Subsections 7 and 8 of section 57-40-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

- *7. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, every vendor who makes deliveries into this state in his own vehicle or by contract carrier as defined in subsection 9 of section 49-18-01, and every vendor sending catalogs or other circulars into this state offering merchandise for sale to North Dakota customers; but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom he operates or from whom he obtains the tangible personal property sold by him, whether he is making sales in his own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard him as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter;
- *8. "Retailer maintaining a place of business in this state", or any like term, shall mean any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, any vendor making deliveries

*Note: Subsections 7 and 8 of section 57-40-01 were also amended by section 24, chapter 386, 1965 S.L.

into this state by his own vehicle or by contract carrier as defined in subsection 9 of section 49-18-01, and any vendor sending catalogs or other circulars into this state offering merchandise for sale to North Dakota customers, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state;

Approved March 2, 1965.

CHAPTER 435

H. B. No. 535

(Backes, Davis, Dornacker, Giffey, Hauf, Knudsen,
(Miller, Shablow, Wilkie)
(From LRC Study)

USE TAX EXEMPTION

AN ACT

To amend and reenact subsection 1 of section 57-40-03 of the North Dakota Century Code, relating to exemptions from the use tax, and declaring an emergency.

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

§ 1. Amendment.) Subsection 1 of section 57-40-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any tangible personal property or taxable service upon the sale of which the retail sales tax imposed by section 57-39-02 has been collected by a retailer holding the permit prescribed by section 57-39-12;

§ 2. 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 6, 1965.

CHAPTER 436

H. B. No. 825
(Meyer, Leer)

REMITTANCE OF USE TAX

AN ACT

To amend and reenact subsection 4 of section 57-40-06 of the 1963 Supplement to the North Dakota Century Code, relating to the due dates and the payment of use tax to the state tax commissioner.

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

§ 1. Amendment.) Subsection 4 of section 57-40-06 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Each retailer required or authorized, pursuant to this section, to collect such tax shall pay the tax in quarterly installments on or before the last day of the month next succeeding each quarterly period ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Except that when there is a sale of any business by any retailer required or authorized, pursuant to this section, to collect such tax or when any business is discontinued by such 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 57-40-18. Every retailer, at the time of making the return required by this chapter, shall compute and pay to the commissioner the tax due for the preceding period;

Approved February 25, 1965.

CHAPTER 437

H. B. No. 810
(Dornacker)

USE TAX CREDITS

AN ACT

To amend and reenact section 57-40-10 of the 1963 Supplement to the North Dakota Century Code, relating to articles taxed in other states or political subdivisions thereof.

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

§ 1. **Amendment.**) Section 57-40-10 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40-10. Articles Taxed in Other States or Political Subdivisions of Other States.) If any article or tangible personal property has been subjected already to a tax by any other state or political subdivision thereof in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference only between the rate fixed in this chapter and the rate by which the previous tax upon the sale or use was computed. If the tax imposed in such other state is the same or more, then no tax shall be due on such article. The provisions of this section shall apply only if such other state or political subdivision thereof allows a tax credit with respect to the retail sales and use taxes imposed by this state which is substantially similar in effect to the credit allowed by this section.

Approved February 25, 1965.

CHAPTER 438

S. B. No. 40

(Hernett, Holand, Kisse, Lips, Van Horn)
(From LRC Study)

MOTOR VEHICLE USE TAX ADMINISTRATION

AN ACT

To create and enact section 57-40.1-09 of the North Dakota Century Code, and to amend and reenact subsection 2 of section 57-40.1-01 and section 57-40.1-07 of the North Dakota Century Code, to provide that the state tax commissioner shall administer the motor vehicle use tax and that the motor vehicle registrar shall act as the agent of the tax commissioner for the purpose of collecting the motor vehicle use tax, and providing for the deposit of fifty percent of the revenue in the general fund and fifty percent in the motor vehicle registration fund.

