

TAXATION

CHAPTER 467

H. B. No. 497

(Dornacker, Link, Diehl)

TAX COMMISSIONER TO REVIEW SALES RATIO STUDIES

AN ACT

To amend and reenact section 57-01-07 of the North Dakota Century Code, relating to the review of sales ratio studies by the state tax commissioner.

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

Section 1. Amendment.) Section 57-01-07 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-01-07. Review of Sales Ratio Study by State Tax Commissioner —Appeal.)

1. 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 thirty 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 ten 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.

2. No sale shall be used in any sales ratio study until it has been verified by the state tax commissioner, the county supervisor of assessments, or the board of county commissioners or its agent that none of the exclusions set forth in section 57-01-06 have been used in the study.

Approved March 14, 1969.

CHAPTER 468

S. B. No. 473
(Committee on Delayed Bills)

APPROVAL OF REFUNDS BY TAX COMMISSIONER

AN ACT

To amend chapter 57-01 of the North Dakota Century Code, by creating and enacting thereto a new section, relating to the approval of refunds by the tax commissioner.

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

Section 1. Amendment.) Chapter 57-01 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Approval of Refunds by Tax Commissioner.)

1. Notwithstanding any other provisions of law, if the tax commissioner determines that an amount in excess of the correct amount of tax, interest, or penalty due from any person has been paid by or on behalf of such person, the tax commissioner may approve a refund of such excess amount which shall then be paid to that person in the manner provided for payment of other claims against the state, except that it shall not be necessary for such person to first file a claim for refund of

such amount if the amount to be refunded was paid with respect to a return or report filed by such person with the tax commissioner in the form prescribed therefor.

2. The tax commissioner shall maintain a list showing the name and address of each person for whom the refund was approved, together with the nature and amount of the refund approved, which list shall be made available to the state auditor or his duly authorized representatives for examination by them in the course of examining the books and records of the tax commissioner.

Approved March 29, 1969.

CHAPTER 469

H. B. No. 96
(Dornacker)

DEFINITION OF TRUE AND FULL VALUE

AN ACT

To amend and reenact subsection 4 of section 57-02-01 of the North Dakota Century Code, relating to the definition of "true and full value".

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

Section 1. Amendment.) Subsection 4 of section 57-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "True and full value" means the usual selling price at the place where the property to which the term is applied shall be at the time of the assessment, that being the price at which it could be obtained at private sale, and not at a forced public auction sale. In arriving at the true and full value, consideration may be given to the earning or productive capacity, if any, the market value, if any, and all other matters that affect the actual value of the property to be assessed;

Approved March 14, 1969.

CHAPTER 470

H. B. No. 132
(Dornacker)

**HOMESTEAD CREDIT FOR PERSONS SIXTY-FIVE
YEARS OLD OR OLDER**

AN ACT

To provide for a homestead credit for persons sixty-five years of age or older with a limited income, and providing a penalty.

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

Section 1. Homestead Credit for Persons Sixty-Five Years of Age or Older with Limited Income—Penalty for False Statement.) Any person sixty-five years of age or older with an income of three thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a fifty percent reduction in the assessment up to a maximum reduction of one thousand dollars of assessed valuation on his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this Act regardless of whether or not such person is the head of a family. In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this Act upon their homestead. The provisions of this Act shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that he is sixty-five years of age or older and that such income, including that of any dependent, as determined in this Act does not exceed three thousand dollars per annum. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. Any person knowingly signing a false statement shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet.

Approved March 13, 1969.

CHAPTER 471

H. B. No. 75
(Dornacker)

**PROPERTY TAX EXEMPTIONS FOR PERSONS
WITH MINIMUM INCOMES**

AN ACT

To amend and reenact section 57-02-21 of the North Dakota Century Code, relating to personal property tax exemption for certain persons with minimum income, and declaring an emergency.

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

Section 1. Amendment.) Section 57-02-21 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-21. Tax Exemption of Personal Property of Certain Persons with Minimum Income—Penalty for False Statement.)

1. The assessor shall show upon his listing blank the name of every head of a family. For the purpose of this section, any person who has one or more others dependent upon him for support shall be regarded as the head of a family. If the total of the assessed value of the personal property of such person at the time of assessment does not exceed one hundred dollars, and his total income during the preceding twelve months has been less than fifteen hundred dollars, his personal property shall be exempt from taxation. After the assessor's valuation of such property shall have been equalized, the county auditor shall cause the names of such heads of families to be removed from the tax roll as exempt from personal property taxation.
2. The personal property of any person who receives a major part of his income from any state or federal public assistance program shall be exempt from taxation and the name of such person, if certified to the county auditor by the county welfare board, shall be removed from the personal property tax roll.

3. The household goods, clothing, and musical instruments of any person sixty-five years of age or older with an income of three thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall be exempt from personal property taxation. Any person eligible for the exemption herein provided shall sign a statement that he is sixty-five years of age or older and that such income, including that of any dependent, does not exceed three thousand dollars per annum. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. Any person falsely signing such statement shall be guilty of a misdemeanor. The assessor shall attach such statement to the assessment sheet.
4. Any person exempt from personal property taxation under this section, and any dependent of such person, shall also be exempt from the per capita school tax, and such tax if levied shall be canceled by the county auditor.

Section 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 12, 1969.

S. B. No. 163
(Kautzmann, Stroup)

**TAXATION OF PERSONAL PROPERTY
LEASED FROM A BANK**

AN ACT

To create and enact section 6-03-59.1, to create and enact a new section to chapter 57-02, to create and enact a new subsection to section 57-39.2-04, and to create and enact a new subdivision to subsection 9 of section 57-40.2-01 of the North Dakota Century Code, relating to leasing of personal property, limitation on term and amount, and the taxation of possessory interests in and the use of such property.

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

Section 1.) Section 6-03-59.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-03-59.1. Leasing of Personal Property—Limitation on Term and Amount.) A bank may become the owner and lessor of personal property upon the specific request of and for the use of a customer. The term of the lease shall not exceed five years and all such leases shall provide for the payment of at least annual rentals the total of which shall at least equal the cost to the bank of the personal property so leased. The total leasing obligation or rentals to a bank will be part of the total liability limitations of any borrower as set forth in section 6-03-59.

Section 2. Amendment.) Chapter 57-02 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Assessment to Lessee of Personal Property Owned by a Bank.) A lessee of personal property owned by a bank shall be assessed and taxed for the value of such property in the same way as if such lessee were the owner of it. The taxes levied shall be payable by the lessee in the same manner and subject to the same conditions and requirements as are other personal property taxes. Collection of such taxes shall be enforced in the same manner as are other personal property taxes except

that this leased personal property shall not be subject to any lien for such taxes.

Section 3. Amendment.) Section 57-39.2-04 of the 1967 Supplement to the North Dakota Century Code is hereby amended by creating and enacting thereto a new subsection to read as follows:

Gross receipts of banks from sales at retail.

Section 4. Amendment.) Subsection 9 of section 57-40.2-01 of the 1967 Supplement to the North Dakota Century Code is hereby amended by creating and enacting thereto a new subdivision to read as follows:

The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use or consumption.

Approved March 29, 1969.

CHAPTER 473

H. B. No. 307
(Strinden, Kelsch)

TAX LIENS INVOLVING TAX EXEMPT CORPORATIONS

AN ACT

To amend and reenact section 57-02-41 of the North Dakota Century Code, relating to attachment of tax liens involving tax exempt corporations or organizations.

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

Section 1. Amendment.) Section 57-02-41 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-41. Attachment of Tax Lien and Prorating Taxes as Between Vendor and Purchaser.) All taxes, as between vendor

and purchaser, shall become a lien on real estate on and after the first day of January following the year for which such taxes were levied. In any case where real property is sold or otherwise disposed of or purchased or otherwise acquired by a tax exempt corporation or organization after the assessment date and used for the purposes provided in section 57-02-08, the property shall be liable for taxes during the portion of the year for which it has been assessed computed to the nearest month/ such property was not used as provided in section 57-02-08. The taxes so computed shall attach as a lien on such property and the purchaser shall take the property subject to such lien. When such property has not been assessed, it shall be assessed as omitted real property and taxes computed as herein provided.

Approved March 8, 1969.

CHAPTER 474

H. B. No. 129
(Dornacker)

RAILROADS TO REPORT ANNUALLY TO TAX COMMISSIONER

AN ACT

To amend and reenact section 57-05-08 of the North Dakota Century Code, relating to report by railroad corporations to the state tax commissioner.

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

Section 1. Amendment.) Section 57-05-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-05-08. Report by Railroad Corporation to State Tax Commissioner.) Each railroad corporation required to be assessed under the provisions of this chapter annually shall, on or before May first of each year, under oath of the presiding or other chief executive officer, make and file in such form as the tax commissioner may prescribe, a report containing the following information:

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

real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the said property;

13. A description of the personal property of the company;
14. The number of miles of each main line of railroad, the number of miles of each branch line and sidetracks thereof within the state of North Dakota;
15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years;
16. The location of the property of the company within this state by counties, municipalities, and districts, in such manner and in such detail as the tax commissioner shall prescribe; and
17. Such other facts and information as the tax commissioner may require in the form of returns prescribed by him or which the company may deem material upon the question of taxation of its property in this state.

Approved March 8, 1969.

CHAPTER 475

H. B. No. 238
(Dornacker)

PERSONAL PROPERTY ASSESSMENT FORMULA**AN ACT**

To provide that cities may provide for the uniform application of a percentage of the assessed valuation of the residential real property in which personal property is located and to give county boards of equalization the authority to adjust such percentages; and to amend and reenact subsection 2 of section 57-02-11 of the North Dakota Century Code, providing an exception to the requirement that personal property be assessed annually.

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

Section 1. Assessment of Personal Property Determined as Percentage of Real Property Value—Right of Appeal.) The governing body of any city may by ordinance provide for the uniform multiplication of a determined percentage times the assessed valuation of the residential real property in which personal property is located, which product shall be the assessed valuation for personal property tax purposes, in lieu of the annual assessment of such personal property. The governing body of the city may, in its discretion, require the listing and assessment of such personal property on April 1 of every odd-numbered year for the purpose of determining the relationship between the assessed valuation and the valuation as determined by this section. Any person whose personal property is taxed under the provisions of this section shall have the right to appeal his assessment to the city board of equalization, which shall then order that his personal property be assessed in the manner otherwise provided by law.

Section 2. County Board of Equalization to Adjust Percentages.) The county board of equalization shall have the authority to equalize assessments as between cities which use the percentage of value of real estate formula, as provided in section 1 of this Act, in equalizing personal property assessments between cities and townships which do not use such formula by adjusting the percentage to be applied pursuant to section 1 of this Act.

Section 3. Amendment.) Subsection 2 of section 57-02-11 of the North Dakota Century Code is hereby amended and reenacted

to read as follows:

2. All personal property, except stocks of merchandise, and except as otherwise provided by law, shall be listed and assessed annually with reference to its value on April first of each year. For the purpose of assessment for taxation, each stock of merchandise shall be valued according to the average value for the twelve-month period preceding April first. Each owner shall keep in his place of business a copy of all inventories taken during the preceding year, and all other records and data pertaining to the cost price of such merchandise, and such inventories and other cost data shall be available, at all times, for examination by the assessor or other taxing officers.

Approved March 25, 1969.

CHAPTER 476

H. B. No. 446
(Aamoth)

ASSESSMENT SPOT CHECKS ON PROPERTY

AN ACT

To amend and reenact section 57-12-01.1 of the North Dakota Century Code, relating to spot checks of real and personal property, and providing a penalty for omission to list or for refusal to list property for assessment purposes.

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

Section 1. Amendment.) Section 57-12-01.1 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-12-01.1. Spot Checks of Real and Personal Property.) Prior to the annual meeting of the county board of equalization, the board of county commissioners of each county within this state shall provide for spot checks upon property within each county to properly verify the accuracy of the personal

property listings and valuations and real property listings and valuations. The spot checks shall be reviewed by the county boards of equalization at their annual meeting in July and such boards shall make the necessary corrections in the property assessment listings and valuations. Such changes in the assessments shall be made in accordance with the provisions of chapter 57-12 of the North Dakota Century Code.

In case any person whose duty it is to list property with the assessor shall refuse to list such property or shall intentionally omit a portion of such property in his listing as indicated by the spot check, the county boards of equalization, as a penalty for such refusal or omission, may make an added assessment on such property of twenty-five percent in excess of its true valuation unless the assessor has imposed the penalty provided in section 57-02-12 of the North Dakota Century Code.

The board of county commissioners may select such persons or agencies as may be necessary to carry out the provisions of this section and provide for their compensation.

Approved March 10, 1969.

CHAPTER 477

S. B. No. 268

(Doherty, Rait, Wenstrom, Kelly)

COUNTY LEVY LIMITATIONS

AN ACT

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

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

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

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

1. The board of county commissioners shall not levy any taxes for general or special county purposes which will exceed the amount produced by a levy of twenty mills on the dollar of the net taxable valuation of the county;
2. The board of county commissioners annually shall levy taxes sufficient to meet the obligations of the county for the maintenance of its patients in the charitable institutions of the state, but such taxes shall not exceed the amount produced by a levy rate of one and one-quarter mills on the dollar of net taxable valuation. Such levy shall be within the amount produced by the twenty mill rate, and shall be a paramount charge, to the exclusion of all other budget items, upon the necessary part of the total tax levies; provided that any funds now on hand or hereinafter levied for the purpose of this subsection shall not, in the discretion of the board of county commissioners, be included in the budget of the county;
3. The twenty mill limitation shall apply to all tax levies which the county is authorized to levy for general and special county purposes, including taxes levied for road and bridge purposes. Any unexpended balance in the

county road fund at the end of the fiscal year may be transferred to a special road fund, except that such special fund shall never exceed the amount a ten mill levy on the assessed valuation of the county would yield, and the balance in said fund shall not be considered in determining the budget or the amount that may be levied. Such mill limitation shall not apply:

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

Approved March 17, 1969.

CHAPTER 478

H. B. No. 315
(Rundle, K. Johnson)

TAX LEVY FOR COUNTY EMERGENCY FUND

AN ACT

To amend and reenact section 57-15-28 of the North Dakota Century Code, relating to the emergency fund of counties.

