

**HOUSE BILL NO. 1063**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 57-36-09.4, 57-38-60.2, 57-39.2-15.2,  
2 57-40.2-15.1, 57-40.2-15.2, 57-43.1-17.3, 57-43.2-16.2, and 57-43.3-21 of the North Dakota  
3 Century Code, relating to the personal liability of members in a member-controlled limited  
4 liability company for unpaid tobacco products, income withholding, sales or use, motor vehicle  
5 fuel, importer for use, special fuels, and aviation fuel taxes; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 57-36-09.4 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **57-36-09.4. Governor and manager liability.**

- 10 1. If a limited liability company holding a license issued under this chapter fails for any  
11 reason to file the required returns or to pay the taxes due under this chapter, the  
12 governors ~~or~~, managers, or members of a member-controlled limited liability  
13 company, jointly or severally, charged with the responsibility of supervising the  
14 preparation of ~~such~~ the returns and payments, are personally liable for ~~such~~ the  
15 failure. The dissolution of a limited liability company does not discharge a  
16 governor's ~~or~~, manager's, or member's liability for a prior failure of the limited  
17 liability company to file a return or remit the tax due. The taxes, penalty, and  
18 interest may be assessed and collected under the provisions of this chapter.
- 19 2. If the governors ~~or~~, managers, or members elect not to be personally liable for the  
20 failure to file the required returns or to pay the tax due, the limited liability company  
21 must be required to make a cash deposit or post with the tax commissioner a bond  
22 or undertaking executed by a surety company authorized to do business in this  
23 state. The cash deposit, bond, or undertaking provided for in this section must be

1           in an amount equal to the estimated annual tobacco products tax liability of the  
2           limited liability company.

3           **SECTION 2. AMENDMENT.** Section 57-38-60.2 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **57-38-60.2. Governor and manager liability.**

- 6           1. If a limited liability company is an employer and fails for any reason to file the  
7           required returns or to pay the tax due, the governors ~~or~~, managers, or members of  
8           a member-controlled limited liability company, jointly or severally, charged with the  
9           responsibility of the preparation of ~~such~~ the returns and payments are personally  
10          liable for such failure. The dissolution of a limited liability company does not  
11          discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the  
12          limited liability company to file a return or remit the tax due. The taxes, penalty,  
13          and interest may be assessed and collected pursuant to the provisions of this  
14          chapter.
- 15          2. If the governors ~~or~~, managers, or members elect not to be personally liable for the  
16          failure to file the required returns or to pay the tax due, the limited liability company  
17          must be required to make a cash deposit or post with the tax commissioner a bond  
18          or undertaking executed by a surety company authorized to do business in this  
19          state. The cash deposit, bond, or undertaking provided for in this section must be  
20          in an amount equal to the estimated annual income tax withholding liability of the  
21          limited liability company.

22          **SECTION 3. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code  
23 is amended and reenacted as follows:

24          **57-39.2-15.2. Governor and manager liability.**

- 25          1. If a limited liability company required to hold a permit under this chapter fails for  
26          any reason to file the required returns or to pay the taxes due under this chapter,  
27          the governors ~~or~~, managers, or members of a member-controlled limited liability  
28          company, jointly or severally, charged with the responsibility of supervising the  
29          preparation of the returns and payments are personally liable for the failure. The  
30          dissolution of a limited liability company does not discharge a governor's ~~or~~,  
31          manager's, or member's liability for a prior failure of the limited liability company to

1 file a return or remit the tax due. The taxes, penalty, and interest may be assessed  
2 and collected under the provisions of this chapter.

3 2. If the governors ~~or~~, managers, or members elect not to be personally liable for the  
4 failure to file the required returns or to pay the tax due, the limited liability company  
5 must be required to make a cash deposit or post with the tax commissioner a bond  
6 or undertaking executed by a surety company authorized to do business in this  
7 state. The cash deposit, bond, or undertaking provided for in this section must be  
8 in an amount equal to the estimated annual sales tax liability of the limited liability  
9 company.

10 **SECTION 4. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code  
11 is amended and reenacted as follows:

12 **57-40.2-15.1. Corporate officer liability.**

13 1. If a corporation fails for any reason to file the required returns or to pay the tax due  
14 under this chapter, the president, vice president, secretary, or treasurer of the  
15 corporation, jointly or severally, having control or supervision of, or charged with  
16 the responsibility for making the returns and payments are personally liable for the  
17 failure. The dissolution of a corporation does not discharge an officer's liability for  
18 a prior failure of the corporation to make a return or remit the tax due. The sum  
19 due for the liability may be assessed and collected pursuant to the provisions of  
20 this chapter for the assessment and collection of other liabilities.