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

§ 1. Amendment.) Subsection 2 of section 57-40.1-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Motor vehicle registrar" shall mean the registrar of motor vehicles who is the officer in charge of the motor vehicle department of this state and who shall act as the agent of the state tax commissioner in administering the provisions of this chapter;

§ 2. Amendment.) Section 57-40.1-07 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.1-07. Distribution and Use of Revenue.) Fifty percent of the moneys accruing by virtue of section 57-40.1-02, promptly upon collection, shall be remitted by the motor vehicle registrar to the state tax commissioner and by him shall be paid to the state treasurer to be transferred and credited to the general fund and fifty percent to the motor vehicle registration fund.

§ 3). Section 57-40.1-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-40.1-09. Motor Vehicle Registrar to Act as Agent of Tax Commissioner in Administration of Motor Vehicle Use Tax.) The state tax commissioner is charged with the administration of this chapter. The tax commissioner may prescribe all rules and regulations, not inconsistent with the provisions of this chapter, necessary and advisable for the proper and efficient

administration of the motor vehicle use tax. The collection of the motor vehicle use tax shall be carried out by the motor vehicle registrar who shall act as the agent of the state tax commissioner and who shall be subject to all rules and regulations, not inconsistent with the provisions of this chapter, that may be prescribed by the tax commissioner. The provisions of this section shall not be construed as preventing the collection of motor vehicle use taxes by the tax commissioner in the course of any audit carried on by the tax commissioner.

§ 4. Distribution to Local Highway Funds.) Prior to any disbursement out of the motor vehicle registration fund, under subsections 1 and 2 of section 39-04-39, a sum equal to the amount of use tax deposited in the motor vehicle registration fund shall be distributed by the state treasurer to the county highway funds and the special municipal highway funds of each county in such manner and in such amounts so that each county highway fund and each special municipal highway fund shall receive a total sum out of the motor vehicle registration fund equal to that which it would have received under subsection 3 of section 39-04-39, if all of the motor vehicle use tax had been deposited in the motor vehicle registration fund.

Approved March 6, 1965.

CHAPTER 439

S. B. No. 255
(Larson)

RELEVY OF INVALID PROPERTY TAXES

AN ACT

To amend and reenact section 57-44-03 of the North Dakota Century Code, relating to relevy of invalid property taxes.

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

§ 1. Amendment.) Section 57-44-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-44-03. How Tax Computed and Spread.) After the board of county commissioners has levied such tax, the county auditor shall apply the consolidated mill levy for the year for which such levy is made to the net assessed valuation of property involved and shall spread the proper tax charges upon the tax list of the county.

Approved March 15, 1965.

CHAPTER 440

S. B. No. 251
(Kadlec)

PAYMENT OF OIL AND GAS PRODUCTION TAX

AN ACT

To amend and reenact sections 57-51-05, 57-51-06 and 57-51-17 of the North Dakota Century Code, relating to the due dates and delinquency dates for paying gross production taxes and for the filing of reports by producers, purchasers and carriers pursuant to the provisions of the oil and gas gross production tax law.

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

§ 1. **Amendment.**) Section 57-51-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-05. Payment of Tax on Quarterly Basis — When Tax Due — When Delinquent — Payment by Purchaser—By Producer—How Casinghead Gas Taxed.) 1. The gross production tax on oil or gas, as herein provided, shall be paid on a quarterly basis. Said tax shall become due on the forty-fifth day following the preceding quarterly period on all oil or gas produced in and saved during the preceding quarterly period, and, if the tax is not paid on or before the end of the forty-fifth day, it shall become delinquent and shall be collected as herein provided. The tax commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when such a request is granted the tax shall not be delinquent until the extended period has expired.

