

TAXATION

CHAPTER 513

SENATE BILL NO. 2350

(Senators Holmberg, Christenson, Espegard)
(Representatives Delmore, Svedjan, Warnke)

STATE PROPERTY UNDER LEASE TAX STATUS

AN ACT to amend and reenact section 57-02-26 of the North Dakota Century Code, relating to assessment of property taxes on certain state property held under a lease; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁵ **SECTION 1. AMENDMENT.** Section 57-02-26 of the North Dakota Century Code is amended and reenacted as follows:

57-02-26. Certain property taxable to lessee or equitable owner - Exception.

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes or upon which the state makes payments in lieu of property taxes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, must be considered, for all purposes of taxation, as the property of the person so holding the same.
2. Property held under an easement or a lease for a term of years and any improvements upon that property which are used for any purpose relating to discovery, exploration, processing, or transportation of oil or gas must be considered the property of the lease or easement holder. For the purposes of this subsection, "improvements" does not include property subject to the provisions of chapter 57-06 or property subject to the in lieu of ad valorem tax provisions of chapter 57-51.
3. Property owned by the state and held under a lease and any structure, fixture, or improvement located on that property is not taxable to the leaseholder if the structure, fixture, or improvement is used primarily for athletic and educational purposes at any state institution of higher education.

²³⁵ Section 57-02-26 was also amended by section 36 of Senate Bill No. 2046, chapter 48.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved April 11, 2003
Filed April 14, 2003

CHAPTER 514

SENATE BILL NO. 2390

(Senators O'Connell, Nichols)
(Representatives Herbel, D. Johnson, Solberg)

CAPITALIZATION RATE FOR AGRICULTURAL VALUATION

AN ACT to amend and reenact subsection 4 of section 57-02-27.2 of the North Dakota Century Code, relating to the capitalization rate for valuation of agricultural property for property tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross ~~federal land bank~~ agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than nine and one-half percent. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross ~~federal land bank~~ agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 25, 2003

Filed March 26, 2003

CHAPTER 515

HOUSE BILL NO. 1348

(Representatives M. Klein, Carlson)
(Senators Mutch, Urlacher)

ELECTRIC TRANSMISSION LINE MILEAGE TAX

AN ACT to create and enact a new subsection to section 57-06-02 and a new section to chapter 57-06 of the North Dakota Century Code, relating to property tax exemption for new or expanded capacity electric transmission lines; to amend and reenact subsection 2 of section 57-33.1-02 of the North Dakota Century Code, relating to application of the electric transmission lines mileage tax for cooperatives; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-06-02 of the North Dakota Century Code is created and enacted as follows:

"Transmission line" means a line to transmit electrical energy which operates at a voltage of forty-one and six-tenths kilovolts or more but does not include a line owned or operated by an agency or instrumentality of the United States government.

SECTION 2. A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

New transmission line property tax exemption. A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and property taxes as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

1. Seventy-five percent for the second taxable year of operation of the transmission line.
2. Fifty percent for the third taxable year of operation of the transmission line.
3. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to the same manner of imposition and allocation as the tax imposed by subsection 2 of section 57-33.1-02.

For purposes of this section, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line,

and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

SECTION 3. AMENDMENT. Subsection 2 of section 57-33.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. In addition to the tax imposed under subsection 1, the commissioner shall levy a tax upon transmission lines of two hundred thirty kilovolts or larger, owned by cooperatives subject to the provisions of this chapter and chapter 57-60 and carrying electrical energy the gross receipts or production of which have been subjected to the tax imposed by subsection 1 of this section or subsections 2 and 3 of section 57-60-02, at the rate of two hundred twenty-five dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state, except that the rate of tax under this subsection for a transmission line of two hundred thirty kilovolts or larger which is initially placed in service on or after October 1, 2002, is three hundred dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state. The tax imposed under this subsection does not apply to a transmission line initially placed in service on or after October 1, 2002, for the first taxable year after the line is initially placed in service, and the tax imposed under this subsection on a transmission line initially placed in service on or after October 1, 2002, must be reduced by:
 - a. Seventy-five percent for the second taxable year of operation of the transmission line.
 - b. Fifty percent for the third taxable year of operation of the transmission line.
 - c. Twenty-five percent for the fourth taxable year of operation of the transmission line.