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

Section 1. Amendment.) Section 57-15-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-28. Emergency Fund—County.) The governing body of any county may levy a tax for emergency purposes which shall not exceed the amount produced by the levy of one mill on the dollar of the net taxable valuation of the county. Such emergency fund and the sums therein shall not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes, but shall be shown in such budget as an "emergency fund" and shall not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, shall be covered into such emergency fund and shall be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund shall not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding such determination to expend emergency funds, or for the purchase of road equipment. Any unexpended balance, remaining in the emergency fund at the end of any fiscal year, shall be kept in such fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, shall equal the amount produced by a levy of five mills on the net taxable valuation, the levy of one mill for emergency purposes shall be discontinued, and no further levy shall be made for this purpose until another levy of one mill is required to replenish the emergency fund.

Approved March 13, 1969.

CHAPTER 479

S. B. No. 403
(Holand, Litten)

COUNTY AND CITY AMBULANCE
SERVICE

AN ACT

To provide for county and city ambulance service, and permit a tax levy thereof.

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

Section 1. Levy Authorized for County Ambulance Service.)

Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax of not to exceed one-half mill on the net taxable assessed valuation of the county, for the purpose of subsidizing county ambulance services, provided that such tax shall be approved by a majority of the voters of the county at a regular or special countywide election.

Section 2. Levy Authorized for City Ambulance Service.)

Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of each city in this state shall levy annually a tax of not to exceed one mill upon its net taxable assessed valuation, for the purpose of subsidizing city ambulance services, provided that such tax shall be approved by a majority of the voters of the city at a regular or special city election. Whenever a tax for county ambulance services is levied by a county, any city levying a tax for, or subsidizing city ambulance services, shall upon written application to the county board of such county be exempted from such county tax levy.

Approved March 29, 1969.

CHAPTER 480

H. B. No. 280
(Powers, Miedema, E. Johnson)

COMMUNICATIONS EQUIPMENT IN SCHOOL BUSES

AN ACT

To provide that school districts may levy to equip school buses with two-way communications and central station equipment and to provide for the installation and maintenance of such equipment.

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

Section 1. School District Levy to Equip and Maintain Two-Way Radios For School Buses.) The school board of any school district, upon the passage of a proper resolution, may submit the question at the next regularly scheduled or special election in the school district of providing for an annual levy of not in excess of one mill to equip school buses with two-way communications and central station equipment and to provide for the installation and maintenance of such equipment. If the question submitted is approved by a majority of the electors voting thereon, the school board shall proceed to make such levy, which levy shall be over and above any mill levy limitations provided by law.

Approved March 17, 1969.

CHAPTER 481

H.B. No. 412
(Kelsch)

TAX LEVY FOR POLICE STATIONS**AN ACT**

To provide for a tax levy for police department stations.

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

Section 1.) Upon approval of a majority of the electors voting thereon at any regular election or special election called for such purpose, the governing body of any city may levy taxes annually, not in excess of two mills on the net taxable assessed valuation, for the purpose of providing additional funds to meet the operational, maintenance, and construction costs of establishing stations for police protection services and correctional facilities. Such levy shall be in addition to and not restricted by the levy prescribed by law. The proceeds of such levy shall be placed in a separate fund known as the police station and correctional facility fund. No levy shall be made under this section during any period in which the moneys to the fund equal or exceed an amount equal to the sum that would be produced by a levy of ten mills upon the net taxable assessed valuation of the city making such a levy.

Approved March 25, 1969.

CHAPTER 482

H. B. No. 467
(Link, Davis, Connolly)

**MILL LEVY FOR DESTRUCTION
OF WEEDS ALONG ROADS**

AN ACT

To provide for a tax levy, upon approval of the electorate, for the destruction of weeds, plants, and grass along county or township roads in a county or county commissioner district.

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

Section 1. Destruction of Weeds Along Highways—Election To Be Held on Question—Mill Levy.) Upon resolution by the board of county commissioners, or upon petition by ten percent of the number of qualified electors residing in the county or a county commissioner district who voted for governor at the last general election, the board of county commissioners shall submit the question of a tax levy to cover all costs of cutting or otherwise destroying all weeds, plants, or grass growing along all county or township roads in the county or county commissioner district to the qualified electors of the county or county commissioner district at the next countywide general or special election. If a majority of the qualified electors voting thereon shall approve, a tax shall be levied not to exceed the amount produced by a levy of two mills on the dollar of the net assessed taxable valuation of the county or county commissioner district, as the case may be. The levy of two mills authorized by this section shall be over and above any levy limitations provided by law.

Approved March 25, 1969.

CHAPTER 483

S. B. No. 187
(Litten, Goldberg)

MILL LEVY FOR PUBLIC
TRANSPORTATION SYSTEM

AN ACT

Authorizing a mill levy to provide for payments under contract for the provision of a public transportation system.

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

Section 1. Tax Levy for Public Transportation.) The governing body of any city, upon approval by a majority vote of the electors of such city at any citywide election, may annually levy a tax not in excess of one mill on the net taxable assessed valuation of property within such city to provide payments under a contract approved by such governing body with a private contractor for the provision and operation of a public transportation system within such city, which mill levy shall be over and above any mill levy limitations prescribed by law. Such levy shall not be made during any year in which the amount of unexpended funds raised by such levy shall equal or exceed three dollars per capita according to the population of the city as determined at the last federal decennial census.

Approved March 5, 1969.

CHAPTER 484

H. B. No. 202
(Gackle, Mueller)

SCHOOL DISTRICT EXCESS LEVIES

AN ACT

To amend and reenact section 57-16-03 of the North Dakota Century Code, relating to school district elections to authorize excess levies.

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

Section 1. Amendment.) Section 57-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-16-03. Election to be held—Notice.) The governing board of the school district thereupon shall have the power to call a special election for the purpose of voting upon the question of authorizing an excess levy. Such election shall be held not later than October first of the year in which the tax is to be levied and shall be conducted as other elections of such school district except as otherwise provided in this chapter. The notice of election, in addition to the usual requirements, shall contain a statement of the question to be voted upon pursuant to the terms of this chapter, and also shall show:

1. The total amount of income and expenditures of such school district for the fiscal year preceding;
2. The estimated expenditures for the year for which the taxes are to be levied;
3. The aggregate amount of the tax levy which the governing body seeks authority to make;
4. The aggregate amount of tax levy permissible without special authority from the electors; and
5. The amount of the tax levy in excess of the statutory limit which the board seeks authority to make.

A copy of the notice of election shall be mailed by the clerk of the school district to the tax commissioner at Bismarck, North Dakota, on or before the date of the first publication of the notice and shall be open to public inspection in his office.

Approved March 8, 1969.

CHAPTER 485

S. B. No. 113
(Lips)

SCHOOL DISTRICT MILL LEVIES

AN ACT

To amend and reenact sections 57-15-14, 57-16-04, and 57-16-05 of the North Dakota Century Code, relating to mill levy elections in school districts, and declaring an emergency.*

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

Section 1. Amendment.) Section 57-15-14 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-14. Tax Levy Limitations in School Districts.) The aggregate amount levied by any school district, except the Fargo school district, shall not exceed such amount as will be produced by a levy of nineteen mills on the dollar of the net assessed valuation of the district, except that:

1. Any school district giving two years of standard high school work may levy taxes not to exceed twenty-one mills;
2. Any school district giving three years of standard high school work may levy taxes not to exceed twenty-four mills;
3. Any school district giving four years of standard high school work may levy taxes not to exceed thirty-four

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 ten percent of the electors of the district as determined by the county superintendent for such county in which such school is located provided, however, that the approval of discontinuing such unlimited taxing authority shall not affect the tax levy in the calendar year in which the election is held. 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;

4. Any school district maintaining an elementary school with two or more teachers may levy taxes not to exceed twenty-two mills on the dollar of its net taxable valuation, except that where high school work is offered by such school the limitations on the regular high school levy shall apply.

Section 2. Amendment.) Section 57-16-04 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-16-04. Increase May Be for Five Years—Extension—Discontinuance.) The governing board of the school district may submit the question of authorizing an excess levy for the current year and not to exceed four succeeding years. The notice of election shall give the year or years for which authorization is sought for an excess levy as well as the percentage of excess which is to be voted upon. Prior to the termination of the ex-

cess levy, such levy may be extended for a term not to exceed the original term of the increase upon the unanimous approval by the governing board of the school district, and further extensions may be made for the same number of years prior to each termination date upon the unanimous approval of the governing board of the school district. The question of discontinuing such extended excess levy 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 ten percent of the electors of the district as determined by the county superintendent for such county in which such school is located provided, however, that the approval of discontinuing such extended excess levy shall not affect the tax levy in the calendar year in which the election is held. The election shall be held 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.

Section 3. 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 29, 1969.

***Note:** The section of this bill which had amended section 57-16-05 of the North Dakota Century Code was defeated on the floor, but the title was not amended to conform to the defeat of that section.

H. B. No. 358
(Wilkie, Boustead, Stone, Dornacker, Weber, Aas)

REAL AND PERSONAL PROPERTY TAX DUE DATES

AN ACT

To amend and reenact section 57-20-01 of the North Dakota Century Code relating to the due dates and delinquency of real and personal property taxes, and penalties thereon.

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

Section 1. Amendment.) Section 57-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-01. Real and Personal Property Taxes—When Due and Delinquent—Penalties.) All real and personal property taxes, hail insurance taxes, and yearly installments of special assessment taxes shall become due on the first day of January following the year for which such taxes were levied. The first installment of real estate taxes, all personal property taxes, hail insurance taxes, and yearly installments of special taxes shall become delinquent on the first day of March following and, if not paid on or before said date, shall be subject to a penalty of two percent, and on May first following an additional penalty of two percent, and on July first following an additional two percent, and an additional penalty of two percent on October fifteenth following. 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 seven percent per annum upon the principal of the unpaid taxes on personal property 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. The second installment of real estate taxes shall become delinquent on October fifteenth, and, if not paid on or before that date shall become subject to a penalty of two percent.

Approved March 14, 1969.

CHAPTER 487

H. B. No. 273
(Wilkie, Goodman, Ganser, Gackle)

DELIVERY OF TAX LISTS TO
COUNTY TREASURER

AN ACT

To amend and reenact section 57-20-06 of the North Dakota Century Code, relating to the delivery of tax lists to county treasurers.

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

Section 1. Amendment.) Section 57-20-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-06. Tax Lists Delivered to Treasurer.) On or before December fifteenth in each year, the county auditor shall deliver the tax lists of the several districts of the county to the county treasurer, taking his receipt therefor. Such lists shall be authority for the county treasurer to receive and collect taxes therein levied. The county auditor, immediately upon delivering such lists to the county treasurer, shall charge such treasurer with the amount of the lists delivered to him, as shown in the recapitulation thereof in a book prepared for that purpose, and he also shall charge the county treasurer in such tax list account with all additional assessments made after such lists are delivered, and shall credit him with all amounts collected thereon, and such other amounts as may be deducted lawfully from such lists.

Approved March 10, 1969.

CHAPTER 488

S. B. No. 68
(Holand)

PUBLICATION OF DELINQUENT
PERSONAL PROPERTY TAX LISTS

AN ACT

To amend and reenact section 57-22-02.1 of the North Dakota Century Code, relating to publication of delinquent personal property tax lists.

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

Section 1. Amendment.) Section 57-22-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-02.1. County Auditor to Publish List and Maintain Record of Delinquent Personal Property Taxes.) The county auditor, upon receiving a list of the delinquent personal property taxes as required by law, shall cause the same to be published in the official newspaper of the county and entered in individual accounts by taxpayers in a record to be kept in his office. Such record shall show the names of delinquent taxpayers alphabetically arranged, the amount of the tax of each, for what year or years, and all other information as shown on the original tax list. Subsequent payments shall be posted from duplicate copies of tax receipts transmitted by the treasurer and sheriff. The list of the delinquent personal property taxes published in the official newspaper of the county may show the total due by each person, firm, or corporation, and need not list such delinquent personal property taxes by year.

Approved March 17, 1969.

S.B. No. 413
(Chesrown, Freed)

SHERIFF'S FEES FOR DISTRAINT

AN ACT

To amend and reenact section 57-22-25 of the North Dakota Century Code, relating to travel fees for sheriffs for distraint.

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

Section 1. Amendment.) Section 57-22-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-25. Fees of Sheriff for Distraint.) The sheriff or his deputy shall be allowed the same fees for making distraint and sale of goods and chattels for the payment of taxes as are allowed by law for making a levy and sale of personal property on execution, and travel fees shall be allowed as determined by law. Such fees and mileage shall be added to any tax and collected by the sheriff, and when presenting a statement and bill for such fees and mileage a full and complete description of the route traveled shall be given. In no case shall mileage be charged more than once from the county seat of the county in which the services required are performed.

Approved March 13, 1969.

S.B. No. 415
(Decker, Trenbeath, Becker, Coughlin)

APPLICATION FOR ABATEMENT OR
REFUND OF TAXES

AN ACT

To amend and reenact section 57-23-05 of the North Dakota Century Code, relating to the application for the abatement or refund of taxes and providing that the county auditor shall give notice of hearing.

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

Section 1. Amendment.) Section 57-23-05 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-05. Application for Abatement or Refund—Who May Make.) An application for an abatement or refund shall be in writing and shall be filed in duplicate with the county auditor. It shall state the grounds relied upon for such abatement or refund, give the post-office address of the applicant, and shall be verified. The county auditor shall note the date of filing and shall file the same. He shall present the application to the board of county commissioners at its next regular meeting. The county auditor shall give the applicant notice by mail of the time and place of hearing on any abatement or refund not less than ten days prior to such hearing.

Any person having any estate, right, title or interest in or lien upon any real or personal property who claims that the assessment made or the tax levied against the same is excessive or illegal, in whole or in part, shall be entitled to make an application for abatement, refund, or compromise, as the case may be, and have such application granted if the facts upon which the application is based bring it within the provisions of this chapter for abatement, refund or compromise. In addition, if an abatement is based upon any of the grounds specified in section 57-23-04 and if the application for abatement will not result in a refund of tax or a compromise of a tax, the abatement application may be signed and submitted by either the county auditor or the assessor who made the assessment resulting in the tax specified in the abatement application.

Approved March 13, 1969.

CHAPTER 491

H. B. No. 440
(Dahl)

REFUND OF REAL OR PERSONAL
PROPERTY TAXES

AN ACT

To amend and reenact section 57-23-08 of the North Dakota Century Code, relating to the approval by the state tax commissioner of application for abatement or refund of real or personal property taxes.

