

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1063
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact sections 57-36-09.4, 57-38-60.2, 57-39.2-15.2, 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 Century Code, relating to the personal liability of members in a member-controlled limited liability company for unpaid tobacco products, income withholding, sales or use, motor vehicle fuel, importer for use, special fuels, and aviation fuel taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

57-36-09.4. Governor and manager liability.

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

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

57-38-60.2. Governor and manager liability.

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

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

57-39.2-15.2. Governor and manager liability.

1. If a limited liability company required to hold a permit under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors ~~or~~, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the limited liability company.

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

57-40.2-15.1. Corporate officer liability.

1. If a corporation fails for any reason to file the required returns or to pay the tax due under this chapter, the president, vice president, secretary, or treasurer of the corporation, jointly or severally, having control or supervision of, or charged with the responsibility for making the returns and payments are personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for the liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers, governors, ~~or~~ managers, or members of a member-controlled limited liability company elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual use tax liability of the corporation or limited liability company.

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

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

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

57-43.1-17.3. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors ~~or~~,

managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such the~~ returns and payments are personally liable for ~~such the~~ failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

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

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

57-43.2-16.2. Governor and manager liability.

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

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

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1063.

House Vote: Yeas 97 Nays 0 Absent 1

Senate Vote: Yeas 46 Nays 1 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State