The tax imposed by this subsection is in lieu of any property tax on such lines and any substation used in delivering electrical energy, the gross receipts or production of which have been subjected to the tax imposed by subsection 1 or subsections 2 and 3 of section 57-60-02. The proceeds derived from the taxing of transmission lines must be allocated to each county in which such transmission lines are located in the proportion that the miles [kilometers] of such lines in a county bear to the total miles [kilometers] of such transmission lines located within this state. Revenues received by each county must be deposited in the county general fund.

For purposes of this subsection, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line, and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 516

HOUSE BILL NO. 1024

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

COUNTY MILL LEVY CONSOLIDATION

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to optional consolidation of county mill levies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Optional consolidation of county mill levies.

1. In lieu of determining its general fund levy limitation under section 57-15-01.1 or 57-15-06, a county may determine its general fund levy authority as provided in this section. A county may consolidate the levies provided for under sections 4-02-26, 4-02-27, 4-02-27.1, 4-02-27.2, 4-02-37, 4-08-15, 4-08-15.1, 4-16-02, 4-33-11, 11-11-24, 11-11-53, 11-11-60, 11-11-65, 11-11.1-06, 11-28-06, 18-07-01, 24-05-01, 32-12.1-08, 40-38-02, 40-57.2-04, 49-17.2-21, 52-09-08, 57-15-06.4, 57-15-06.5, 57-15-06.6, 57-15-06.9, 57-15-10.1, 57-15-27.2, 57-15-54, 57-15-59, 57-47-04, 61-04.1-26, and 63-01.1-06 with its general fund levy under section 57-15-06 to provide for a county general fund levy which may not exceed one hundred thirty-four mills on the dollar of taxable valuation of the county. A county that elects to determine its general fund levy authority under this section may not impose separate levies under the sections listed in this subsection and may not increase the number of mills levied in any one year over the number levied in the previous year by more than the increase in the consumer price index for all urban consumers, all items, United States city average, as completed by the United States department of labor, bureau of labor statistics.
2. The consolidation of mill levies under subsection 1 may be accomplished by resolution of the board of county commissioners, subject to the right of referendum by the county electors. The board of county commissioners may by majority vote adopt a preliminary resolution providing for the consolidated levy. The board shall publish the preliminary resolution in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold at least one public hearing and receive comments regarding the consolidation of mill levies. The preliminary resolution may be referred to the qualified electors of the county by a petition protesting the consolidation. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor before four p.m. on the ninetieth day after the preliminary resolution is adopted. If the petition contains the signatures

of a sufficient number of qualified electors, the board of county commissioners shall rescind the preliminary resolution or submit the resolution to a vote of the qualified electors of the county at the next regular election or at a special election called by the board of county commissioners to address the question. If a majority of the qualified electors voting on the question approve the resolution, the consolidation becomes effective for the next tax year and subsequent tax years. If a petition protesting the consolidation is not submitted within ninety days, the board of county commissioners shall consider the comments received regarding the consolidation and either adopt a final resolution implementing the consolidation or rescind the preliminary resolution. The consolidation of mill levies may be reversed by resolution of the board of county commissioners following the same procedure provided for implementation of the consolidation or by a majority vote of the qualified electors of the county voting on the question pursuant to submission of a petition to reverse the consolidation signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election.

3. A contractual obligation entered by a county with respect to a dedicated mill levy may not be impaired as a result of consolidation of levies under this section.

Approved April 4, 2003

Filed April 7, 2003

CHAPTER 517

HOUSE BILL NO. 1058

(Representatives Eckre, Williams, Kretschmar)
(Senators Thane, Heitkamp, Cook)

RELEVY OF OMITTED PROPERTY TAXES

AN ACT to amend and reenact section 57-15-63 of the North Dakota Century Code, relating to relevy by a taxing district of property taxes omitted by mistake; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-63 of the North Dakota Century Code is amended and reenacted as follows:

57-15-63. (Effective through December 31, ~~2005~~ 2008) Mistake in levy - Levy increase ~~the following in later year~~ - Levy reverts.