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

Section 1. Amendment.) Section 57-23-08 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-08. When Action Effective.) Except as herein-after provided the granting of any application for abatement or refund shall be effective then 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. If the tax commissioner disapproves any application for abatement or refund, in whole or in part, the applicant may appeal the rejection of the application for abatement or refund to the district court within thirty days from the date of the mailing of the notice of rejection or, in lieu thereof, the appellant, pursuant to chapter 28-32 of the North Dakota Century Code, shall have a right to a hearing before the tax commissioner as an administrative agency on such application for abatement or refund, provided that a hearing thereon is demanded by the applicant within thirty days from the date of the mailing of the notice of the rejection of the application for abatement or refund. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency, including the right to appeal to the district court, shall be applicable to and shall govern the hearing. 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.

With respect to any application for abatement that is not required to be submitted for approval to the state tax commissioner, as provided in this section, the county auditor at the close of each calendar year shall certify to the director of the state department of accounts and purchases the amount of state taxes canceled by such action of the board of county commissioners and same shall be credited to the county.

Approved March 18, 1969.

CHAPTER 492

H. B. No. 39

(Backes, Boustead, Dornacker, Gackle, K. Johnson)

(From Legislative Research Committee Study)

REMOVAL OF TAXES ON SALE OF TAX DELINQUENT LAND

AN ACT

To amend and reenact sections 57-28-17 and 57-28-21 of the North Dakota Century Code, relating to the removal of general taxes, hail indemnity taxes, and special assessments of record when tax delinquent land is sold by the county.

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

Section 1. Amendment.) Section 57-28-17 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-17. Sale Between Annual Sales.) All parcels of real estate not sold at the annual November sale may be sold by the county auditor at private sale at any time before the next annual November sale, but no sale shall be made by the county auditor at a price less than the minimum sale price fixed prior to the

November sale. Provided, however, that a parcel of real estate against which one or more unpaid installments of any special assessment continue as a lien pursuant to section 57-28-09 may be sold by the county auditor free of any part or all of such lien if the governing body of the city in which the parcel is located finds that the minimum sale price fixed by law for the parcel together with the special assessment lien or liens against it exceed the market value of the parcel; in such a case the governing body of the city is hereby authorized to cancel all or such part of any special assessment lien against the parcel to an amount which, when added to the minimum sale price, will be equal to the market value of the parcel; the action of the governing body shall be certified by the city auditor or clerk to the county auditor, after which the county auditor may sell the parcel at private sale at any time before the next annual November sale for not less than the minimum sale price fixed by law; the parcel shall pass to the purchaser free from any encumbrance for that part of any lien for special assessment that was canceled by the governing body of the city, and the county auditor shall remove from the record those special assessments against the premises that have been so canceled.

Notwithstanding the provisions of this section or other provisions of law, any such parcel of real estate that is subject to a special assessment lien for improvements made by a city may be sold between annual sales by the county auditor for cash to the city at whatever price less than the minimum sales price that is agreed upon by the board of county commissioners and the governing body of the city.

Section 2. Amendment.) Section 57-28-21 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-21. Cancellations from Record.) 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 and removal from the record of all general taxes, hail indemnity taxes, and special assessments remaining of record against the premises sold at the date of sale, except those installments of special assessments certified or to be certified to the county auditor which had not become due at the date of such sale. It shall be the duty of the county auditor immediately to send a

copy of 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 and removal thereof.

Approved March 10, 1969.

CHAPTER 493

S. B. No. 437

(Unruh)

COMPUTATION OF AIRLINE PROPERTY TAX

AN ACT

To amend and reenact section 57-32-02 of the North Dakota Century Code, relating to assessment and computation of taxes relating to air transportation companies.

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

Section 1. Amendment.) Section 57-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-02. Assessment and Computation of Tax.) The tax commissioner, after the provisions of chapter 57-06 have been complied with and final assessment has been made by the state board of equalization, shall compute a tax upon the valuation fixed as is provided by law for the assessment of other utilities. Such a tax shall be computed by applying to that portion of the valuation which by law is subject to tax the average millage rate, which is obtained by dividing the total taxable valuation of all property within this state for the current year, into the total of all state and local taxes assessed within the state on a millage basis for the current year, provided that such tax for air transportation companies shall be computed by applying to that portion of the valuation which by law is subject to the tax, the average millage rate which is obtained by dividing the total taxable valuation of all property for the current year, within all cities operating an airport served by scheduled airlines in North Dakota, into the total of all state and local taxes assessed within all such cities on a millage basis for the current year.

Approved March 12, 1969.

CHAPTER 494

H. B. No. 134
(Dornacker)

**CERTIFICATION OF TAXES ASSESSED AGAINST
TRANSPORTATION COMPANIES**

AN ACT

To amend and reenact section 57-32-03 of the North Dakota Century Code, relating to the due date, delinquency, penalties and certification to state treasurer of taxes assessed against car line, express and air transportation companies.

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

Section 1. Amendment.) Section 57-32-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-03. Tax Certified to State Treasurer—When Due and Delinquent.) On or before the thirty-first day of March in each year, the tax commissioner shall file with the state treasurer a certified list of all companies assessed under the provisions of this chapter for the preceding year, together with the valuations and taxes assessed in each case. Such taxes shall be due upon the fifteenth day of April next following the date of certification. The taxes shall become delinquent on the first day of May and, if not paid on or before said date, shall be subject to a penalty of two percent and, on June first following delinquency, an additional penalty of two percent and, on July first following delinquency, an additional penalty of two percent and, an additional penalty of two percent on October fifteenth following delinquency. From and after January first of the year following the year in which the taxes became due and payable, simple interest at the rate of seven 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. All the provisions of the law respecting delinquency of personal property assessments generally so far as may be consistent with the provisions of this chapter shall be applicable equally to the assessments and taxes provided for in this chapter.

Approved March 14, 1969.

CHAPTER 495

S. B. No. 282

(Wenstrom, Melland, Wilhite, Litten, Lowe)

ALLOCATION OF TAXES OF
TRANSPORTATION COMPANIES

AN ACT

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

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

Section 1. Amendment.) Section 57-32-04 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-04. Allocation of Tax.) The taxes imposed by this chapter upon car line companies and express companies shall be collected by the state treasurer and deposited in the state general fund.

The taxes imposed by this chapter upon air transportation companies shall be deposited with the state treasurer, who shall credit the same to the air transportation fund, but within ninety days after receipt thereof, these funds shall be allocated and remitted as herein provided by the state treasurer to the cities or municipal airport authorities where such transportation companies make regularly scheduled landings. The taxes collected from each such company shall be allocated to each city or municipal airport authority where such company makes regularly scheduled landings according to the ratio that the annual gross landing weight of the company for such city or municipal airport authority bears to the total annual gross landing weight of the company for all cities or municipal airport authorities where it makes regularly scheduled landings. The annual gross landing weight of a company for a city or municipal airport authority shall be computed by (1) multiplying the certified landing weight for each plane of the company by the number of landings made by it during the preceding calendar year at the city or municipal airport authority and (2) adding together the amount so computed for each such plane. The annual gross

landing weight of a company for all cities and municipal airport authorities shall be the total of the annual gross landing weight of the company for each city or municipal airport authority in which it made regularly scheduled landings. The certified landing weight of a plane shall be the landing weight as certified by the federal aviation agency. It shall be the duty of the tax commissioner to certify to the state treasurer the names of such air transportation companies and the amount of tax of each company that shall be allocated by the state treasurer to each city or municipal airport authority.

Approved March 12, 1969.

CHAPTER 496

S. B. No. 299
(Wilhite)

ANNUAL TAX REPORTS OF BANKS, TRUST COMPANIES, BUILDING AND LOAN ASSOCIATIONS

AN ACT

To amend and reenact sections 57-35-07 and 57-35.1-03 of the North Dakota Century Code, relating to the filing of annual tax reports by banks, trust companies, and building and loan associations.

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

Section 1. Amendment.) Section 57-35-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35-07. Report.) On or before the fifteenth day of March in each year, the managing officer of each bank or trust company located in this state shall file with the tax commissioner, on forms to be provided by him, a report in writing under oath showing the amount of the net income of said bank or trust company for the preceding calendar year, including the amount of its income from tax exempt securities for such year, and shall file with the county auditor of the county in which such bank or trust company is located, the amount of the tax due as certified to the tax commissioner.

Section 2. Amendment.) Section 57-35.1-03 of the 1967 Supplement to 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. The amount of the tax due will be certified to the county auditor of the county in which such association is located.

Approved March 17, 1969.

CHAPTER 497

H. B. No. 310
(Emerson, Register)

DEFINITION OF CIGARETTE FOR TAX PURPOSES

AN ACT

To amend and reenact section 57-36-01 and subsection 1 of section 57-36-26 of the North Dakota Century Code, relating to the definition of a "cigarette" and to provide for authority for the annual and consolidated filing of tobacco products excise tax returns by dealers.

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

Section 1. Amendment.) Section 57-36-01 of the 1967 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;
13. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, snuff,

cigars or other tobacco products; and

14. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.

Section 2. Amendment.) Subsection 1 of section 57-36-26 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit such a remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

Approved March 8, 1969.

CHAPTER 498

S. B. No. 231
(Nothing, Redlin, Unruh, Lowe)

INCREASE IN CIGARETTE TAX
AND ALLOCATION TO CITIES

AN ACT

To amend and reenact sections 57-36-06 and 57-36-10, subsection 1 of section 57-36-27, and subsection 2 of section 57-36-31 of the North Dakota Century Code, providing for an increase in the cigarette tax, allocating proceeds to cities, and providing that stamps may be purchased at a discount of three percent.

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

Section 1. Amendment.) Section 57-36-06 of the 1967 Supplement to 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, five mills on each such cigarette;
2. Class B. On cigarettes weighing more than three pounds per thousand, five and one-half mills on each such cigarette.

Section 2. Amendment.) Section 57-36-10 of the 1967 Supplement to 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 three percent of the face value thereof, 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.

Section 3. Amendment.) Subsection 1 of section 57-36-27 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, five mills on each such cigarette.
 - b. On cigarettes weighing more than three pounds per thousand, five and one-half mills on each such cigarette.

Section 4. Amendment.) Subsection 2 of section 57-36-31 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. All moneys received from the levy and assessment of one and one-half mills 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 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 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 incorporated subsequent to the last federal census, and warrants shall be drawn payable to the treasurers of such cities.

Approved March 29, 1969.

CHAPTER 499

S. B. No. 190

(Chesrown, Freed, Holand, Ringsak)

ESTATE TAX - POWERS OF APPOINTMENT

AN ACT

To amend and reenact subsection 3 of section 57-37-02 and subsection 2 of section 57-37-07 of the 1967 Supplement to the North Dakota Century Code, relating to the adoption of the federal definition of powers of appointment and treatment of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent and the effective date thereof for estate tax purposes, and declaring an emergency.

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

Section 1. Amendment.) Subsection 3 of section 57-37-02 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. All intangible personal property wherever located, except that the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement other than as insurance under policies on the life of the decedent shall be included in the gross estate of any decedent dying after June 30, 1967, only to the extent that it is or would be includable for federal estate tax purposes pursuant to the provisions of section 2039 of the United States Internal Revenue Code of 1954, as amended, through December 31, 1968, effective for a decedent dying on or after January 1, 1969;

Section 2. Amendment.) Subsection 2 of section 57-37-07 of the 1967 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, 1968, effective for a decedent dying on or after

January 1, 1969.

Section 3. 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 10, 1969.

CHAPTER 500

S. B. No. 192
(Meschke)

DEFINITION OF MINOR FOR ESTATE TAX EXEMPTION PURPOSES

AN ACT

To amend and reenact subsection 1 a of section 57-37-11 of the North Dakota Century Code, relating to the determination of a minor for exemption purposes pursuant to the provisions of the Estate Tax Act.

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

Section 1. Amendment.) Subsection 1 a of section 57-37-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An exemption, not exceeding the amount specified in each case, of the value of the property passing to each of the following beneficiaries:
 - a. Lineal ancestor or descendant, adopted child, step-child or lineal descendant of an adopted child or step-child, not exceeding two thousand dollars, and if under the age of twenty-one years, not exceeding five thousand dollars;

Approved March 10, 1969.

CHAPTER 501

H. B. No. 95
(Aamoth)

**SELECTION OF ASSETS TO SATISFY BEQUEST
TO SURVIVING SPOUSE**

AN ACT

To provide a method of valuation of assets distributed by a fiduciary to a surviving spouse in satisfaction of a bequest or transfer within the meaning of the marital deduction provision of the Federal Internal Revenue Code.

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

Section 1. Valuation of Assets Distributed to Surviving Spouse by Fiduciary—Marital Deduction.) Whenever a decedent leaves a surviving spouse, or by law the spouse is presumed to have survived, and the representative of the decedent's estate, the decedent's trustee, or any other fiduciary is authorized by a will or a trust agreement to satisfy wholly or partly in kind a pecuniary bequest or transfer in trust of a pecuniary amount to the surviving spouse, the representative, trustee, or other fiduciary shall select, unless the instrument expressly provides otherwise, assets having an aggregate fair market value at the date, or dates, of distribution amounting to no less than the amount of the pecuniary bequest or transfer in trust as stated in, or determined by the formula stated in, the instrument.

Approved March 5, 1969.

CHAPTER 502

S. B. No. 195

(Chesrown, Holand, Freed, Ringsak)

FILING ESTATE TAX RETURNS

AN ACT

To amend and reenact sections 57-37-15, 57-37-16 and 57-37-22 of the North Dakota Century Code, relating to the filing of a copy of the federal estate tax return, the payment of estate taxes in advance of final determination, in certain instances, to stop the accrual of interest and the requirement of filing estate tax returns and supplemental or amended inventories and estate tax returns.

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

Section 1. Amendment.) Section 57-37-15 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-15. Court To Furnish Report To Tax Commissioner and Give Notice of Assessment.) The county court shall furnish to the tax commissioner:

1. An original and one copy of the application for determination of estate taxes in the gross estate of each decedent;
2. A copy of the inventory and appraisalment;
3. A statement of all taxable transfers made by the decedent that have come to the court's knowledge;
4. A copy of the order of the court assessing the tax;
5. A copy of the decedent's will, if any, in a probate proceeding;
6. Such other information contained in the records and files of the court as the tax commissioner shall require; and
7. A copy of the federal return when the gross estate of a decedent is such as to require the filing of an

estate tax return for the decedent's estate pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended.

The court at the same time, shall notify the executor, administrator, trustee or other person interested in the estate of the amount of such assessment, but failure to receive such notice from the county court shall not excuse the nonpayment of the tax nor invalidate the tax in any way.