2. On oil or gas sold at the time of production, the gross production tax thereon shall be paid by the purchaser, and such purchaser shall and is hereby authorized to deduct in making settlement with the producer or royalty owner, the amount of tax so paid; provided, that in the event oil on which such gross production tax becomes due is not sold at the time of production but is retained by the producer, the tax on such oil not so sold shall be paid by the producer for himself including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner such producer shall have the right to deduct the amount of such tax so paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time such tax becomes due with the amount of the tax paid.

3. Gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, shall be considered for the purpose of this chapter, as to the amount utilized, as gas actually produced and saved.

4. In case oil or gas is sold under circumstances where the sale price does not represent the cash price thereof prevailing for oil or gas of like kind, character or quality in the field from which such product is produced, the state tax commissioner may require the said tax to be paid upon the basis of the prevailing price then being paid at the time of production thereof in said field for oil, or gas of like kind, quality and character.

§ 2. **Amendment.)** Section 57-51-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-06. Tax Paid to Tax Commissioner — Statements by Person Paying Tax—Statements by Producer.) The tax herein provided for shall be paid to the commissioner and the person paying the tax shall file with said commissioner at the time the tax is required to be paid, a statement, under oath, on forms prescribed by said commissioner, giving other information required, the following:

1. Full description of the property by lease name, subdivision of quarter section, section, township and range, from which said oil or gas was produced;
2. The name of the producer;
3. The gross amount of said oil or gas purchased;
4. The total value of such oil or gas at the price paid therefor, if purchased at time of production; and
5. The prevailing market price of oil or gas sold at time of production; provided, that in lieu of such statement, a purchaser, at time of production, may furnish a true verified copy of the regular settlement sheet in use by such purchaser, if such sheet contains all the information required.

Any person engaged in the production within this state of oil or gas, shall on or before the forty-fifth day following the preceding quarterly period file with the commissioner a statement under oath upon forms prescribed by said commissioner, giving, along with other information required, the following:

1. Name of the property, description by subdivision of quarter section, section, township and range;
2. The gross amount of oil or gas produced and saved;
3. The name of the purchaser and the price received therefor; and
4. Each report required hereunder shall be filed on separate forms as to product and county.

Reports from either the purchaser or producer, as the case may be, shall be delinquent after the last day fixed for filing the same, and every person required to file such report shall be subject to penalty of twenty-five dollars per day for each property upon which such person shall fail or refuse to file such reports. The penalties herein prescribed shall be for failure to file reports and shall be in addition to the penalty imposed at the rate of seven percent per annum for delinquent tax, and shall likewise constitute a lien against the assets of such person failing or refusing to file such reports. The penalties prescribed under this section shall be collected in the same manner as gross production taxes and shall be apportioned as other gross production tax penalties; provided that the commissioner may, for good cause shown, remit any penalties imposed under this section. When royalty is claimed to be exempt from taxation by law, the facts on which such claims of exemption are based and such other information pertaining thereto as the commissioner may require shall be furnished in the report.

§ 3. **Amendment.**) Section 57-51-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-17. Reports by Carriers of Oil and Gas Transported—Reports of Refiners—Reports by Persons Purchasing or Storing Oil.) It shall be the duty of every railroad company, pipeline or transportation company to furnish to the commissioner, upon forms prescribed by him, any and all information relative to the transportation of oil or gas subject to gross production tax, that may be required to properly enforce the provisions of this chapter; and such report shall contain, along with other information required, the name of shipper, amount of oil and gas transported, point of receipt of shipment and point of destination; said commissioner may require any such pipeline or transportation company to install suitable measuring devices to enable such company to include in such reports the quantity of oil or gas transported within, into, out of, or across the state of North Dakota. It shall be the duty of every person engaged in the operation of a refinery for the processing of oil or gas,

in the state of North Dakota to furnish quarterly to the commissioner, upon forms prescribed by him, any and all information relative to the amount of oil or gas subject to gross production tax that has been processed by it during such quarterly period, and oil on hand at the close of such period, that may be required to properly enforce the provisions of this chapter. It shall be the duty of every person engaged in the purchase or storing of oil subject to gross production tax in the state of North Dakota to furnish quarterly a report to the commissioner, upon forms prescribed by him, showing the amount of such oil in storage, giving, along with other information required, the location, identity, character and capacity of the storage receptacle in which such oil is stored. All such reports shall be filed for each quarter and shall be delinquent if not filed on or before the forty-fifth day following the preceding quarterly period.