1. Notwithstanding sections 57-15-01.1 and 57-15-14, if a mistake occurred in the ~~2000~~ 2001 tax year which would result in ~~ten~~ seven percent or more of the amount a taxing district intended to be levied, as of the October tenth deadline under section 57-15-31.1, not being levied and the mistake is brought to the attention of the county auditor or county treasurer of any county with land in the taxing district by February 1, ~~2004~~ 2002, the taxing district may include ~~half of~~ the amount which was mistakenly not levied in the taxing district's budget and general fund levy for ~~the 2004~~ a single tax year, ~~and the other half that was mistakenly not levied in the taxing district's budget and general fund for the 2002 tax year~~ or spread among one or more tax years, in tax years 2004 through 2008.
2. If the resulting general fund levy for the ~~2004 or 2002~~ tax year is above one hundred eighty-five mills, the taxing district need not comply with chapter 57-16.
3. After ~~the 2002~~ a tax year in which a taxing district's levy increase authority under this section is exhausted, the taxing district's general fund levy must revert to the general fund levy ~~for the 1999 tax year~~ as it would have been determined without application of this section, plus any increase authorized by law or the taxing district may elect to apply subsection 5 to determine its general fund levy limitation.
4. ~~The 2004 and 2002~~ Before any taxable years year may ~~not~~ be used as a "base year" under section 57-15-01.1 ~~and may not be considered~~ or a "prior school year" under section 57-15-14, any amount included in that taxable year's levy under this section must be deducted.
5. A taxing district that used this section to determine its general fund levy for 2001 or 2002 may use the amount it intended to levy in the 2000 tax year as its "base year" under section 57-15-01.1 or as its "prior school year" under section 57-15-14.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 2002, and before December 31, 2008, and is thereafter ineffective.

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 518

HOUSE BILL NO. 1338

(Representatives Thoreson, Carlisle, Iverson)
(Senators Mathern, Schobinger)

PROPERTY TAX ABATEMENT PENALTY REFUNDS

AN ACT to amend and reenact sections 57-20-22, 57-23-08, 57-23-09, and 57-55-12 of the North Dakota Century Code, relating to refund of penalties and interest on any abated property taxes or mobile home taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-20-22 of the North Dakota Century Code is amended and reenacted as follows:

57-20-22. Disposition of penalty and interest. All penalties on general taxes and interest on certificates of sale issued, or deemed to be issued to the county, or tax liens against the property belong to the county and become a part of the general fund or of ~~such~~ any other fund as the county commissioners may direct, except penalties and interest collected on ~~the following items:~~

- 1- ~~Taxes~~ taxes and parts of taxes due to townships, cities, school districts, and park districts; and
- 2- ~~Special on special~~ assessments for public improvements, which must be paid to the municipality levying the same, or whatever other taxing district or agency thereof is entitled to the original amount of ~~such~~ the taxes or assessments.

SECTION 2. AMENDMENT. Section 57-23-08 of the North Dakota Century Code is amended and reenacted as follows:

57-23-08. Duties of county auditor and county commissioners after abatement action. After the granting of any application for abatement or refund or compromise of any tax, the county auditor shall correct all tax lists in accordance with the order of abatement or compromise, and the applicant is relieved of further liability for the tax abated or compromised and any penalties and interest on the abated or compromised portion of the tax. If the board of county commissioners disapproves any application for abatement or refund or compromise, in whole or in part, the reasons for disapproval must be stated thereon, and the applicant may appeal the rejection of the application for abatement or refund or compromise as provided by law.

SECTION 3. AMENDMENT. Section 57-23-09 of the North Dakota Century Code is amended and reenacted as follows:

57-23-09. Procedure when refund is made. When any application for refund is granted, the county auditor shall issue and deliver to the applicant a warrant drawn on the county treasurer for the amount ordered refunded, and the county treasurer shall refund the same, and shall write opposite such tax in the treasurer's list the word "refund", with the date and the number of the warrant. The amount so refunded must be charged to the state, county, city, township, school district, ~~or~~ park

district, or any other taxing district, which may have received any part of such money, in proportion to the levies for the year for which the tax was extended. The refund must include any penalties and interest previously paid on the portion of any tax abated or compromised.