Section 2. Amendment.) Section 57-37-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-16. Appraisals Made and Taxes Payable as of Date of Death and Procedure for Payment of Uncontested Portion of Estate Tax in Estate Where the Amount of Estate Tax Due is in Contention.)

1. The tax imposed by this chapter shall be due and payable at the death of the decedent, and, if not paid within fifteen months after the date of death, shall bear interest at the rate of six percent per annum to be computed from the expiration of fifteen months after death until the amount is paid. The transfer shall be deemed to take place at the time of death, and all appraisals shall be as of that date, unless otherwise provided in this chapter. Wherever there has been a taxable transfer prior to death on which the tax has not been paid, the property transferred shall be considered a part of the estate and shall be appraised as of the date of death of the decedent and taxed according to the laws then in force.
2. In an estate tax determination where the amount of the estate tax due is in contention before the court or the tax commissioner the estate may petition the court or the tax commissioner, as the case may be, for an order allowing the payment of a portion of the tax so that the interest imposed by this section shall cease to accrue on that portion of the tax until the determination of the correct amount of tax has been made. The county treasurer or the state treasurer, as the case may be, shall deposit the tax paid into a separate account

established for payments made under this subsection, and the county treasurer or state treasurer, as the case may be, shall refrain from making any distribution of the tax until the records of the court or the tax commissioner reveal that the proper amount of estate tax due has been determined.

Section 3. Amendment.) Section 57-37-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-22. Reports, Inventories, Estate Tax Applications and Supplements.) It shall be the duty of the executor, administrator, trustee or other interested person of competent legal capacity to file an estate tax return and, before the final settlement of an estate, to furnish a supplemental or amended inventory and amended estate tax return listing all property and taxable transfers or other events that have come to his knowledge since the first inventory or estate tax return was made which would result in a change in either the amount of the estate tax initially determined or the statements made by the affiant therein. He also shall furnish copies of any documents or records, and any other information pertaining to the estate, or the value thereof, upon request of the county court.

Approved March 12, 1969.

CHAPTER 503

S. B. No. 189

(Ringsak, Chesrown, Holand, Freed)

DETERMINING VALUE OF DECEDENT'S ESTATE

AN ACT

To amend and reenact subsection 1 of section 57-37-21 of the North Dakota Century Code, relating to the definition of "value" for estate tax purposes.

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

Section 1. Amendment.) Subsection 1 of section 57-37-21 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 the decedent's death of all property, real or personal, tangible or intangible. The term "value" shall mean, for the purposes of this chapter, the fair market value at date of death unless provided otherwise by the provisions of this section.

Approved March 10, 1969.

CHAPTER 504

S. B. No. 200

(Ringsak, Holand, Chesrown, Freed)

LIABILITY OF BENEFICIARIES FOR
ESTATE TAX IMPOSED

AN ACT

To amend and reenact subsection 3 of section 57-37-23 of the North Dakota Century Code, relating to the liability of beneficiaries for the estate tax imposed and the limitation of the general statutes of limitation as a bar to the collection of estate taxes.

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

Section 1. Amendment.) Subsection 3 of section 57-37-23 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The beneficiaries shall be personally liable for their respective share of the tax imposed by this chapter, as well as the executor, administrator, or trustee, and if the executor, administrator, or trustee pays such tax, he shall have the right to recover the tax from the beneficiaries in accordance with the provisions of chapter 30-21.1. No general statutes of limitation shall be considered as a bar to the collection of the respective share of the estate tax from each beneficiary. For the purposes of this chapter, the term "beneficiaries" shall mean any persons receiving an interest in property of a decedent which is subject to inclusion in the decedent's gross estate for estate tax purposes pursuant to the provisions of this chapter.

Approved March 29, 1969.

CHAPTER 505

S. B. No. 358
(Holand, Freed)

DISTRIBUTION OF ESTATE TAX

AN ACT

To amend and reenact section 57-37-24 of the North Dakota Century Code, relating to the procedure for the computation of the distribution of the estate tax between the state, counties and cities of this state.

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

Section 1. Amendment.) Section 57-37-24 of the 1967 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.)

1. The county treasurer in the county where the estate tax determination 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.
2. The county treasurer 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 or cities in which any part of the decedent's property was located at the time of the decedent's death. If any part of decedent's property at the time of the decedent's death had a legal situs within the limits of a city the share of tax based on such property shall be divided between the city and the county in proportion to their respective total mill levies, except school levies. If any part of decedent's property had a legal situs outside the limits of a city, the share of tax based on said property shall go entirely to the county. If the tax determined to be due pursuant to this chapter is an amount which is one hundred dollars or less, after the deduction of the share payable to the state, no further

apportionment pursuant to this section shall be made and the entire amount due shall be retained by the county in which the county court therein had jurisdiction of the estate tax matter. The share of a city or county of the tax shall be deposited to the credit of its general fund.

3. 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 legal situs of 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 or city, as the case may be. If the tax determined to be due pursuant to this chapter is in an amount which is one hundred dollars or less, after the deduction of the share payable to the state, no further apportionment pursuant to this section shall be made and the entire amount determined to be due shall be distributed to the county in which the legal situs of the property is located.
4. Real property and tangible personal property shall be deemed located where it has its legal situs at the time of the decedent's death, and all other property shall be deemed located at the decedent's residence.
5. 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.
6. 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 city, and a refund has been made, the county treasurer making the refund shall file with the treasurer of the county or city 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 or city.

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

Approved March 12, 1969.

CHAPTER 506

H. B. No. 60
(Aamoth)

TRANSFER OF ESTATE SECURITIES TO
TRUST COMPANY

AN ACT

To create and enact subsection 4 of section 57-37-29 of the North Dakota Century Code, relating to the transfer of securities to certain trust companies acting as an executor or administrator of an estate.

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

Section 1.) Subsection 4 of section 57-37-29 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

4. The provisions of subsection 1 of this section requiring the retention of assets by any of the individuals or entities as set forth therein shall not apply when a request for the transfer of securities has been made by any trust company acting as an executor or administrator of an estate, provided that the trust company is qualified to do business under the laws of the state of North Dakota. Any individual or entity as set forth in subsection 1 of this section who effects any transfer of securities to a trust company pursuant to the provisions of this subsection shall be subject to the provisions of section 57-37-30 and shall within thirty days from the date of the transfer thereof give notice of the transfer to the county court of the county in which the decedent resided at date of death, setting out the nature of the transfer with a specific description of the securities transferred.

Approved March 6, 1969.

CHAPTER 507

S. B. No. 177
(Meschke)

DEFINITION OF FEDERAL INTERNAL REVENUE CODE

AN ACT

To amend and reenact subsection 21 of section 57-38-01 of 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:**

Section 1. Amendment.) Subsection 21 of section 57-38-01 of the 1967 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, 1968.
- 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 1968 and for fiscal years ended during 1968 shall also apply to returns required to be filed under the provisions of this chapter for the same periods.

Section 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 10, 1969.

CHAPTER 508

S. B. No. 178
(Meschke)

ADDITIONAL EXEMPTION FOR HUSBAND AND
WIFE OR HEAD OF HOUSEHOLD

AN ACT

To amend and reenact subdivision d of subsection 1 of section 57-38-01.2 of the North Dakota Century Code to provide for an additional exemption of three hundred dollars for a head of a household for income tax purposes.

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

Section 1. Amendment.) Subdivision d of subsection 1 of section 57-38-01.2 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. (1) Reduced by three hundred dollars if the return filed is a joint return by husband and wife. If separate returns are filed by husband and wife no deduction can be taken under this subdivision. This subdivision shall not be applicable to estates or trusts.
- (2) Reduced by three hundred dollars if the return filed is the return of a "head of household" as defined by the United States Internal Revenue Code of 1954, as amended, provided that the term "head of household" shall also include a "surviving spouse" as defined by said Code.

Approved March 29, 1969.

S. B. No. 269
(Longmire, Lips)

**ADJUSTMENT TO TAXABLE INCOME FOR
FEDERAL RETIREMENT INCOME**

AN ACT

To amend and reenact subsection 1 of section 57-38-01.2 of the North Dakota Century Code by creating a new subdivision thereto, relating to an adjustment to taxable income for income received under the United States Civil Service Retirement Act.

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

Section 1. Amendment.) Subsection 1 of section 57-38-01.2 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted by creating the following new subdivision:

Reduced by any amount, up to a maximum of fifteen hundred dollars, received pursuant to the United States Civil Service Retirement Act.

Approved March 14, 1969.

CHAPTER 510

S. B. No. 329
(Butler, Unruh, Wilhite)

RECOGNIZING SUBCHAPTER S ELECTION

AN ACT

To amend and reenact section 57-38-01.4 of the North Dakota Century Code, relating to the recognition of subchapter S election.

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

Section 1. Amendment.) Section 57-38-01.4 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-01.4. Recognition of Subchapter S Election.)

1. For the purposes of this chapter, any person as defined in section 57-38-01 and required to file a North Dakota income tax return who makes an election under subchapter S of the Internal Revenue Code of 1954, as amended, for federal income tax purposes shall have such status recognized and such person's taxable income shall be computed as provided in subchapter S of the Internal Revenue Code of 1954, as amended, with the adjustments allowed by this Act or chapter or other provisions of law.
2. Notwithstanding the provisions of subsection 1 of this section, any person therein described who makes an election under subchapter S of the Internal Revenue Code of 1954, as amended, may elect to have such status not recognized for purposes of filing returns pursuant to this chapter. In such case, the taxable income of the corporation shall be reported as is the taxable income of other corporations that are subject to the provisions of this chapter. The taxable income of each shareholder of such corporation shall be reduced by the amount of federal income taxes paid by the shareholder on that part of the income or grain of the corporation received by the shareholder which was not received as a dividend for which an adjustment was made pursuant to subdivision i of

subsection 1 of section 57-38-01.2 or subdivision g of subsection 1 of section 57-38-01.3.

3. Those persons who were required for taxable years beginning prior to January 1, 1969, to file as subchapter S taxpayers under subsection 1 of this section may elect for taxable years beginning on or after January 1, 1969, to have such status not recognized for purposes of filing returns pursuant to this chapter, provided such election is made, on a form prescribed by the tax commissioner, prior to the end of the taxable year that begins in 1969.
4. If an election to have such subchapter S status recognized or not recognized is made under subsection 2 or 3 of this section, a termination or revocation of such status or a subsequent election relating thereto shall be made only in accordance with the conditions and requirements prescribed for terminations, revocations and subsequent elections under subchapter S of the Internal Revenue Code of 1954, as amended.

Approved March 17, 1969.

CHAPTER 511

S. B. No. 65

(Butler, Unruh, Lowe, Litten, Trenbeath, Goldberg)

EXCLUSION OF NONRESIDENT'S PROFESSIONAL INCOME ON RECIPROCAL BASIS

AN ACT

To amend and reenact subsections 1 and 2 of section 57-38-04 of the North Dakota Century Code to provide for exclusion of income of a nonresident received from personal or professional services performed in this state if the state in which the nonresident resides grants reciprocal treatment to residents of this state, and providing an effective date.

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

Section 1. Amendment.) Subsections 1 and 2 of section 57-38-04 of the 1967 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Income from personal or professional services performed in this state by individuals shall be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has his place of abode in another state to which place of abode he customarily returns at least once a month shall be excluded from his income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which he resides, provided that the state in which he resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota;
2. Except as provided in subsection 1 of this section:
 - a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property shall be assigned to this state. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter if written proof of such payment is furnished to the tax commissioner; provided, that this credit for such tax shall not exceed the difference between (a) the amount of tax that would be due under this chapter if all of the taxpayer's income had been derived from sources within North Dakota, and (b) the amount of tax that would be due under this chapter if the income from personal or professional services performed outside of North Dakota, together with any federal income taxes paid thereon, were excluded from the computation of the North Dakota income tax;
 - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an indi-

vidual who (1) performs services for a common carrier engaged in interstate transportation and (2) who resides and has his place of abode to which he customarily returns at least once a month in another state shall be excluded from income to the extent that such income is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of such compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For the purposes of this subdivision the words "an individual who performs services for a common carrier engaged in interstate transportation" shall be limited to an individual who performs such services for a common carrier only during the course of making regular "runs" into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.

Section 2. Effective Date.) The provisions of this Act shall apply to taxable years beginning on or after January 1, 1969.

Approved March 13, 1969.

CHAPTER 512

H.B. No. 464
(Halcrow, Strinden, Hoghaug)

TAX CREDIT FOR NEW CORPORATIONS

AN ACT

To create and enact section 57-38-30.1 of the North Dakota Century Code, relating to a tax credit for new corporations.

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

Section 1.) Section 57-38-30.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-30.1. Corporate Tax Credit for New Industry.) For the purpose of providing a tax incentive to new industry in this state, any domestic corporation that has been incorporated for the first time in this state after January 1, 1969, and which is not the result of a business reorganization or acquisition, or any foreign corporation that has received a certificate of authority to transact business in this state for the first time after January 1, 1969, shall be entitled to receive the corporate tax credit allowed by this section by complying with the provisions herein, provided that corporations organized under and receiving the tax credit allowed by chapter 40-57 of the North Dakota Century Code, or reorganized corporations that were in existence prior to January 1, 1969, shall not be allowed the credit. The credit shall consist of a deduction from the net tax as computed under section 57-38-30 of one percent of the annual gross amount expended by the corporation for salaries and wages within the state of North Dakota for each of the first three taxable years, and a deduction from the net tax as computed under section 57-38-30 of one-half of one percent of the annual gross amount expended by the corporation for salaries and wages within the state of North Dakota for each of the fourth and fifth taxable years. After the fifth taxable year, no further deduction shall be allowed, and the corporation shall be taxed in accordance with the schedule provided in section 57-38-30 without credit. For the purpose of this Act new industry shall be defined as a corporate enterprise engaged in assembling, fabricating, manufacturing, mixing or processing of any agricultural, mineral, or manufactured products or any combination thereof.

Approved March 29, 1969.

CHAPTER 513

H. B. No. 339

(Kelsch)

INCOME TAX REFUND FOR DECEASED TAXPAYER

AN ACT

To create and enact subsection 3 of section 57-38-40 of the North Dakota Century Code, relating to the approval of income tax refunds of a deceased taxpayer.