The failure of any person to comply with the provisions of this section shall make any such person liable to a penalty of twenty-five dollars for each day it shall fail or refuse to furnish such statement or comply with the provisions of this chapter; and such penalty may be recovered at the suit of the state, on relation of the commissioner; and such penalty so collected shall be apportioned to the state general fund.

Approved March 15, 1965.

CHAPTER 441

S. B. No. 132

(Morgan, Roen, Weber, Reichert)

MOTOR VEHICLE FUEL USE TAX

AN ACT

To create and enact chapter 57-54.1 of the North Dakota Century Code, imposing a tax on motor vehicle fuel imported for use upon public highways in this state, providing for the administration and enforcement thereof and providing a penalty.

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

§ 1.) Chapter 57-54.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-54.1-01. Title.) This chapter may be cited as the Importers for Use Tax Act.

57-54.1-02. Statement of Purpose.) The purpose of this chapter is to supplement chapters 57-52 and 57-54, by imposing a tax upon motor fuel imported for use within this state, not subject to the tax imposed by chapters 57-52 and 57-54.

57-54.1-03. Definitions.) For the purposes of this chapter:

1. "Use" means the consumption of motor fuel by any person in a motor vehicle for the propulsion thereof upon the public highways;
2. "Special fuel" means special fuel as defined in the Special Fuels Tax Act, subsection 4 of section 57-52-03;
3. "Motor vehicle fuel" means motor vehicle fuel as defined in section 57-54-03;
4. "Motor vehicle" means any self-propelled vehicle licensed or required to be licensed under the motor vehicle law, except those operated on or over fixed rails and aircraft;
5. "Person" means every individual, firm, association, joint stock company, syndicate, corporation, city, town, county or other political subdivision of this state, wherever used in any portion of this article prescribing or imposing a fine, imprisonment or both. "Person" as applied to a firm, association, joint stock company or syndicate means the partners or members thereof and as applied to a corporation, the officers or resident managing agent thereof;
6. "Public highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of vehicular travel, notwithstanding that the same may be temporarily closed for construction, reconstruction, repair or maintenance;
7. "Auditor" means the state auditor of this state;
8. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the auditor has designated the lessor, rentor or some other person as the importer for use.

57-54.1-04. Levy of Tax.) There is hereby imposed upon all importers for use a tax at the same rate as prescribed by the Motor Vehicle Fuel Tax Act as now or hereafter amended on special fuel and motor vehicle fuel used in the propulsion of motor vehicles upon the public highways in this state. Provided

that credit shall be given for the North Dakota fuel tax paid on all such fuel.

57-54.1-05. Computation.) The amount of fuel used in interstate fleet operations shall be determined by using a factor the numerator of which shall be the total miles operated in this state, and the denominator of which shall be the total miles operated by the importer for use both within and without this state applied to the total such fuel used by the importer for use both within and without this state.

57-54.1-06. Exemptions.) The tax levied hereunder shall not apply to fuel imported into and used in this state in:

1. Operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons for purposes other than for hire or compensation;
2. Operating a motor vehicle having a motor fuel supply tank or tanks with an aggregate capacity of not more than thirty-five gallons if such vehicle is not being used as a common or contract carrier of persons or property or as a private commercial carrier of property;
3. Operating vehicles of the government of the United States or any of its agencies. No tax is imposed upon the use of motor fuel or special fuel by any state, by any town, city, county or other political subdivision of any state, including specifically any school district therein, in any motor vehicle owned or operated by any state, or by any town, city, county, school district or other political subdivision of any state; provided, no exemption of the tax levied by this article shall be construed as an exemption from the tax levied by the Fuels Tax Act.