SECTION 4. AMENDMENT. Section 57-55-12 of the North Dakota Century Code is amended and reenacted as follows:

57-55-12. Refunds.

1. The owner of any mobile home who has paid, through mistake or otherwise, a greater amount of tax or penalty and interest than was justly due may apply for an abatement or refund under chapter 57-23 and a refund of the unjust portion paid. The county auditor and treasurer shall charge all refunds against the taxing districts to which the collection was credited.
2. If the owner of a mobile home has paid the full amount of taxes due under this chapter and thereafter during the current year such mobile home has been demolished or destroyed beyond repair by fire, windstorm, or flood, the owner is entitled to a refund under subsection 1.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 519

SENATE BILL NO. 2400

(Senator Christmann)

(Representatives Headland, Wrangham)

EASEMENT SURVIVAL AFTER TAX FORECLOSURE

AN ACT to amend and reenact subsection 2 of section 57-28-04 and sections 57-28-08 and 57-28-09 of the North Dakota Century Code, relating to survival of an easement or right of way on property upon acquisition by the county through tax foreclosure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-28-04 of the North Dakota Century Code is amended and reenacted as follows:

2. By March first, the county auditor shall request from the recorder and the clerk of the district court a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property except a person whose only interest is in an easement or right of way recorded, or a mineral interest that was severed from the surface estate, before filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax lien relates, upon whom the notice of foreclosures must be served. The recorder and the clerk of the district court shall provide the county auditor with the requested lists by April fifteenth following the request.

SECTION 2. AMENDMENT. Section 57-28-08 of the North Dakota Century Code is amended and reenacted as follows:

57-28-08. Effect of failure to satisfy tax lien. The failure of the owner, any mortgagee, or other lienholder to satisfy the tax lien before the date of foreclosure shall:

1. Pass any interest of the owner, mortgagee, or lienholder in the property to the county. The interest acquired by the county is subject ~~only~~ to the lien for installments of special assessments certified to the county auditor or which may become due after the service of the notice of foreclosure of tax lien. The interest acquired by the county is subject to an easement or right of way recorded with an effective date that precedes the date of official notice to the record titleholder which states that property taxes are delinquent and constitute a property lien.
2. Foreclose all rights of satisfaction.
3. Waive all errors, irregularities, or omissions which do not affect the substantial rights of the parties, except jurisdictional defects.

SECTION 3. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the date of foreclosure for property with an unsatisfied tax lien, the county auditor shall issue a tax deed to the county or, in cases in which the state engineer has made an assessment against the property under section 61-03-21.3, the county auditor shall issue a tax deed to the state or, if the property was sold by another political subdivision of this state within the ten years preceding the foreclosure, the county auditor shall issue a tax deed to that political subdivision. The tax deed passes the property in fee to the county, the state, or political subdivision, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of foreclosure of tax lien ~~and except for~~, a homestead credit for special assessments lien provided for in section 57-02-08.3, and an easement or right of way recorded with an effective date that precedes the date of official notice to the record titleholder which states that property taxes are delinquent and constitute a property lien. While the county, the state, or political subdivision holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners, the state, or political subdivision has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 520

HOUSE BILL NO. 1492

(Representatives Monson, Froelich, D. Johnson, Nelson)
(Senators Nichols, Trenbeath)

TAX SALE BIDDER DISQUALIFICATION

AN ACT to create and enact a new section to chapter 57-28 of the North Dakota Century Code, relating to filing of tax delinquencies in the central notice system; and to amend and reenact subsection 1 of section 54-09-09 and section 57-28-15 of the North Dakota Century Code, relating to bidders at annual sales of land acquired by tax deeds and tax delinquency filings in the central notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-09-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall maintain a computerized central indexing system that contains the information filed with the office of the secretary of state or with any of the offices of the recorder in this state pursuant to sections 35-13-02, 35-17-04, 35-20-16, 35-30-02, 35-31-02, 35-34-04, 35-34-06, 41-09-72, section 3 of this Act, 57-38-49, 57-39.2-13, 57-40.2-16, 57-40.3-07.1, 57-43.1-17.4, 57-43.2-16.3, and 57-51-11. The system must connect each recorder's office to the secretary of state's office through the information technology department. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information technology department. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state.