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

Section 1.) Subsection 3 of section 57-38-40 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

3. a. If a return is filed by an individual or an individual and spouse and, after the death of the individual, a refund claim is filed or becomes payable, the tax commissioner shall approve the refund for payment to the legal representative of the decedent upon application and presentation of certified copies of letters testamentary or letters of administration establishing the fiduciary relationship of the legal representative.

b. If the legal representative of the taxpayer has not made application for the refund of the deceased taxpayer within one year from the date of the taxpayer's death, the tax commissioner may approve the refund to any person within the classifications set out herein and with the following priority: surviving spouse, children, grandchildren, ancestors of the decedent and other relatives; upon proper application establishing the relationship of the claimant. Should an application be received from more than one individual in any of the classifications set out herein, the tax commissioner shall honor the earliest post-marked application which is properly filed pursuant to rules and regulations promulgated by him.

c. When the tax commissioner acting in good faith has approved a refund payment pursuant to the provisions of this subsection, the tax commissioner shall not be held responsible to any person or legal representative of the decedent who may have qualified to make a proper application but has failed to do

so within one year from the date of death of the deceased taxpayer.

Approved March 12, 1969.

CHAPTER 514

H. B. No. 490

(Backes)

INCOME TAX PAYMENT, INTEREST, AND PENALTIES

AN ACT

To amend and reenact sections 57-38-35, 57-38-39 and 57-38-45 of the North Dakota Century Code, relating to income tax, interest and penalties and to repeal section 57-38-43 of the North Dakota Century Code.

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

Section 1. Amendment.) Section 57-38-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-35. Payment of Tax.) Except as otherwise provided in section 57-38-36, every taxpayer shall compute the amount of tax due under the return and shall attach thereto a check, draft, or money order, payable to the state tax commissioner, Bismarck, North Dakota, for the amount of the tax computed.

Section 2. Amendment.) Section 57-38-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-39. Additional Tax.) If upon audit, the tax commissioner finds additional tax due, as provided in section 57-38-38, the taxpayer shall be given thirty days from the date of the notice prescribed in section 57-38-38 to file objections to the additional tax and to apply for a hearing regarding the additional tax. Unless such objections are filed and a hearing requested, said tax shall become finally and irrevocably fixed.

If objections are filed, and a hearing requested, the tax commissioner shall give notice of the hearing date, by registered or certified mail and at such hearing evidence may be offered to support such additional tax or prove that it is not due. The provisions of chapter 28-32 shall apply to and govern the hearing procedure including appeals from any decision rendered by the tax commissioner.

Section 3. Amendment.) Section 57-38-45 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-45. Interest and Penalties.) For failure to make a return or to pay any tax within the time required by this chapter, a taxpayer shall be subjected to penalties and interest as follows:

1. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return of income or pay a tax if one is due at the time required by or under the provisions of this chapter, but voluntarily shall file a correct return of income or pay the tax due within sixty days thereafter, there shall be added to the tax a penalty of five percent thereof, or one dollar whichever is greater, plus interest of one percent of such tax for each month or fraction of a month during which the tax remains unpaid, excepting the first month after such return was required to be filed or such tax became due;
2. If any taxpayer does not voluntarily file a return of income within sixty days after the time required by or under the provisions of this chapter, and after notice by the tax commissioner, he shall be subject to a fine of not less than ten dollars and not more than five hundred dollars, and shall pay interest at the rate of one percent for each month or fraction of a month from the time the tax originally was due until the date of payment;
3. Any person or any officer or employee of any partnership who, with intent to evade any requirement of this chapter, shall fail to pay any tax, or to make, sign, or verify any return, or to supply any information required by law, or under the provisions of this chapter, or who with like intent shall make, render, sign, or verify

any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction. He also shall be guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment;

4. In case any person or any corporation fails to pay any tax or penalty imposed by this chapter within thirty days after notice of the amount of the tax or penalty which is due has been mailed from the office of the tax commissioner, the attorney general shall bring action for the recovery of the amount of the tax, penalty, and interest which may be due, in the name of the state, in any court of competent jurisdiction;
5. The tax commissioner may for good cause shown waive all or any part of any civil penalty or interest that attached pursuant to the provisions of this chapter. The provisions of this subsection shall be effective for all returns filed prior to and after December 31, 1966;
6. If any taxpayer who has failed to file a return or who has filed an incorrect or insufficient return and has been notified by the tax commissioner of his delinquency, refuses or neglects within thirty days after such notice to file a proper return, or files a fraudulent return, the tax commissioner shall determine the income of such taxpayer according to his best information and belief, and shall assess the same at not more than double the amount so determined.

Section 4. Repeal.) Section 57-38-43 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1969.

CHAPTER 515

H. B. No. 344
(Dornacker)

INCOME TAX INSTALLMENT PAYMENTS**AN ACT**

To amend and reenact section 57-38-36 of the North Dakota Century Code, relating to installment payments of income tax.

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

Section 1. Amendment.) Section 57-38-36 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

Approved March 12, 1969.

CHAPTER 516

S.B. No. 154
(Becker, Torgerson)

EXCHANGE OF INFORMATION BETWEEN
CERTAIN STATE AGENCIES

AN ACT

To amend and reenact sections 52-01-03, 57-38-57, 57-39.2-23, and 65-04-15 of the North Dakota Century Code, relating to the exchange of certain information by the unemployment compensation division of the employment security bureau, the tax commissioner and the workmen's compensation bureau.

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

Section 1. Amendment.) Section 52-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-01-03. Disclosure of Information.) Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of this title and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or his legal representative shall be supplied with information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding under this title with respect to such claim. Subject to such restrictions as the bureau by regulations may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged,

the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this title. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the provisions of this title, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in section 3305, subsection c of the Federal Internal Revenue Code.

The unemployment compensation division of the employment security bureau may upon request of the state tax commissioner or the workmen's compensation bureau furnish to such commissioner or bureau a list or lists of employers showing only the names, addresses and bureau file identification numbers of such employers, provided that any list so furnished shall be used by the tax commissioner or the workmen's compensation bureau only for the purpose of administering the duties of such commissioner or bureau.

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

The tax commissioner is hereby authorized to furnish to the workmen's compensation bureau or to the unemployment compensation division of the employment security bureau upon the request of either a list or lists of employers showing only the names, addresses and the tax department file identification numbers of such employers, provided that any such list shall be used by the bureau to which it is furnished only for the purpose of administering the duties of such bureau.

Section 3. Amendment.) Section 57-39.2-23 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-23. Information Deemed Confidential—Penalty.) It shall be unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or ex-

aminated in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law. The commissioner may authorize examination of such returns by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state, or the federal government. Any person violating the provisions of this section shall be guilty of a misdemeanor and punishable by a fine of not to exceed one thousand dollars.

The commissioner is hereby authorized to furnish to the workmen's compensation bureau or to the unemployment compensation division of the employment security bureau upon request of either a list or lists of holders of permits issued pursuant to the provisions of this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of such permit holders, provided that any such list shall be used by the bureau to which it is furnished only for the purpose of administering the duties of such bureau.

Section 4. Amendment.) Section 65-04-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-15. Information in Employer's Reports Confidential—Penalty If Employee of Bureau Divulges Information.) The information contained in an employer's report to the bureau shall be for the exclusive use and information of the bureau in the discharge of its official duties and shall not be open to the public nor used in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in such report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Any person in the employ of the bureau who, while acting as an employee of the bureau, shall divulge to any person other than an officer or employee of the bureau any information secured by him in respect to the transactions, property, or business of any company, firm, corporation, person, association, copartnership, or public utility, shall be guilty of a misdemeanor and, upon conviction thereof, shall be disqualified from holding any appointment with the bureau.

The workmen's compensation bureau may upon request of the state tax commissioner or the unemployment compensation division of the employment security bureau furnish to such commissioner or bureau a list or lists of employers showing only the names, addresses and workmen's compensation bureau file identification numbers of such employers, provided that any such list so furnished shall be used by the tax commissioner or the employment security bureau only for the purpose of administering the duties of such commissioner or bureau.

Approved March 29, 1969.

CHAPTER 517

H. B. No. 287
(Aamoth)

WITHHOLDING FROM WAGES OF NONRESIDENT EMPLOYEES

AN ACT

To amend and reenact section 57-38-59 of the North Dakota Century Code, relating to the withholding from wages of nonresident employees, and providing a penalty, and declaring an emergency.

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

Section 1. Amendment.) Section 57-38-59 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-59. Withholding from Wages of Nonresident Employees—Penalty.)

1. Every employer making payment of wages to nonresident employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of 1954 as amended, as will approximate the income taxes due the state; provided that no employer shall be required to deduct and withhold any amount on the first

six hundred dollars of annual wages paid to a nonresident employee unless such employee is employed for a period of sixty days or more within any one year. The amount of tax withheld shall be computed without regard to any other amount required to be withheld thereunder, but the tax withheld shall as closely as possible pay any tax liability imposed by this chapter.

2. In the event that the tax deducted and withheld under the provisions of subsection 1 of this section should prove to be disproportionate to the tax liability, the tax commissioner may adjust the percentage which, when withheld, will, as closely as may be possible, pay the income tax liability imposed by this chapter.
3. The tax commissioner may, in lieu of the requirement above for deducting and withholding tax based upon a percentage of federal income tax withheld, adopt by regulation tax tables which, when the tax provided for in the tables is withheld, will, as closely as possible, pay the income tax liability imposed by this chapter. When adopted by the tax commissioner said tables shall be followed by every employer required to deduct and withhold any tax imposed by this chapter.
4. Every employer shall deduct and withhold from every nonresident employee's wages the amounts required to be deducted and withheld from a nonresident employee's wages until such time as the employee has filed with his employer a signed certificate, in such form as the tax commissioner shall provide, that such employee entitled to wages is a resident of the state of North Dakota as defined for withholding purposes. Such certificate shall contain a written declaration that it is made under the penalties of perjury. Once filed, a certificate shall remain in effect with the employer with which it is filed, until the employee's status shall have changed to that of a nonresident as defined in subsection 4 of section 57-38-58 of the North Dakota Century Code. The employee shall give written notice to his employer within fifteen days after such change in status. The employer upon receiving such written notice shall deduct and withhold from the employee's wages as provided in this section until the employee files with the employer the signed certificate referred to herein. Any employee will-

fully submitting a falsified statement shall be guilty of perjury and punished in accordance with chapter 12-14. Any employee willfully failing to give written notice to his employer of his change in status as required herein within the time prescribed shall be subject to the penalty provided for in subsection 3 of section 57-38-45 of the North Dakota Century Code. Employers shall be required to make the certificates of residence available to the tax commissioner upon request.

Section 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 14, 1969.

CHAPTER 518

S. B. No. 328
(Butler, Unruh, Becker)

RECIPROCAL WITHHOLDING OF INCOME TAX

AN ACT

To amend chapter 57-38 of the North Dakota Century Code by creating and enacting thereto a new section relating to reciprocal arrangements between states for withholding of income taxes.

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

Section 1. Amendment.) Chapter 57-28 of the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Reciprocal Arrangement With Other States for Withholding Income Taxes.) The tax commissioner may enter into an agreement with the tax commissioner or other taxing officials of another state for the interpretation and administration of the acts of their several states providing for the collection of income tax at source on wages for the purpose of promoting fair and equitable administration of such acts and to eliminate duplicate withholding. The tax

commissioner at his discretion may furnish information on a reciprocal basis to the taxing officials of another state in order to implement the purposes set forth above.

Approved March 12, 1969.

CHAPTER 519

S. B. No. 273

(Decker, Kelly, Meschke)

DEFINITION OF TERMS FOR SALES AND USE TAX PURPOSES

AN ACT

To amend and reenact subsection 3 of section 57-39.2-01 and subsection 3 of section 57-40.2-01 of the North Dakota Century Code, relating to the definition of the term "processing" for sales and use tax purposes.

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

Section 1. Amendment.) Subsection 3 of section 57-39.2-01 of the 1967 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, 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, com-

pounding, 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 real property 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 the aged or similar institution that furnishes services to any patient or occupant.

Section 2. Amendment.) Subsection 3 of section 57-40.2-01 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Property used in "processing", as that term is used in subsection 2, shall mean any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property shall be considered as a purchase of tangible personal property for a purpose other than for processing.

Approved March 12, 1969.

CHAPTER 520

S. B. No. 89
(Nothing, Decker)

MIXED DRINKS EXEMPT FROM
SALES AND USE TAX

AN ACT

To create and enact subsection 18 of section 57-39.2-04 and subsection 7 of section 57-40.2-04 of the North Dakota Century Code, relating to exemptions from sales and use tax.

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

Section 1.) Subsection 18 of section 57-39.2-04 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

18. Gross receipts from the sale of mixed drinks which are composed of alcoholic beverages and non-alcoholic beverages, or ingredients such as sugar, ice, flavoring syrups, soda-water, pop, malt, and other commodities of a like nature, or any combination thereof when mixed with an alcoholic beverage.

Section 2.) Subsection 7 of section 57-40.2-04 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

7. Mixed drinks which are composed of alcoholic beverages and non-alcoholic beverages, or ingredients such as sugar, ice, flavoring syrups, soda-water, pop, malt, and other commodities of a like nature, or any combination thereof when mixed with an alcoholic beverage.

Approved March 13, 1969.

S.B. No. 161

(Berube, Rait, Van Horn, Nasset, Becker, L.Larson, Meschke)

**EXEMPTION FOR FOODS SOLD TO
PUBLIC OR PRIVATE SCHOOLS FOR
SCHOOL LUNCH PROGRAMS****AN ACT**

To create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to sales tax exemptions.

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

Section 1.) A new subsection to section 57-39.2-04 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the sale of food supplies to any public school, to any parochial or private nonprofit school conducting courses of study similar to those conducted by public schools in this state, or to any nonprofit organization, for use by the public, parochial, or private school or nonprofit organization in sponsoring or conducting a lunch program or programs in and for any such public, parochial, or private nonprofit school.

Approved March 29, 1969.

CHAPTER 522

S. B. No. 86
(Nothing)

**MOTION PICTURE RENTAL RECEIPTS EXEMPT FROM
SALES AND USE TAX**

AN ACT

To create and enact a new subsection to sections 57-39.2-04 and 57-40.2-04 of the North Dakota Century Code, relating to sales and use tax exemptions.

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

Section 1.) A new subsection to section 57-39.2-04 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition if the sale of tickets or admissions to the exhibition of the film is subject to the sales tax imposed by this chapter.