21 2. If the corporate officers, governors, ~~or~~ managers, or members of a  
22 member-controlled limited liability company elect not to be personally liable for the  
23 failure to file the required returns or to pay the tax due, the corporation or limited  
24 liability company must be required to make a cash deposit or post with the tax  
25 commissioner a bond or undertaking executed by a surety company authorized to  
26 do business in this state. The cash deposit, bond, or undertaking provided for in  
27 this section must be in an amount equal to the estimated annual use tax liability of  
28 the corporation or limited liability company.

29 **SECTION 5. AMENDMENT.** Section 57-40.2-15.2 of the North Dakota Century Code  
30 is amended and reenacted as follows:

1           **57-40.2-15.2. Governor and manager liability.** If a limited liability company fails for  
2 any reason to file the required returns or to pay the taxes due under this chapter, the governor  
3 ~~or,~~ manager, or member of a member-controlled limited liability company, jointly or severally  
4 charged with the responsibility of supervising the preparation of the returns and payments, is  
5 personally liable for the failure. The dissolution of a limited liability company does not discharge  
6 a governor's ~~or,~~ manager's, or member's liability for a prior failure of the limited liability  
7 company to file a return or remit the tax due. The sum due for such a liability may be assessed  
8 and collected under the provisions of this chapter.

9           **SECTION 6. AMENDMENT.** Section 57-43.1-17.3 of the North Dakota Century Code  
10 is amended and reenacted as follows:

11           **57-43.1-17.3. Governor and manager liability.**

- 12           1. If a limited liability company holding a license issued under this chapter fails for any  
13 reason to file the required returns or to pay the taxes due under this chapter, the  
14 governors ~~or,~~ managers, or members of a member-controlled limited liability  
15 company, jointly or severally, charged with the responsibility of supervising the  
16 preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the  
17 failure. The dissolution of a limited liability company does not discharge a  
18 governor's ~~or,~~ manager's, or member's liability for a prior failure of the limited  
19 liability company to file a return or remit the tax due. The taxes, penalty, and  
20 interest may be assessed and collected under the provisions of this chapter.
- 21           2. If the governors ~~or,~~ managers, or members elect not to be personally liable for the  
22 failure to file the required returns or to pay the tax due, the limited liability company  
23 must be required to make a cash deposit or post with the tax commissioner a bond  
24 or undertaking executed by a surety company authorized to do business in this  
25 state. The cash deposit, bond, or undertaking provided for in this section must be  
26 in an amount equal to the estimated annual motor vehicle fuel tax liability of the  
27 limited liability company.

28           **SECTION 7. AMENDMENT.** Section 57-43.2-16.2 of the North Dakota Century Code  
29 is amended and reenacted as follows:

30           **57-43.2-16.2. Governor and manager liability.**

- 1           1. If a limited liability company holding a license issued under this chapter fails for any  
2           reason to file the required returns or to pay the taxes due under this chapter, the  
3           governors ~~or~~, managers, or members of a member-controlled limited liability  
4           company, jointly or severally, charged with the responsibility of supervising the  
5           preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the  
6           failure. The dissolution of a limited liability company does not discharge a  
7           governor's ~~or~~, manager's, or member's liability for a prior failure of the limited  
8           liability company to file a return or remit the tax due. The taxes, penalty, and  
9           interest may be assessed and collected pursuant to the provisions of this chapter.  
10          2. If the governors ~~or~~, managers, or members elect not to be personally liable for the  
11          failure to file the required returns or to pay the tax due, the limited liability company  
12          must be required to make a cash deposit or post with the tax commissioner a bond  
13          or undertaking executed by a surety company authorized to do business in this  
14          state. The cash deposit, bond, or undertaking provided for in this section must be  
15          in an amount equal to the estimated annual special fuel tax liability of the limited  
16          liability company.

17           **SECTION 8. AMENDMENT.** Section 57-43.3-21 of the North Dakota Century Code is  
18          amended and reenacted as follows:

19           **57-43.3-21. Governor and manager liability.** If a limited liability company holding a  
20          license issued under this chapter fails for any reason to file the required returns or to pay the  
21          taxes due under this chapter, the governor ~~or~~, manager, or member of a member-controlled  
22          limited liability company, jointly or severally, charged with the responsibility of supervising the  
23          preparation of ~~such~~ the returns and payments, is personally liable for ~~such~~ the failure. The  
24          dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or  
25          member's liability for a prior failure of the limited liability company to file a return or remit the tax  
26          due. The taxes, penalty, and interest may be assessed and collected pursuant to the  
27          provisions of this chapter.

28           **SECTION 9. EFFECTIVE DATE.** This Act is effective for taxable periods beginning  
29          after December 31, 2000.