SECTION 2. AMENDMENT. Section 57-28-15 of the North Dakota Century Code is amended and reenacted as follows:

57-28-15. Annual sale at auction - Sale price - Terms of payment. The annual sale must be conducted in the following manner:

1. Each parcel of land must be sold at auction to the highest qualified bidder for no less than the minimum sale price as fixed before the sale. The sale may be made either for cash or one-fourth of the purchase price in cash, and the balance in equal annual installments over a period of not more than ten years. The purchaser may pay any or all annual installments with interest before the agreed due date of the installments.
2. If the sale is for cash, the purchaser shall promptly pay the amount bid to the county treasurer.

3. If the purchase price is to be paid in installments, the purchaser shall pay the first installment to the county treasurer and be given a contract for deed setting forth the terms of the sale. The contract for deed must be executed by the purchaser, the chairman of the board of county commissioners, and the county auditor. The contract must be in a form prescribed by the state tax commissioner. The contract must give the county the right to cancel the contract by resolution and due notice upon default by the purchaser.
4. The original contract for deed must be filed with the county treasurer, who shall record upon it all payments made by the purchaser. The interest rate for the contract must be established by the board of county commissioners at no more than twelve percent.
5. Upon completion of a cash sale or payments under a contract for deed, the county auditor shall execute and deliver a deed conveying to the purchaser the entire interest of the county in the property.
6. Upon the execution and delivery of the deed or contract for deed, the property becomes taxable to the purchaser.
7. A person is unqualified to be the highest bidder for property if the person owes delinquent taxes to any county.

SECTION 3. A new section to chapter 57-28 of the North Dakota Century Code is created and enacted as follows:

Notice of tax delinquency - Central indexing system. The secretary of state shall prescribe a form to be used by county officials when notices of delinquent taxes owed to a county are entered in the central indexing system.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 521

SENATE BILL NO. 2286

(Senators Erbele, Robinson, Urlacher)
(Representatives M. Klein, Solberg, Wrangham)

COOPERATIVE GROSS RECEIPTS REPORTING

AN ACT to amend and reenact section 57-33-03 of the North Dakota Century Code, relating to reporting of cooperative gross receipts for purposes of taxation of rural electric cooperatives; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-33-03 of the North Dakota Century Code is amended and reenacted as follows:

57-33-03. Report of gross receipts. Each cooperative annually on or before May first in each year shall file a report with the tax commissioner in such form and containing such information as the tax commissioner may prescribe and demand. Such report must state the amount of gross receipts derived during the preceding calendar year. Gross receipts derived from the sale of a capital asset do not have to be reported. Each such cooperative at the same time shall file with the county auditor of each county within which any of its lines are located a report giving the length of the line or lines within each taxing district in said county and the total length of its lines within the county as of January first of that year. The county auditor may require a map to be filed, showing the length of the lines within each taxing district of said county. To facilitate the making of such maps, the county auditor shall furnish each cooperative an accurate map of the county showing the boundaries of each taxing district. A cooperative that does not own and operate an electric generation plant and which purchases electric energy for resale to cooperatives subject to taxation under this chapter shall include in its report to the tax commissioner the cost and amount of all electric energy purchased for resale. The cost of electric energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's tax liability under this chapter. A cooperative that purchases wind power for resale to others from a North Dakota wind energy facility subject to centrally assessed property taxation shall include in its report to the tax commissioner the cost and amount of all such wind energy purchased for resale. The cost of such wind energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's tax liability under this chapter.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 522

HOUSE BILL NO. 1105

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

TELECOMMUNICATIONS TAX DEFINITIONS AND REFUNDS

AN ACT to amend and reenact subsection 6 of section 57-34-01, subsection 2 of section 57-34-03, sections 57-34-04.3 and 57-34-05, and subsection 1 of section 57-34-10 of the North Dakota Century Code, relating to the definition of mobile telecommunications service, refunds to retail customers, refunds to telecommunications carriers, deposit of telecommunications carriers gross receipts tax revenues, and waiver of penalty for failure to report; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
 - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; ~~and~~
 - d. Mobile telecommunications service that is deemed to be provided by the customer's home service provider under chapter 57-34.1, regardless of where the mobile telecommunications service originates, terminates, or passes through; and
 - e. Telegraph service.