Section 2.) A new subsection to section 57-40.2-04 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition in this state if the sale of the tickets or admissions to the exhibition of the film is subject to the sales tax imposed by chapter 57-39.2 of the North Dakota Century Code.

Approved March 14, 1969.

CHAPTER 523

H. B. No. 179
(Jenkins, Reimers)

SALES AND USE TAX EXEMPTION FOR
CERTAIN CHEMICALS AND FERTILIZER

AN ACT

To amend and reenact subsection 8 of section 57-39.2-04 of the North Dakota Century Code, and to amend and reenact section 57-40.2-04 (misnumbered as section 59-40.2-04) of the North Dakota Century Code by creating a new subsection thereto, relating to exemptions from sales and use tax.

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

Section 1. Amendment.) Subsection 8 of section 57-39.2-04 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Gross receipts from sales of commercial fertilizers, fungicides, seed treatments, innoculents and fumigants, herbicides and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

Section 2. Amendment.) Section 57-40.2-04 of the 1967 Supplement to the North Dakota Century Code (misnumbered as section 59-40.2-04) is hereby amended and reenacted by the creation of a new subsection to read as follows:

Commercial fertilizers, fungicides, seed treatments, innoculents and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

Approved March 14, 1969.

CHAPTER 524

S. B. No. 142
(Meschke)

SALES AND USE TAX RETURNS

AN ACT

To amend and reenact section 57-39.2-11 and subsection 5 of section 57-40.2-07 of the North Dakota Century Code, relating to sales and use tax returns.

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

Section 1. Amendment.) Section 57-39.2-11 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-11. Return of Gross Receipts.) 1. On or before the last day of the month following the close of the first quarterly period as defined in the following section, and on or before the last day of the month following each subsequent quarterly period of three months, the retailer 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 commissioner may require to enable him correctly to compute and collect the tax herein levied. The commissioner upon request by any retailer and a proper showing 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 such retailer, the time in which he is required to make payment as provided for in section 57-39.2-12 shall be extended for the same period;

2. The commissioner, if he deems it necessary or advisable in order to ensure 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 this chapter to the contrary notwithstanding; and

3. Returns shall be signed by the retailer or his duly authorized agent and shall contain a written declaration that they are made and subscribed under the penalties of this chapter.

Section 2. Amendment.) Subsection 5 of section 57-40.2-07 of the 1967 Supplement to 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 ensure 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 shall contain a written declaration that it is made and subscribed under penalties of this chapter.

Approved March 11, 1969.

CHAPTER 525

S. B. No. 155
(Becker, Torgerson)

APPEALS FROM SALES TAX HEARINGS

AN ACT

To amend and reenact section 57-39.2-15 and subsection 1 of section 57-39.2-16 of the North Dakota Century Code, relating to sales tax hearings and appeals therefrom, and to repeal subsections 2 and 3 of section 57-39.2-16 of the North Dakota Century Code, regarding appeals from decision of the tax commissioner relating to sales tax.

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

Section 1. Amendment.) Section 57-39.2-15 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-15. 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 pursuant to chapter 28-32 of the North Dakota Century Code 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 pursuant to the provisions of chapter 28-32 of the North Dakota Century Code.

Section 2. Amendment.) Subsection 1 of section 57-39.2-16 of the 1967 Supplement to 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 57-39.2-15. The appeal shall be taken pursuant to and in accordance with chapter 28-32 of the North Dakota Century Code.

Section 3. Repeal.) Subsections 2 and 3 of section 57-39.2-16 of the 1967 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 17, 1969.

CHAPTER 526

S. B. No. 152
(Becker, Torgerson)

SALES AND USE TAX PENALTIES

AN ACT

To amend and reenact subsection 1 of section 57-39.2-18 and subsection 1 of section 57-40.2-15 of the North Dakota Century Code, relating to sales and use tax penalties.

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

Section 1. Amendment.) Subsection 1 of section 57-39.2-18 of the 1967 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 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 waive, and if paid, refund all or any part of such

penalty. 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.

Section 2. Amendment.) Subsection 1 of section 57-40.2-15 of the 1967 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 this chapter, 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 waive, and if paid, refund all or any part of such penalty. Such penalty shall be paid to the commissioner and disposed of in the same manner as the tax with respect to which it is attached. Unpaid penalties may be enforced in the same manner as is the tax.

Approved March 12, 1969.

CHAPTER 527

S. B. No. 288
(Decker)

REMITTANCE OF EXCESSIVE SALES
OR USE TAX COLLECTED

AN ACT

To amend chapters 57-39.2 and 57-40.2 of the North Dakota Century Code by creating and enacting thereto new sections providing for the remittance of sales and use taxes to the state of North Dakota which were improperly collected by retailers and not refunded to customers.

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

Section 1. Amendment.) Chapter 57-39.2 of the 1967 Supplement to the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Whenever a retailer has collected a sales tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer shall be paid by the retailer to the tax commissioner in the quarterly period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer 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 properly refunded to the customer. 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 a credit against future sales tax due from the retailer. If 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.

Section 2. Amendment.) Chapter 57-40.2 of the 1967 Supplement to the North Dakota Century Code is hereby amended by creating and enacting thereto a new section to read as follows:

Whenever a retailer maintaining a place of business in this state has collected a use tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer shall be paid by the retailer to the tax commissioner in the quarterly period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, as a credit against his use tax liability on the next return that he is required to file, the amount of use tax properly refunded to the customer. In the event such deduction exceeds the amount of use tax due the state by the retailer in the next regular return, such excess shall be allowed as a credit against future use tax due from the retailer. If 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.

Approved March 17, 1969.

CHAPTER 528

S. B. No. 137

(Torgerson)

(From Personal Property Tax Commission Study)

**PERSONAL PROPERTY TAX REPEAL
AND REVENUE REPLACEMENT**

AN ACT

To provide for the levying and collection of a tax for the privilege of doing business in this state on businesses, corporations, and cooperative corporations; to provide for the imposition of a tax upon banks, trust companies, and building and loan associations for the privilege of transacting business in this state and providing penalties; to allocate moneys to counties and their political subdivisions; and to create and enact subsection 25 of section 57-02-08 and sections 57-39.2-03.1, 57-39.2-03.2, 57-39.2-08.1, 57-40.2-03.1, 57-40.2-03.2, and 57-40.3-03.1 of the North Dakota Century Code, relating to the elimination of personal property taxes on personal property not required to be assessed by the state board of equalization, and to provide for a separate and additional sales, use, and excise tax of one percent and to broaden the base of the sales and use taxes; to exempt certain food products from sales and use taxes; and to repeal sections 18-03-09 and 37-01-27, chapter 57-03, section 57-15-23, and subsection 14 of section 57-39.2-04 of the North Dakota Century Code, relating to the per capita school tax; exemption from the sales tax on sales made from vending machines; and the assessment and valuation of grain; declaring legislative intent; and providing an appropriation.

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

Section 1.) Subsection 25 of section 57-02-08 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

25. All personal property not required by section 179 of the Constitution of North Dakota to be assessed by the state board of equalization shall become exempt from assessment and taxation in the year 1970 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 except as specifically provided in this Act. In

addition, this Act shall not exempt from taxation the personal property of any corporation organized pursuant to the North Dakota Nonprofit Corporation Act, which is not exempt from personal property taxation under any other statute nor shall it exempt from assessment and taxation fixtures, buildings, and improvements upon land which are now assessed as real estate. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 2. Business and Corporation Privilege Tax.)

1. Each individual, estate, or trust required to file an income tax return pursuant to chapter 57-38 and who derives income from the operation of a business, trade, or profession, other than as an employee, shall pay a tax for the privilege of doing business in this state of one percent of the net income derived from the operation of such business, trade, or profession, but the minimum tax assessable to any one taxpayer shall be twenty dollars, which tax shall be a separate tax that is levied in addition to the taxes provided for in chapter 57-38. For the purposes of this subsection, the term "net income" means the gross income derived from such business, trade, or profession less the expenses of carrying on such business, trade, or profession, as computed for federal income tax purposes pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended. Provided, however, that the provisions of this subsection of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this subsection continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.
2. Each foreign and domestic corporation, the personal property of which is not assessed by the state board of

equalization, and which is not subject to a special tax in lieu of personal property taxes, required to file an income tax return pursuant to the provisions of chapter 57-38, in addition to any other taxes imposed by such chapter, shall pay a separate and additional tax, for the privilege of doing business in this state, of one percent of its taxable income computed as provided by section 57-38-01.3, except that federal income taxes paid or accrued shall not be deducted, and except as otherwise provided in this Act. Each cooperative corporation required to file an income tax return pursuant to the provisions of chapter 57-38, in addition to any other taxes imposed by such chapter, shall pay a separate and additional tax, for the privilege of doing business in this state, of one percent of its net income, except that this tax shall not apply to cooperative corporations taxed under the provisions of chapters 57-33, 57-33.1, and 57-34. For the purposes of this Act, net income of a cooperative corporation shall include distributed patronage dividends, amounts allocated but withheld, and amounts earned but not allocated by the cooperative corporation. Each corporation or cooperative corporation which does business in the state of North Dakota shall be required to report its full and true income resulting from transactions completed in the state of North Dakota or from income producing activity performed in North Dakota and shall pay the tax provided in this section on such actual North Dakota earned income. The minimum tax assessable to any one taxpayer subject to the provisions of this section shall be twenty dollars. Provided, however, that the provisions of this subsection of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this subsection continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

3. For the purposes of this section, the term "United States Internal Revenue Code of 1954, as amended" shall have the same meaning as provided in subdivision a of subsection 21 of section 57-38-01.
4. For the purposes of administering the provisions of this

section, the provisions of chapter 57-38, pertaining to the administration of the income tax law, not in conflict with the provisions of this section and including but not limited to the provisions relating to the filing of returns, the withholding of income taxes, the payment of income taxes and interest and penalties thereon, refunds, attachment of liens for failure to pay such taxes, and civil and criminal penalties for failure to comply with the provisions of that chapter, shall govern the administration of the taxes levied in this section.

5. The provisions of this section shall be effective for all taxable years beginning on or after January 1, 1970.

Section 3. Definitions.) As used in this Act, unless the context or the subject matter otherwise requires:

1. "Bank" means any banking association organized under the laws of the United States or of the state of North Dakota located in or having a place of business in this state.
2. "Trust company" means any trust company organized under the laws of this state, any other state, or of the United States, with a place of business in this state.
3. "Building and loan association" means any building and loan association or savings and loan association organized under the laws of the United States or the state of North Dakota, located in or having a place of business in this state.
4. "Net income" for a bank or trust company means net income as computed pursuant to chapter 57-35 and "net income" for a building and loan association means net income as defined by section 57-35.1-01.

Section 4. Imposition and Basis of Tax.) An annual tax is hereby imposed upon each bank, trust company, and 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, 1970. The tax shall be based upon and measured by the net income of each bank, trust company, and building and loan association for the preceding calendar year, including the

amount of income received from tax-exempt securities. The amount of the tax shall be computed at a rate of two percent of such net income. The liability for the tax imposed by this Act 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. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 5. Tax Return—Payment of Tax.) On or before the fifteenth day of April in each year, each bank, trust company, and building and loan association shall file a return with the state tax commissioner, on forms to be provided by him and remit the tax imposed by this Act for the preceding calendar year. Taxes due and unpaid by the fifteenth day of April for the preceding calendar year shall be deemed delinquent, and a penalty of five percent shall attach and be charged on all such delinquent taxes, and thenceforth interest shall be charged at the rate of three-fourths of one percent per month of the original amount of delinquent taxes until such taxes are paid.

Section 6. Disposition of Tax.) Upon receipt by the tax commissioner of the tax payable under this Act, he shall deposit the same in the general fund of the state treasury.

Section 7. Reassessment—Access to Records.) If at any time the tax commissioner has reason to verify the correctness of the return made to him under this Act, he may investigate the books and records of the bank, trust company, or building and loan association in question. If any additional tax is due and unpaid, it shall be paid by such bank, trust company, or building and loan association within thirty days after it receives notice thereof from the tax commissioner. If such bank, trust company, or building and loan association is found to have overpaid its tax and to be entitled to a refund, such refund shall be made by the commissioner from the general fund of the state treasury. In enforcing this Act, the commissioner shall have access, upon demand, to all books and records of any bank, trust company, or building and loan association subject to the provisions of this Act, and shall also have access to all records, reports, and information in the office of the state examiner concerning any bank, trust company, or building and loan association. Information obtained from such sources shall

not be disclosed by the commissioner or any of his employees or agents, except as may be necessary in the enforcement of the law.

Section 8. Lien.) The amount of tax due, from the date of its assessment, shall constitute a prior lien upon the assets of the bank, trust company, or building and loan association, and no dividend shall be declared or distributed while any tax assessed under this Act remains delinquent and unpaid.

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

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

Section 10. Tax Imposed By This Act To Be Separate and Additional.) Notwithstanding sections 57-35-06 and 57-35.1-02 or any other provision of law, the tax imposed by section 4 of this Act shall be a separate and additional tax to the tax imposed by chapters 57-35 and 57-35.1 of this Code.

Section 11.) Section 57-39.2-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-39.2-03.1 Separate and Additional Tax on Retail Sales.) There is hereby imposed effective January 1, 1970, a tax of one percent, which tax shall be separate and in addition to any other taxes provided for by law, 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.
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 participating 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. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under the provisions of chapter 57-40.2.

In the case of any contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to January 1, 1970, the contractor receiving the award shall be liable only for the sales tax at the rate of tax in effect on the date of contract.

All definitions of terms, provisions for collection and delinquency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in this chapter, and any other provisions of law now in effect, or which may become effective relating to the retail sales tax, shall apply and are hereby made applicable to the tax imposed under the provisions of this section. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly that would cause it to become ineffective.

Section 12.) Section 57-39.2-03.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-39.2-03.2. Sales Tax on Alcoholic Beverages, Tobacco Products, and Oleomargarine.) Notwithstanding any other provision of law, the sales taxes imposed by this chapter shall apply to the gross receipts of retailers from all sales at retail beginning July 1, 1969, of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off sale outlets for consumption off the premises, and cigarettes, cigars, other tobacco products, and oleomargarine, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 13.) Section 57-39.2-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-39.2-08.1. Separate and Additional Tax on Retail Sales To Be Added to Purchase Price and be a Debt.) Retailers shall add the tax imposed under section 57-39.2-03.1, or the average equivalent thereof, to the sale price or charge and when added such taxes shall constitute a part of such 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, and when such tax is applied and collected at the same time, in the same manner and in addition to but as a part of the sales taxes imposed by sections 57-39.2-02 and 57-39.2-03, retailers shall adopt the following bracket system for the application of the tax, which system shall supersede the bracket systems provided for in sections 57-39.2-07 and 57-39.2-08:

\$0.01 to \$0.15	no tax
.16 to .31	1c tax
.32 to .51	2c tax
.52 to .71	3c tax
.72 to 1.00	4c tax

Each additional \$1.00 4c additional tax or each additional 25c or fraction thereof over \$1.00 1c additional tax.

Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 14.) Section 57-40.2-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-40.2-03.1. Separate and Additional Use Tax.) An excise tax is imposed effective January 1, 1970, 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 one percent of the purchase price of such property, which tax shall be in addition to any other taxes provided by law. 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 one percent of the fair market value of such property at the time it was brought into this state. In the case of any contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to January 1, 1970, the contractor receiving the award shall be liable only for the use tax at the rate of tax in effect on the date of the contract. All definitions of terms, provisions for collection and delinquency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in this chapter, and any other provisions of law now in effect or which may become effective relating to the use tax, shall apply and are

hereby made applicable to the tax imposed under the provisions of this section. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 15.) Section 57-40.2-03.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-40.2-03.2. Use Tax on Alcoholic Beverages, Tobacco Products, and Oleomargarine.) Notwithstanding any other provision of law, the use taxes imposed by this chapter shall apply to the storage, use, or consumption in this state beginning July 1, 1969, of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off sale outlets for consumption off the premises, and cigarettes, cigars, other tobacco products, and oleomargarine, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 16.) Section 57-40.3-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-40.3-03.1. Separate and Additional Tax Imposed.) There is hereby imposed effective January 1, 1970, an excise tax at the rate of one percent on the purchase price of any motor vehicle purchased or acquired either in or 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. The tax herein imposed shall be in addition to any other taxes provided for by law on the purchase price of any motor vehicle purchased or acquired either in or 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. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provisions of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly that would cause it to become ineffective.

Section 17. Sales Tax on Sales Through Vending Machines.)
Beginning July 1, 1969, gross receipts from the sale of tangible personal property costing sixteen cents or more sold through a coin-operated vending machine shall be subject to the sales tax imposed by chapter 57-39.2 and this Act, and gross receipts from the sale of tangible personal property costing fifteen cents or less sold through a coin-operated vending machine shall be specifically exempted from the provisions of that chapter.

Section 18. Sales Tax Exemption for Certain Food Products.)
Beginning January 1, 1970, gross receipts from sales for human consumption of milk and milk products and of fresh and cured meat, including poultry and fish and other fresh and saltwater animal products when purchased by consumers for consumption off the premises where purchased, shall be exempt from the sales tax imposed by chapter 57-39.2 and this Act, except that fresh and cured meat, fish and other fresh and saltwater animal products shall not include such products if preserved by enclosure in an airtight container. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 19. Use Tax Exemption for Certain Food Products.)
Beginning January 1, 1970, gross receipts from sales for human consumption of milk and milk products and of fresh and cured meat, including poultry and fish and other fresh and saltwater animal products when purchased by consumers for consumption off the premises where purchased, shall be exempt from the use tax imposed by chapter 57-40.2 and this Act, except that fresh and cured meat, fish and other fresh and saltwater animal products shall not include such products

if preserved by enclosure in an airtight container. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 20. Distribution to Counties and Local Subdivisions.)

It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 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. On or before March 15, 1971, the county auditor of each county shall certify to the state tax commissioner the total amount of taxes levied in the year 1968 for the state, county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes, and levies voted by the people, new or present levies increased by legislative action of such county on those items of personal property exempt under the provisions of section 57-02-08, and, in addition, the total valuation of real estate and taxes levied on real estate for the year 1968. On or before May 1, 1971, and each year thereafter, the state tax commissioner shall certify for payment to the state treasurer an amount for payment by the state treasurer to each county equal to fifty percent of the amount determined to be due such county based upon the personal property taxes levied in the year 1968 for the political subdivisions herein mentioned on the items of personal property exempt from the personal property tax under the provisions of section 57-02-08, the per capita school tax under the provisions of section 57-15-23, and the grain tax under the provisions of chapter 57-03, together with any adjustments to be made according to the manner hereinafter provided. The remaining fifty percent due each county shall be paid on or before June 1, 1971, and each year thereafter. Within sixty days after the receipt of the revenue as provided by this section, the county treasurer shall allocate and remit to the county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes that amount of revenue which is received from

the state in the same ratio as he would have distributed the revenue from the personal property tax, adjusting such amount by any increase or decrease in real property taxes as levied by each taxing authority according to the formula hereinafter provided. Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision. In the years after 1971, payments to the counties under this section shall be made based upon such payment for 1971 together with a growth factor which shall be based upon the dollar amount of increase or decrease in real property taxes levied within each county. For each four-dollar increase in real property taxation within a county, the state shall contribute an additional one dollar over that amount which was remitted in the base year. For each four-dollar decrease in real property taxation within a county, the state shall contribute one dollar less than that amount which was remitted in the base year.

On or before May 1, 1971, and each year thereafter, the state tax commissioner shall certify to the state treasurer the amount determined to be due to the state based upon the personal property taxes levied in the year 1968 for the North Dakota state medical center. In the years after 1971 the amount so certified shall be computed in accordance with the formula provided in this section for computing the amounts to be certified and paid to the counties. The state treasurer upon receiving the certification from the tax commissioner shall transfer from the general fund to the credit of the North Dakota state medical center the amount so certified.

Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective.

Section 21. Computation of Grants-In-Aid to County Equalization Funds.) The superintendent of public instruction in determining the amount of a grant-in-aid from the state to the county equalization fund of each county shall reduce the amount of such payment by the amount that is equal to that part of

the distribution made pursuant to section 20 of this Act with respect to the county equalization fund levy, which amount shall be certified to the superintendent of public instruction by the state tax commissioner.

Section 22. Declaration of Legislative Intent.) It is the intent of the legislative assembly to remove from taxation all personal property, except as specifically provided in this Act, and to replace such taxes with a separate one percent sales tax and a broadened base on sales and use taxes. It is the further intent of the legislative assembly to apply a business privilege tax on all professional and business income earned, other than as an employee, in order to prevent an unreasonable shifting of the tax burden to salaried persons. In addition, it is the intent of the legislative assembly to impose business privilege taxes upon corporations or cooperative corporations, banks, trust companies, and building and loan associations, but to specifically exclude from the provisions of this Act, both as to the exemption of personal property taxation and as to the replacement income taxes, those nonprofit corporations which do not pay income taxes either because they are exempted from the provisions of the income tax by law or because of the peculiar nature of their status in relation to other corporations, in order to prevent injustice by granting relief to any class without providing for the sharing of the replacement tax burden.

Section 23. Appropriation.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, such amount as shall be necessary to carry out the provisions of this Act, including such additional data processing costs that may be incurred by the office of central data processing in excess of the data processing appropriation for the office of the state tax commissioner.

Section 24. Repeal.) Sections 18-03-09, 37-01-27, 57-15-23, and chapter 57-03 of the North Dakota Century Code and subsection 14 of section 57-39.2-04 of the 1967 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 29, 1969.

CHAPTER 529

H. B. No. 184
(Thompson, Anderson)

ACCEPTANCE OF MOTOR VEHICLE TRADE-INS
FOR SALES AND EXCISE TAX PURPOSES

AN ACT

To amend and reenact subsection 6 of section 57-39.2-01, subsection 9 of section 57-40.3-01, and section 57-40.3-05 of the North Dakota Century Code, relating to the acceptance of trade-ins for sales tax and motor vehicle excise tax purposes.

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

Section 1. Amendment.) Subsection 6 of section 57-39.2-01 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Gross receipts" means the total amount of 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 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 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 or will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, 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 quar-

terly 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.

Section 2. Amendment.) Subsection 9 of section 57-40.3-01 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- *9. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise, provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or chapter 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of 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. "Purchase price" in those instances where a motor vehicle is manufactured by a person who registers it under the laws of this state, shall mean the manufactured cost of such motor vehicle and manufactured cost shall mean the amount

***Note:** Subsection 9 of section 57-40.3-01 was also amended by section 1 of chapter 530, 1969 S. L.

expended for materials, labor and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured costs shall mean the reasonable value of the completed motor vehicle. 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 and shall not include the transfer of a motor vehicle between a lessee and lessor pursuant to the exercise of a right to purchase under a lease agreement, provided that the lessee has been in continuous possession of such vehicle for a period of one year or longer and further, provided, that the lessor has paid either the tax imposed under this chapter at the time of titling or licensing the vehicle in this state or the excise tax imposed by chapter 57-40.2 of the North Dakota Century Code.

Section 3. Amendment.) Section 57-40.3-05 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-05. 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 and description of the trade-in, if any, whether the vehicle was the subject of a gift, and any other information that the motor vehicle registrar may require.

Approved March 8, 1969.

H.B. No. 489
(Backes)

**MOTOR VEHICLE EXCISE TAXES AND
TREATMENT OF TRADE-INS**

AN ACT

To amend and reenact subsections 8 and 9 of section 57-40.3-01; amend section 57-40.3-04 by creating and enacting thereto a new subsection and amend and reenact sections 57-40.3-05, 57-40.3-06 and 57-40.3-07 of the North Dakota Century Code, relating to motor vehicle excise tax.

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

Section 1. Amendment.) Subsections 8 and 9 of section 57-40.3-01 of the 1967 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. "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, parent and child or brothers and sisters.
- *9. "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 chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-

in allowance allowed by the seller 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. "Purchase price" in those instances where a motor vehicle is manufactured by a person who registers it under the laws of this state, shall mean the manufactured cost of such motor vehicle and manufactured cost shall mean the amount expended for materials, labor and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured costs shall mean the reasonable value of the completed motor vehicle. The term "purchase price" shall not include the transfer of a motor vehicle by way of gift between a husband and wife, parent and child or brothers and sisters and shall not include the transfer of a motor vehicle between a lessee and lessor pursuant to the exercise of a right to purchase under a lease agreement, provided that the lessee had been in continuous possession of such vehicle for a period of one year or longer and further, provided, that the lessor has paid either the tax imposed under this chapter at the time of titling or licensing the vehicle in this state or the excise tax imposed by chapter 57-40.2 of the North Dakota Century Code.

***Note:** Subsection 9 of section 57-40.3-01 was also amended by section 2 of chapter 529, 1969 S.L.

Section 2. Amendment.) Section 57-40.3-04 of the 1967 Supplement to the North Dakota Century Code is hereby amended by creating and enacting thereto a new subsection to read as follows:

Any motor vehicle transferred without consideration to or from a person within thirty days prior to his entering into the armed services of the United States or within thirty days after discharge therefrom or while serving in the armed services of the United States, provided the person certifies to the motor vehicle registrar that the transfer is made only by reason of entering into, serving

in or being discharged from the armed services of the United States.

Section 3. Amendment.) Section 57-40.3-05 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

***57-40.3-05. 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, parent or child or from a brother or sister 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.

***Note:** Section 57-40.3-05 was also amended by section 3 of chapter 529, 1969 S.L.

Section 4. Amendment.) Section 57-40.3-06 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-06. 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 or acquired by way of gift from a husband or wife, parent or child or from a brother or sister 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.

Section 5. Amendment.) Section 57-40.3-07 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-07. Title or License Registration Not To Be Issued Unless Tax Paid.) No title or license registration shall be issued by the motor vehicle registrar for the ownership or operation of any motor vehicle 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, parent and child or brothers and sisters, unless the tax imposed by this chapter shall be paid by the applicant to the motor vehicle registrar.

Approved March 12, 1969.

CHAPTER 531

H. B. No. 109
(Hoghaug)

MOTOR VEHICLE EXCISE TAX REFUNDS

AN ACT

To provide for motor vehicle excise tax refunds, for a procedure for refunding, and making an appropriation.

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

Section 1. Motor Vehicle Excise Tax Refunds—Three-Year Limitation.) If it shall appear that any motor vehicle excise tax paid on or after July 1, 1967, was paid in error, or for any other reason the tax was not due under the provisions of chapter 57-40.3 of the North Dakota Century Code, the tax shall be refunded to the person who paid the same upon an application made and duly allowed in accordance with this Act, provided that the application is made within three years from the date of the payment of the tax.

Section 2. Procedure for Refunding.) Any person entitled to a refund of motor vehicle excise tax, may make application for such refund to the tax commissioner in the manner prescribed by the commissioner. Upon the presentation of proof

satisfactory to the commissioner, he shall authorize the refund to be made from moneys appropriated for that purpose. No refund shall be authorized by the commissioner until he is fully satisfied through the production of necessary purchase agreements, tax receipts, and other documents and information that the refund is warranted. Payment of the refund shall be made by warrant prepared by the department of accounts and purchases, after approval of the voucher by the state auditing board.

Section 3. Appropriation.) There is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise appropriated, as a standing and continuing appropriation, such sums as may be necessary to provide for motor vehicle excise tax refunds under this Act; and in addition thereto, there is hereby appropriated out of any moneys in the motor vehicle registration fund, not otherwise appropriated, as a standing and continuing appropriation, such sums as may be necessary to provide for motor vehicle excise tax refunds under this Act, such appropriations to be made from both such funds in equal amounts. Refunds shall be made from the moneys appropriated out of the general fund of the state treasury, and from the moneys appropriated out of the motor vehicle registration fund in the same proportion as the tax was allocated at the time it was collected.

Approved March 25, 1969.

CHAPTER 532

S. B. No. 176
(Meschke)

EXTENSION OF INCOME TAX FILING TIME**AN ACT**

To amend and reenact section 57-46-01.1 of the North Dakota Century Code, relating to the extension of time for filing income tax returns and payment of income tax by members of the armed forces and merchant marine serving outside of the boundaries of the United States, providing a termination date and declaring an emergency.

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

Section 1. Amendment.) Section 57-46-01.1 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-46-01.1. Extension of Time for Filing Income Tax Returns and Payment of Income Tax.) A taxpayer actively serving in the armed forces or merchant marine, outside the boundaries of the United States, may defer the filing of an income tax return and the payment of income tax until:

1. The fifteenth day of the third month after his return to the United States; or
2. The fifteenth day of the third month after his discharge from the military service or the United States merchant marine, if he remains, after discharge, outside the boundaries of the United States; or
3. The fifteenth day of the third month after an administrator or executor has been appointed for the estate of the taxpayer; or
4. December 31, 1972, whichever of said dates shall first occur.