57-54.1-07. Importer for Use License Required.) Before any person imports fuel into this state in the fuel supply tank of any motor vehicle, such person shall file application for and obtain an importer for use license. Provided, however, persons exempted from the tax levied hereunder shall not be required to obtain such license. All applications for an importer for use license shall be on forms furnished by the auditor and shall contain such information as the auditor shall require.

57-54.1-08. Importer for Use Bond.) Before any such application may be approved by the auditor, the applicant must file a bond payable to the state of North Dakota, conditioned upon compliance with the provisions of this article and the rules and regulations of the state auditor in a sum of not more than twenty thousand dollars, but not to exceed twice the

amount of the estimated quarterly liability for tax under this article. The amount of any such bond required may be increased or reduced by the auditor at any time. The auditor may, at his discretion, waive the filing of a bond by any person who regularly purchases for the operation of his motor vehicles sufficient fuel on which the fuel excise tax has been paid to the state of North Dakota to equal or exceed the fuel used in the operation of his motor vehicles in North Dakota or by any other person as to whom the auditor, upon investigation, finds such bond may be waived without impairing or jeopardizing the revenue collections of this state. An importer for use who is also a licensed fuel dealer under the Fuels Tax Act may have his obligation under this section and under sections 57-52-06 and 57-54-05 covered by one bond in an amount of not less than three thousand dollars nor more than twenty thousand dollars.

57-54.1-09. Issuance and Display.) Upon approval of such bond and investigation by the auditor, if the statements contained in the application shall be found to be true, and if the auditor shall be satisfied that the application is made in good faith, he shall issue to said applicant an importer for use license bearing a distinctive number and specifying the terms and conditions thereof. The license or permit or a photo copy thereof must be carried in the passenger compartment of each motor vehicle operated by each importer for use at all times when each such motor vehicle is in this state.

57-54.1-10. Assignment Forbidden.) All such licenses issued by the auditor pursuant to this Act shall not be subject to assignment or transfer, nor shall such license be construed to be either a franchise or irrevocable.

57-54.1-11. Revocation, Cancellation and Surrender of License and Bond.) All such licenses issued by the auditor shall be in force so long as the holder thereof has in force a bond as required by law or rules and regulations deposited with the auditor, or until such license is suspended, surrendered, or revoked for cause by the auditor. The auditor may at any time, upon showing of failure to comply with the provisions of this article or rules and regulations promulgated hereunder, suspend or completely revoke any license or registration issued hereunder upon five days' notice to the grantee thereof and on opportunity to be heard.

57-54.1-12. Occasional Trip Permits.) Any person who occasionally makes trips into or through North Dakota and who elects to secure occasional trip permits as hereinafter provided shall be exempt from the licensing and bonding requirements herein imposed. The word "occasionally" shall

mean no more than one trip in any seventy-two hour period or two trips into or through the state of North Dakota in any one month.

57-54.1-13. Authority of the Auditor.) The auditor is specifically authorized at his discretion to issue authorization relieving fuel dealers of the duty of collecting the tax imposed under chapters 57-52 and 57-54 from persons who are licensed as importers for use under the importer for use tax law, and who consistently purchase in North Dakota from fuel dealers more fuel than is consumed in the propulsion of their motor vehicles in this state. The auditor further may formulate such reasonable rules and regulations as he may deem necessary for the administration and enforcement of this importer for use tax law.

57-54.1-14. Credit for North Dakota Purchases—Refunds.) If the credit for tax paid on fuel purchased or acquired by the importer for use from sources within this state for the propulsion of motor vehicles exceeds the tax which would otherwise apply to fuel used for the propulsion of motor vehicles on the public highways of this state, such excess credit shall be refunded, or credit applied for such amount against any subsequent tax return.