SECTION 2. AMENDMENT. Subsection 2 of section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A telecommunications carrier's retail customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before ~~July first~~ December thirty-first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax

commissioner. The tax commissioner shall verify that the telecommunications carrier to which the retail customer paid telecommunications service charges has paid the telecommunications gross receipts tax for the year for which the refund is claimed before a refund may be paid. Refunds under this subsection must be paid by the tax commissioner ~~from tax collections under this chapter~~ and are appropriated from the ~~telecommunications carriers tax~~ state general fund as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 3. AMENDMENT. Section 57-34-04.3 of the North Dakota Century Code is amended and reenacted as follows:

57-34-04.3. Claims for credit or refund - Continuing appropriation.

1. A telecommunications carrier may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires later.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. Refunds under this section must be paid by the tax commissioner and are appropriated from the state general fund as a standing and continuing appropriation to the tax commissioner for that purpose.
4. The tax commissioner shall notify the telecommunications carrier if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

SECTION 4. AMENDMENT. Section 57-34-05 of the North Dakota Century Code is amended and reenacted as follows:

57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation. ~~Net gross~~ Gross receipts tax revenues of up to eight million four hundred thousand dollars ~~per taxable year~~ under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. ~~Net gross~~ Gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars ~~in a taxable year~~ must be deposited in the state general fund. ~~For purposes of this section, "net gross receipts tax revenues" means gross receipts tax revenues minus any refunds paid under section 57-34-03.~~ The tax commissioner shall allocate moneys in the telecommunications carriers tax fund among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. The balance ~~of~~ in the telecommunications carriers tax fund, not exceeding

eight million four hundred thousand dollars ~~per taxable year~~, is appropriated as a standing and continuing appropriation to the tax commissioner for annual allocation to counties under this section. If gross receipts tax revenues available for allocation ~~in a taxable~~ on the first day of March of any year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation from the telecommunications carriers tax fund ~~for the taxable year~~, results in allocation of eight million four hundred thousand dollars to counties ~~per taxable~~ calendar year. On or before the first day of March of each year, the tax commissioner shall certify for payment to the state treasurer an amount determined to be due each county. The state treasurer shall remit the certified amount to the county treasurers according to the allocation made by the tax commissioner under this section not later than the tenth working day in March of each year.

SECTION 5. AMENDMENT. Subsection 1 of section 57-34-10 of the North Dakota Century Code is amended and reenacted as follows:

1. If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall use the best available facts and estimates to determine taxation of the gross receipts of that carrier. The tax must be imposed upon the basis of that information. If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report which must be collected as a part of the tax, but the tax commissioner, upon application, may grant extensions of time within which the returns must be filed. For good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 523

HOUSE BILL NO. 1471 (Representatives Carlson, Timm)

CORPORATE INCOME TAX RATES

AN ACT to create and enact a new subsection to section 57-38.4-02 of the North Dakota Century Code, relating to the tax on the water's edge filing method; to amend and reenact subsections 1 and 2 of section 57-35.3-02, subsections 1 and 3 of section 57-38-01.3, section 57-38-30, and subsection 3 of section 57-38-40 of the North Dakota Century Code, relating to financial institutions taxes, the corporate income tax deduction for federal income taxes paid, net operating losses, and corporate income tax rates; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁶ **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 57-35.3-02 of the North Dakota Century Code are amended and reenacted as follows:

1. In determining "taxable income" there must be added to federal taxable income:
 - a. The adjustments provided by subdivisions ~~d, e, and i~~ c, d, and g of subsection 1 of section 57-38-01.3;
 - b. Interest not subject to federal tax upon obligations of the state of North Dakota and its political subdivisions;
 - c. The amount of any charitable contribution deduction taken for federal income tax purposes under section 170 of the Internal Revenue Code;
 - d. In the case of a building and loan association or savings and loan association, the amount of any bad debt reserve deduction taken for federal income tax purposes under section 585 of the Internal Revenue Code; and
 - e. Dividends paid by a federal reserve bank to the extent not subject to federal tax.
2. In determining "taxable income" there must be subtracted from federal taxable income:
 - a. The adjustments provided by ~~subdivisions b, e, and h~~ subdivision b, ~~e, and h~~ of subsection 1 of section 57-38-01.3;

²³⁶ Section 57-35.3-02 was also amended by section 2 of Senate Bill No. 2159, chapter 524, and section 3 of Senate Bill No. 2099, chapter 529.