Section 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 29, 1969.

H. B. No. 309
(Halcrow)

**MOTOR VEHICLE AND SPECIAL
FUEL TAX REFUNDS**

AN ACT

To create and enact a new section to chapter 57-54 of the North Dakota Century Code; to amend and reenact sections 57-50-03 and 57-54.1-15 of the North Dakota Century Code and to amend and reenact sections 17, 34 and 48 of chapter 376 of the 1967 Session Laws of the state of North Dakota, relating to motor vehicle fuel and special fuel tax refunds, refunds for erroneously or illegally collected taxes, setting a limitation on the minimum dollar amount to be refunded, limiting the period of time refund checks must be retained and eliminating the statutory requirement requiring receipts to be issued upon payment of motor vehicle fuel taxes.

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

Section 1.) A new section to chapter 57-54 of the North Dakota Century Code is hereby created and enacted to read as follows:

Erroneously or Illegally Collected Taxes.) In the event that any taxes, penalties or interest imposed by chapter 57-54 have been erroneously or illegally collected from any person, the state tax commissioner may permit such person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment, or shall present a voucher to the department of accounts and purchases for payment of the amount erroneously or illegally collected and a warrant-check shall be prepared by that department drawn on the state treasurer payable to such person. Such refund shall be paid to said person from undistributed funds received from the tax imposed by chapter 57-54 and any such credit or refund shall not be approved or paid unless it is in an amount which is in excess of ten dollars.

Section 2. Amendment.) Section 57-50-03 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

barred. No claim for refund shall be made or approved unless the amount of the claim is in excess of ten dollars.

Section 3. Amendment.) Section 57-54.1-15 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-54.1-15. Administration, Records, Refunds, Penalties, and Disposition of Funds.) Importer for use tax shall be reported, paid, collected, refunded, and administered and importers for use shall be subject to the same penal provisions, and importer for use tax collection shall be distributed all as provided in the fuels tax chapter, sections 57-52-09 to 57-52-20, inclusive, and motor vehicle fuel tax and refund motor fuel tax chapters, sections 57-50-03, 57-50-04, and 57-54-11 to 57-54-23.

Section 4. Amendment.) Section 17 of chapter 376 of the 1967 Session Laws of the state of North Dakota is hereby amended and reenacted to read as follows:

57-50-04. Tax Commissioner to Audit and Approve Claim—Investigation of Doubtful Claims—Payment of Claims.) The state tax commissioner, upon the presentation of such sworn claim, shall audit said claim for refund and prepare, in duplicate, an abstract showing the claim number, the name and address and the amount due each claimant, and shall approve and submit such claims for payment within thirty days of the receipt thereof in the state tax commissioner's office unless the tax commissioner shall be in doubt as to the validity of any claim, in which case the tax commissioner may withhold the approval thereof for a reasonable time for purposes of investigation. The state tax commissioner may authorize any employee or agent of his office to investigate doubtful claims and make a report of his findings to the tax commissioner who shall thereupon promptly approve or reject such claim as the facts may warrant. All claims approved by the tax commissioner shall be paid by warrant-checks prepared by the department of accounts and purchases. The state tax commissioner shall not be required to retain the canceled checks by which any refund may have been paid for a period of more than six years from the first day of July of the fiscal year in which the refund check is issued.

Section 5. Amendment.) Section 34 of chapter 376 of the 1967 Session Laws of the state of North Dakota is hereby amended and reenacted to read as follows:

57-52-15. Erroneously or Illegally Collected Taxes.) In the event that any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from a special fuel dealer, the state tax commissioner may permit such special fuel dealer to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment, or shall present a voucher to the department of accounts and purchases for payment of the amount erroneously or illegally collected and a warrant-check shall be prepared by that department drawn on the state treasurer payable to such special fuel dealer. Such refund shall be paid to the special fuel dealer from undistributed funds received from the tax imposed by this chapter and any such refund shall not be approved or paid unless it is in an amount which is in excess of ten dollars. The state tax commissioner shall not be required to retain the canceled checks by which any refund may have been paid for a period of more than six years from the first day of July of the fiscal year in which the refund check is issued.

Section 6. Amendment.) Section 48 of chapter 376 of the 1967 Session Laws of the state of North Dakota is hereby amended and reenacted to read as follows:

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

Approved March 8, 1969.

H. B. No. 391
(Halcrow)

**BONDING OF SPECIAL FUEL AND
PETROLEUM GAS DEALERS**

AN ACT

To amend and reenact sections 25 and 39 of chapter 376 of the 1967 Session Laws of the state of North Dakota, relating to bonding of special fuel dealers and liquefied petroleum gas dealers.

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

Section 1. Amendment.) Section 25 of chapter 376 of the 1967 Session Laws of the state of North Dakota is hereby amended and reenacted to read as follows:

57-52-06. Special Fuel Dealer's Bond.) Except as herein-after provided no special fuel dealer's license shall be issued to any person or continued in force unless such person has furnished a surety bond in such form and amount as the state tax commissioner shall require, but not less than the amount of five hundred dollars, to secure his compliance with this chapter and the payment of all taxes, interest, and penalties due or to become due hereunder. The state tax commissioner may, at his discretion, waive the filing of a bond if, upon investigation, he finds such bond may be waived without impairing or jeopardizing the revenue collections of this state.

Section 2. Amendment.) Section 39 of chapter 376 of the 1967 Session Laws of the state of North Dakota is hereby amended and reenacted to read as follows:

57-53-10. Liquefied Petroleum Gas Dealers—License—Fee—Permits—Bond.) It shall be unlawful for any person to act as a wholesale dealer in special fuel known as liquefied petroleum gas in this state unless such person is a holder of an uncanceled special liquefied petroleum gas dealer's license issued to him by the state tax commissioner, in addition to complying with all other provisions of this chapter. Application for such license shall be made to the state tax commissioner and a sep-

arate license shall be required for each separate place of business or location where such liquefied petroleum gas is regularly sold, delivered or placed into tanks of bulk supply vehicles for delivery into supply tanks of retail liquefied petroleum gas dealers or users. The cost of this license shall be ten dollars, which amount shall accompany each application, upon a form prepared and furnished by the state tax commissioner, containing such information as the state tax commissioner in his discretion shall deem necessary, together with a surety bond in such form and amount as the state tax commissioner shall require, but not less than the amount of five hundred dollars, except that the state tax commissioner may, at his discretion, waive the filing of a bond if, upon investigation, he finds such bond may be waived without impairing or jeopardizing the revenue collections of this state.

Whenever any person deals only in the retail selling of liquefied petroleum gas, the provisions of sections 57-53-04 and 57-53-05 shall not apply, but in lieu thereof each liquefied petroleum gas retail dealer shall be required to make application to the state tax commissioner for a liquefied petroleum gas retail dealer's permit. The cost of such permit issued by the state tax commissioner shall be one dollar and shall expire on June thirtieth of every odd-numbered year. Each liquefied petroleum gas retail dealer shall be required to make collections of the special fuels excise tax levied under the provisions of section 57-53-02, and shall transmit all taxes collected by him to the state tax commissioner quarterly. The state tax commissioner shall furnish report forms requiring such information as he deems necessary for the efficient administration of this section, such report to accompany the transmittal of all taxes collected by liquefied petroleum gas retail dealers.

Approved March 8, 1969.

H. B. No. 500
(Hensrud, White, Goodman, Boustead)

**REGISTRATION OF SOIL AND WATER
CONSERVATION VEHICLES AND ON FUELS**

AN ACT

To provide for registration of soil and water conservation vehicles, and levying additional highway users' taxes and related revenue to be used by the state, the counties, and the cities to alleviate severe transportation problems in urban and rural areas, and to assure that the state of North Dakota does not lose by default its share of federal highways users' revenue apportioned to it under existing and future Acts of Congress, by amending and reenacting sections 57-52-04, 57-54-08, and 57-54-10 of the North Dakota Century Code, relating to special fuels tax and motor vehicle fuels tax.

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

Section 1. Registration of Soil and Water Conservation Vehicles.) Trucks or combinations of trucks and trailers owned and operated by a bona fide resident of this state, but no more than one truck-tractor and lowboy trailer unit, of a gross weight of 24,001 pounds or more and used exclusively in soil and water conservation work or exclusively for township road construction work that results in direct benefits to agriculture, shall be furnished license plates upon the payment of one-half the annual fees for such corresponding weight as provided in subdivision b of subsection 2 of section 39-04-19.

This section shall not be applicable to any trucks and trailers used in road construction work, the contract for which is in excess of three thousand dollars.

Section 2. Amendment.) Section 57-52-04 of the 1967 Supplement to the North Dakota Century Code as amended by Chapter 376 of the 1967 Session Laws is hereby amended and reenacted to read as follows:

57-52-04. Tax Imposed—Exemptions.) There is hereby levied and imposed an excise tax of seven cents per gallon on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, industrial or railroad purposes shall be exempt from the tax im-

posed by this chapter. Said tax shall attach at the time of sale, delivery, or transfer of title of such special fuel to a special fuel user. Such tax shall be collected from the special fuel user by the special fuel dealer and paid over to the state tax commissioner as hereinafter provided. The tax imposed herein shall be refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-50 relating to the refund of motor fuel taxes shall apply to the tax imposed by this chapter.

Section 3. Amendment.) Section 57-54-08 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

Section 4. Amendment.) Section 57-54-10 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

Approved March 29, 1969.

CHAPTER 536

S. B. No. 243
(Meschke, Decker)

INSPECTION OF TRAILER PARKS FOR
ASSESSMENT PURPOSES

AN ACT

To amend and reenact section 57-55-08 of the 1967 Supplement to the North Dakota Century Code, relating to the duty of local law enforcement agency.

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

Section 1. Amendment.) Section 57-55-08 of the 1967 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 county supervisor of assessments, if one has been appointed, otherwise the sheriff, 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 county supervisor of assessments, if one has been appointed, otherwise the sheriff, 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.

Approved March 17, 1969.

CHAPTER 537

S. B. No. 96
(Becker, Torgerson)

MULTISTATE TAX COMPACT**AN ACT**

To provide for the enactment of the Multistate Tax Compact to provide solutions and additional facilities for dealing with the tax problems precipitated by multistate business, and making an appropriation.

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

Section 1. Multistate Tax Compact.) The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

MULTISTATE TAX COMPACT**ARTICLE I****Purposes**

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

ARTICLE II**Definitions**

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

2. "Subdivision" means any governmental unit or special district of a state.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from

another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.

ARTICLE III

Elements of Income Tax Laws

Taxpayer Option, State and Local Taxes

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities

within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV

Division of Income

1. As used in this article, unless the context otherwise requires:

(a) "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.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(d) "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, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

(h) "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.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. 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 article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, 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. 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 paragraphs 5 through 8 of this article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) 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.

(c) 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. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the

property had a situs in this state at the time of the sale, or (2) 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.

(c) 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 are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) 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.

(b) 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.

(c) 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. 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. 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 dur-

ing 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 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. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator 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. 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 is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) 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

(c) some of the service is performed in the state and (1) 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 (2) 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. 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. Sales of tangible personal property are in this state if:

(a) 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

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

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

(a) the income-producing activity is performed in this state; or

(b) 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. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V

Elements of Sales and Use Tax Laws

Tax Credit

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI

The Commission

Organization and Management

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other coun-

sel shall receive all notices of meetings required under paragraph 1 (e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States,

or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(1) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated

expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its by-laws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII

Uniform Regulations and Forms

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provi-

sions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII

Interstate Audits

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local

government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident; provided, that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this

article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX

Arbitration

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision

with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or

in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X

Entry Into Force and Withdrawal

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI

Effect on Other Laws and Jurisdiction

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or sub-

ject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Section 2. Optional Computation.) Any taxpayer whose income is subject to the apportionment and allocation provisions of chapter 57-38 or chapter 57-38.1 of the North Dakota Century Code shall have the option to elect, under the terms and conditions specified in article III 2 of this Act, to report and pay any income tax due under the provisions of chapter 57-38 of the North Dakota Century Code on the basis of the following rates applied to the taxpayer's gross sales in North Dakota rather than on the basis provided in said chapter 57-38:

On the first \$20,000 of the gross sales in North Dakota, a tax of six-tenths of one percent;

On all gross sales in North Dakota above \$20,000 and not in excess of \$55,000, a tax of eight-tenths of one percent; and

On all gross sales in North Dakota above \$55,000 and

not in excess of \$100,000, a tax of one percent.

Section 3. Membership of Multistate Tax Commission.)

The governor, with the consent of the senate, shall appoint the member of the multistate tax commission to represent the state of North Dakota, from among the persons made eligible by article VI 1 (a) of the compact, or the head of the state tax department shall represent the state of North Dakota on the multistate tax commission.

Section 4. Designation of an Alternate.) The member representing the state of North Dakota on the multistate tax commission may be represented thereon by an alternate designated by him. Any such alternate shall be a principal deputy or assistant of the member of the commission in the agency which the member heads.

Section 5. Legal Counsel.) The chief counsel of the legal and research division of the state tax department or his designee, shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by article VI 1 (a) of section 1 of this Act.

Section 6. Selection of Representatives to Meet with Commission Member.) The governor, after consultation with representatives of local governments, shall appoint three persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact, or the governor shall appoint three persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact, from among persons nominated by the county commissioners' association, county auditors' association, and league of municipalities. The member of the commission representing the state of North Dakota, and any alternate designated by him, shall consult regularly with these appointees, in accordance with article VI 1 (b) of this Act.

Section 7. Multistate Tax Compact Advisory Committee.) There is hereby established a multistate tax compact advisory committee composed of the member of the multistate tax commission representing the state of North Dakota, any alternate designated by him, the chief counsel of the legal and research division of the state tax department or

his designee, and two members of the senate, appointed by the president of the senate and two members of the house, appointed by the speaker thereof. The chairman shall be the member of the commission representing the state of North Dakota on the multistate tax commission. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in representing the state of North Dakota thereon.

Section 8. Interaudits.) Article VIII of the multistate tax compact relating to interaudits shall be in force in and with respect to the state of North Dakota.

Section 9. Appropriation.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$6,800.00 or so much thereof as may be necessary, to the North Dakota state tax department to pay the necessary expenses for North Dakota's cooperation and participation in the multistate tax commission for the biennium beginning July 1, 1969, and ending June 30, 1971.

Approved March 8, 1969.