57-54.1-15. Administration, Records, Penalties and Disposition of Funds.) Importer for use tax shall be reported, paid, collected and administered and importers for use subject to the same penal provisions, and importer for use tax collections distributed all as provided in the Fuels Tax Act sections 57-52-09 to 57-52-20, inclusive, and Motor Vehicle Fuel Tax Act sections 57-54-11 to 57-54-23.

Approved March 6, 1965.

CHAPTER 442

H. B. No. 653
(Tveten)

MOBILE HOME TAX

AN ACT

To amend and reenact sections 57-55-01, 57-55-02, 57-55-03, and 57-55-08 of the 1963 Supplement to the North Dakota Century Code, relating to the method of taxation of mobile homes, or trailer houses, and sleeping trailers, and providing for a method of tax refund.

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

§ 1. **Amendment.)** Section 57-55-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-01. County Auditor to Tax Mobile Homes.) On or before January fifteenth of each year all nonself-propelled mobile homes or trailer houses, and sleeping trailers, providing that "sleeping trailers" shall not include trailers of the type that are collapsed or folded for the purpose of moving them, hereinafter referred to as "trailers", shall be taxed by the county auditor of the county of such trailer owner's domicile upon receipt of such owner's tax. The tax shall be valid in any county of this state during the period for which it was issued.

§ 2. **Amendment.)** Section 57-55-02 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-02. Application for Taxing — Form — Contents.) No trailer tax decal shall be issued unless the trailer owner files an application with the county auditor. Application shall be on duplicate forms, furnished by the county auditor, and shall contain, in addition to any other information the county auditor shall request, a full description of the trailer and its contents including the name of the manufacturer, serial or identification number, age, length, and width of such trailer, owner's name and address, and space for the owner to list his personal property contained in such trailer. The duplicate of each application, the number of the tax decal issued to the applicant shall be retained by the county auditor.

§ 3. **Amendment.)** Section 57-55-03 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-03. When Taxes Become Due and Delinquent.) The tax for a trailer shall become due upon expiration of fifteen days after such trailer is brought into this state and upon January fifteenth of each year thereafter. If the tax on any mobile home or trailer house, or sleeping trailer becomes due between January fifteenth and March seventeenth and, if not paid on or before March seventeenth, shall become delinquent on the following first day of April, at which time a penalty of two percent of the amount of delinquent tax shall be added. If the tax on any mobile home or trailer house, or sleeping trailer shall become due after March seventeenth, it shall become delinquent on the fifteenth day after it became due and, if not paid on or before that day, shall be subject to a penalty of two percent of the amount of delinquent tax. An additional penalty of one percent of the amount of any delinquent and unpaid tax shall attach on the first day of each calendar month, not including however, the month in which the tax became delinquent. The total penalties shall not exceed ten percent of the amount of tax. Taxes, other than the per capita school tax, may be prorated in three equal installments, if the amount of the tax due is forty dollars or more and upon application of the taxpayer. Upon application for installment payments, the county auditor shall authorize payment of the tax in not to exceed three equal installments, due without penalty, on or before April 1, July 1, and October 1 of the year in which the tax becomes due. The penalty provided in this section shall also apply to installment payments, which shall become delinquent fifteen days after the date of said installment was due and payable.

§ 4. Amendment.) Section 57-55-08 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-08. Duty of Trailer Park Operators — Duty of Local Law Enforcement Agency.) It shall be the duty of the owner, operator, or manager of each trailer park, or trailer lot, or any person permitting a trailer to be parked on his property to inform each trailer owner applying for admission to such park, lot or property of the requirements of this chapter and the penalties for failure to comply. Such information shall also be posted in a conspicuous place on the premises of such lot or property. The local law enforcement agency shall make inspections at least quarterly of each trailer park, trailer lot, or place where trailers are known to be located for the purpose of determining if the provisions of this chapter are being complied with. If he shall determine that any person is not complying with the provisions of this chapter he shall give such person a warning and inform him that if he fails to

comply within ten days after issuance of such warning, civil action will be taken to collect the delinquent tax. The local law enforcement agency shall then notify the county auditor of such person's name and alleged violation. If the alleged violator does not present proof of his compliance to the county auditor within ten days after issuance of the warning the county auditor shall take the necessary action provided by law to collect the delinquent tax.

