

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2060

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subsection 2 of section 57-38-45, subsection 1 of
2 section 57-39.2-18, and subsection 1 of section 57-40.2-15 of the North Dakota Century Code,
3 relating to penalties for income tax and sales or use tax purposes; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subsection 2 of section 57-38-45 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject
8 to ~~additions to tax and~~ penalty penalties as follows:

9 a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
10 fail to pay the amount shown as tax due on any return, including tax withheld
11 by an employer, filed on or before the due date or extended due date
12 prescribed therefor, there shall be added to the tax a penalty of five percent
13 thereof, or five dollars, whichever is greater.

14 b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
15 fail to file a return, including the employer's withheld tax return, on or before
16 the due date or extended due date prescribed therefor, there shall be added a
17 penalty equal to five percent of the tax required to be reported, or five dollars,
18 whichever is greater, if the failure is for not more than one month, counting
19 each fraction of a month as an entire month, with an additional five percent for
20 each additional month or fraction thereof during which the failure continues,
21 not exceeding twenty-five percent in the aggregate.

22 c. If upon audit of a taxpayer's return, including tax withheld by an employer, an
23 additional tax is found to be due, there shall be added to the tax penalty as
24 prescribed in subdivision a or b.

- 1 d. If the mathematical verification of a taxpayer's return, including tax withheld
2 by an employer, results in additional tax due, there shall be added to the tax
3 penalty as prescribed in subdivision a or b.
- 4 e. The provisions of subdivision a, b, c, or d do not apply to the extent it has
5 been determined that the taxpayer has offsetting overpayments of income
6 taxes which have not been refunded.
- 7 f. ~~An employer, required to file returns under subsection 1 of section 57-38-60,~~
8 ~~with four to eight delinquent original tax returns or payments is subject to a~~
9 ~~penalty of ten percent of the tax due or twenty five dollars, whichever is~~
10 ~~greater. An employer with nine or more delinquent original returns or~~
11 ~~payments is subject to a penalty of fifteen percent of the tax due or one~~
12 ~~hundred dollars, whichever is greater.~~

13 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-18 of the North Dakota
14 Century Code is amended and reenacted as follows:

- 15 1. a. If any person fails to file a return or corrected return or to pay any tax within
16 the time required by this chapter or, if upon audit, is found to owe additional
17 tax, the person is subject to ~~a penalty of five percent of the amount of tax due~~
18 ~~or of five dollars, whichever is greater, plus interest of one percent of the tax~~
19 ~~per month or fraction of a month of delay except the first month after the~~
20 ~~return or the tax became due. Any person on a monthly filing schedule with~~
21 ~~seven to fourteen delinquent original returns or payments, and any person~~
22 ~~other than a monthly filer with four to eight delinquent original returns or~~
23 ~~payments, is subject to a penalty of ten percent of the tax due or twenty five~~
24 ~~dollars, whichever is greater, plus interest of one percent of the tax per month~~
25 ~~or fraction of a month of delay except the first month after the return or the tax~~
26 ~~became due. Any person on a monthly filing schedule with fifteen or more~~
27 ~~delinquent original returns or payments, and any person other than a monthly~~
28 ~~filer with nine or more delinquent original returns or payments, is subject to a~~
29 ~~penalty of fifteen percent of the tax due or one hundred dollars, whichever is~~
30 ~~greater, plus interest of one percent of the tax due per month or fraction of a~~
31 ~~month of delay except the first month after the return or the tax became due.~~

- 1 **b.** In addition to the tax and interest prescribed in this chapter, a taxpayer is
2 subject to penalties as follows:
- 3 (1) If any taxpayer, without intent to evade any tax imposed by this
4 chapter, fails to file a return, on or before the prescribed or extended
5 due date, a penalty equal to five percent of the tax required to be
6 reported, or five dollars, whichever is greater, must be added if the
7 failure is for not more than one month, counting each fraction of a
8 month as an entire month, with an additional five percent for each
9 additional month or fraction of a month during which the failure
10 continues, not exceeding twenty-five percent in the aggregate.
- 11 (2) If any taxpayer, without intent to evade any tax imposed by this
12 chapter, fails to pay the amount shown as tax due on any return, filed
13 on or before the prescribed or extended due date, a penalty of five
14 percent of the tax due, or five dollars, whichever is greater, must be
15 added to the tax.
- 16 (3) If upon audit of a taxpayer's return an additional tax is found to be due,
17 penalty as prescribed in subdivision a or b must be added to the tax.
- 18 (4) The commissioner, if satisfied that the delay was excusable, may
19 waive, and if paid, refund all or any part of the penalty and interest.
20 The penalty and interest must be paid to the commissioner and
21 disposed of in the same manner as other receipts under this chapter.
22 Unpaid penalties and interest may be enforced in the same manner as
23 the tax imposed by this chapter.

24 **SECTION 3. AMENDMENT.** Subsection 1 of section 57-40.2-15 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 1. a. Any person failing to file a return or corrected return or to pay any tax
27 imposed pursuant to under this chapter, within the time required by this
28 chapter, is subject to a ~~penalty of five percent of the amount of tax due or of~~
29 ~~five dollars, whichever is greater, plus~~ interest of one percent of the tax for
30 each month or fraction of a month except the first month after the return or the
31 tax became due. ~~Any person on a monthly filing schedule with seven to~~

1 ~~fourteen delinquent original returns or payments, and any person other than a~~
2 ~~monthly filer with four to eight delinquent original returns or payments, is~~
3 ~~subject to a penalty of ten percent of the tax due or twenty five dollars,~~
4 ~~whichever is greater, plus interest of one percent of the tax per month or~~
5 ~~fraction of a month of delay except the first month after the return or tax~~
6 ~~became due. Any person on a monthly filing schedule with fifteen or more~~
7 ~~delinquent returns or payments, and any person other than a monthly filer~~
8 ~~with nine or more delinquent original returns or payments, is subject to a~~
9 ~~penalty of fifteen percent of the tax due or one hundred dollars, whichever is~~
10 ~~greater, plus interest of one percent of the tax due per month or fraction of a~~
11 ~~month of delay except the first month after the return or tax became due.~~

12 b. In addition to the tax and interest prescribed in this chapter, a taxpayer is
13 subject to penalties as follows:

14 (1) If any taxpayer, without intent to evade any tax imposed by this
15 chapter, fails to file a return, on or before the prescribed or extended
16 due date, a penalty equal to five percent of the tax required to be
17 reported, or five dollars, whichever is greater, must be added if the
18 failure is for not more than one month, counting each fraction of a
19 month as an entire month, with an additional five percent for each
20 additional month or fraction of a month during which the failure
21 continues, not exceeding twenty-five percent in the aggregate.

22 (2) If any taxpayer, without intent to evade any tax imposed by this
23 chapter, fails to pay the amount shown as tax due on any return, filed
24 on or before the prescribed or extended due date, a penalty of five
25 percent of the tax due, or five dollars, whichever is greater, must be
26 added to the tax.

27 (3) If upon audit of a taxpayer's return an additional tax is found to be due,
28 penalty as prescribed in subdivision a or b must be added to the tax.

29 (4) The commissioner, if satisfied that the delay was excusable, may
30 wave, and if paid, refund all or any part of the penalty and interest.
31 The penalty and interest must be paid to the commissioner and

1 disposed of in the same manner as the tax with respect to which it is
2 attached. Unpaid penalties and interest may be enforced in the same
3 manner as is the tax.