- b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
- c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
- d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
- e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
- f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision a that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; ~~and~~
- h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions; and
- i. The amount of federal income tax liability for the same taxable year for which North Dakota taxable income is being determined, to the extent that the federal taxes are computed upon income that becomes part of North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 5 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an

adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted. Income must be further reduced by any federal alternative minimum tax when a federal credit for a prior year minimum tax is taken. This reduction is limited to any federal alternative minimum tax previously disallowed in computing North Dakota taxable income and may not exceed North Dakota taxable income computed before the North Dakota net operating loss deduction. Any excess may be carried forward to the next taxable year a federal credit for a prior year minimum tax is taken.

²³⁷ **SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The taxable income of a corporation as computed pursuant to the provisions of the Internal Revenue Code of 1954, as amended, must be:
 - a. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return.
 - b. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation by this state because of the provisions of the Constitution of North Dakota or the Constitution of the United States.
 - c. ~~Reduced by the amount of federal income tax liability, as computed under chapter 4 of the Internal Revenue Code of 1986, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that the taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 5 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted. Income must be further reduced by federal alternative minimum tax when a federal credit for prior year minimum tax is taken. This reduction is limited to federal alternative minimum tax previously disallowed in computing North Dakota taxable income and may not exceed North Dakota taxable~~

²³⁷ Section 57-38-01.3 was also amended by section 3 of House Bill No. 1471, chapter 523, and section 3 of Senate Bill No. 2099, chapter 529.

income computed before the North Dakota net operating loss deduction. Any excess may be carried forward to the next taxable year a federal credit for prior year minimum tax is taken.

- ~~e.~~ Increased by the amount of any income taxes, including income taxes of foreign countries, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
- ~~e.~~ d. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any of its political subdivisions may not be included.
- ~~f.~~ e. Reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.
- ~~g.~~ f. Reduced by dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this chapter or sections 57-35.3-01 through 57-35.3-12, received by the taxpayer and included in the gross income within the income year if such corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation has been assessed and income tax paid under this chapter or sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom may be deducted.
- ~~h.~~ Repealed by S.L. 1999, ch. 487, § 3.
- ~~i.~~ g. Increased by the amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income.
- ~~j.~~ h. Reduced by dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as amended, by a regulated investment company or a fund of a regulated investment company as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, as amended, except that the deduction for dividends paid is not allowed with respect to dividends attributable to any income that is not subject to taxation under this chapter when earned by the regulated investment company. Sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as amended, apply for computing the deduction for dividends paid. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as amended.

Provided, however, that each adjustment in the above subdivisions authorized under law is allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

²³⁸ **SECTION 3. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be ~~carried back or~~ carried forward for the same time period that an identical federal net operating loss may be ~~carried back or~~ carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a ~~carryback or~~ carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

²³⁹ **SECTION 4. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first three thousand dollars of taxable income, at the rate of ~~three~~ two and six-tenths percent.
- b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and ~~one-half~~ one-tenth percent.
- c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of ~~six~~ five and six-tenths percent.
- d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of ~~seven~~ six and ~~one-half~~ four-tenths percent.
- e. On all taxable income above thirty thousand dollars, ~~and not in excess of fifty thousand dollars,~~ at the rate of ~~nine~~ seven percent.

²³⁸ Section 57-38-01.3 was also amended by section 2 of House Bill No. 1471, chapter 523, and section 3 of Senate Bill No. 2099, chapter 529.

²³⁹ Section 57-38-30 was also amended by section 3 of Senate Bill No. 2091, chapter 528.

- f. ~~On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.~~
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

SECTION 5. AMENDMENT. Subsection 3 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

3. A corporation may file a claim for credit or refund of an overpayment of tax resulting from the carryback of a net operating loss under subsection 3 of section 57-38-01.3, or resulting from a federal capital loss carryback, within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection applicable to net operating losses are ~~effective~~ ineffective for loss years beginning after December 31, ~~1986~~ 2002.