§ 5. Amendment.) Chapter 57-55 of the 1963 Supplement to the North Dakota Century Code is hereby amended by creating and enacting a new section thereto to read as follows:

Refunds.) 1. If the owner of any trailer house or mobile home has paid the full amount of tax due under this Act and thereafter during the current year permanently removes it from this state to a state in which he is required to pay a tax or fee on it that is substantially the same as that imposed by this Act, he shall be granted a refund of a part of the tax paid under this Act, but not including any penalty paid, which refund shall be computed by dividing the amount of tax paid by the number of months of the year for which it was paid and multiplying that quotient by the number of calendar months remaining in the year during which the trailer house or mobile home was permanently situated outside of this state. The owner may file with the county auditor an application for refund on such form as the state tax commissioner may prescribe and the county auditor, after determining the correct amount of refund, shall approve it for payment.

2. If the owner of any trailer house or mobile home has paid, through mistake or otherwise, a greater amount of tax or penalty than was justly due, he shall be granted a refund of the unjust portion paid. The county auditor and treasurer shall charge all refunds against the taxing districts to which the collection was credited.

3. Application for refunds under the provisions of this Act shall not be subject to the provisions of chapter 57-23.

Approved March 19, 1965.

CHAPTER 443

H. B. No. 660

(Meschke, Aamoth, Erickson (Ward), Schoenwald, Boustead)

AVIATION FUEL TAX

AN ACT

To levy an excise tax on aviation gasoline and jet motor fuel used by aircraft and provide for distribution of the proceeds.

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

§ 1. Tax Levied.) There is hereby levied and imposed a special excise tax on all sales of aviation gasoline, jet motor fuel and other motor fuel used by aircraft at the rate of two percent of the sale price of such aviation gasoline, jet motor fuel and other motor fuel used by aircraft on which a tax is levied by chapters 57-54 and 57-52 and which is refunded under the provisions of chapter 57-50.

§ 2. Administration.) The state auditor shall be charged with the administration of this chapter. He shall be authorized and empowered to employ such assistance as may be necessary for the efficient administration and enforcement of the chapter and shall also have the power to make such reasonable rules and regulations relating to the administration and enforcement of the chapter as may be deemed necessary and expedient. He shall be authorized and empowered to determine the purchase price of such aviation gasoline, jet motor fuel and other motor fuel used by aircraft and at the time of approving a refund of the taxes imposed by chapters 57-54 and 57-52 on such fuel, he shall deduct the tax imposed in this chapter from the amount of such refund.

§ 3. Distribution of Proceeds.) The tax collected by the state auditor under this chapter shall be deposited by the state auditor in the state treasurer's office who shall deposit said funds in the special fund known as state aeronautics commission construction fund, and such funds are hereby appropriated to the North Dakota aeronautics commission and shall be disbursed by warrant-check prepared by the department of accounts and purchases upon vouchers submitted by the North Dakota aeronautics commission and approved by the state auditing board for the purpose of the matching of any funds made available by political subdivisions of this state, the state, or of the United States, for airport construction or improvement projects including airport administration build-

ings, hangars, and for construction of landing strips for aircraft, purchase of sites for airports or landing fields and easements; for improvements, maintenance, clearing of sites, marking, lighting, engineering and navigational aids, all related to aeronautics in such amounts as the North Dakota aeronautics commission may determine and upon such projects as the North Dakota aeronautics commission may approve.

§ 4. **Conflicting Acts.)** All Acts and parts of Acts in conflict herewith are hereby repealed.

Approved March 19, 1965.