SECTION 6. A new subsection to section 57-38.4-02 of the North Dakota Century Code is created and enacted as follows:

In addition to the tax imposed under subsection 1 of section 57-38-30, there is imposed an additional tax of three and one-half percent of taxable income which must be levied, collected, and paid annually in the same manner as provided in chapter 57-38.

SECTION 7. EFFECTIVE DATE. Sections 1, 2, 4, and 6 of this Act are effective for taxable years beginning after December 31, 2003. Sections 3 and 5 of this Act are effective for net operating losses incurred in taxable years beginning after December 31, 2002.

Approved April 16, 2003
Filed April 16, 2003

CHAPTER 524

SENATE BILL NO. 2159

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

TAX LAW REVISIONS

AN ACT to amend and reenact subsection 2 of section 5-01-17, subsection 2 of section 57-35.3-02, subsections 3, 4, 5, and 6 of section 57-36-09.5, section 57-38-30.3, subsection 15 of section 57-39.2-04, subsection 1 of section 57-40.3-01, section 57-51-02.2, and subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code, relating to farm winery license label registration, correction of statutory references in the financial institutions tax law, collection of tobacco products taxes, calculation of adjustments for individual income tax, exemption of gross receipts from contractor sales, the definition of an all-terrain vehicle for motor vehicle excise tax purposes, gross production tax on gas, and statements made by a person paying the gross production tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁰ **SECTION 1. AMENDMENT.** Subsection 2 of section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A license authorizes the sale, on the farm winery premises, of table or sparkling wines produced by that farm winery at on-sale or off-sale, in retail lots, and not for resale, in total quantities not in excess of one thousand gallons in a calendar year; glassware; wine literature and accessories; cheese, cheese spreads, and other snack food items; and the dispensing of free samples of the wines offered for sale. Subject to local ordinance, sales at on-sale and off-sale may be made on Sundays between twelve noon and twelve midnight. Labels for each type or brand produced must be registered with the state ~~treasurer~~ tax commissioner, without fee before sale. A farm winery may not engage in any wholesaling activities. All sales and delivery of wines to any other retail licensed premises may be made only through a wholesale liquor license.

²⁴¹ **SECTION 2. AMENDMENT.** Subsection 2 of section 57-35.3-02 of the North Dakota Century Code is amended and reenacted as follows:

2. In determining "taxable income" there must be subtracted from federal taxable income:

²⁴⁰ Section 5-01-17 was also amended by section 1 of House Bill No. 1298, chapter 67.

²⁴¹ Section 57-35.3-02 was also amended by section 1 of House Bill No. 1471, chapter 523, and section 3 of Senate Bill No. 2099, chapter 529.

- a. The adjustments provided by subdivisions b, and c, ~~and~~ h of subsection 1 of section 57-38-01.3;
- b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
- c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
- d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
- e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
- f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision ~~a~~ b that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; and
- h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions.

SECTION 3. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-36-09.5 of the North Dakota Century Code are amended and reenacted as follows:

3. ~~To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the lien with the recorder of the county in which the property is located. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any~~

interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section takes free of, or has priority over, the lien.

4. ~~The recorder of each county~~ commissioner shall ~~prepare and keep index~~ in the ~~recorder's office~~ a ~~book known as "index of tax liens", so ruled as to show in appropriate columns all of central indexing system~~ the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. ~~The name "State of North Dakota" as claimant~~ tax identification number or social security number of the taxpayer.
 - c. ~~The time notice of lien was received~~ name "State of North Dakota" as claimant.
 - d. ~~The date of~~ and time the notice of lien was indexed.
 - e. The amount of the lien ~~when due.~~
 - f. ~~The date of satisfaction.~~

~~The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same and shall index is effective as of eight a.m. next day following the indexing of the notice in the index book and the lien is effective from the time of indexing. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.~~

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the ~~filing~~ indexing of a lien ~~the notice of lien or the~~ for its satisfaction of a lien.
6. Upon payment of a tax as to which the commissioner has ~~filed~~ indexed notice ~~with the recorder in the central indexing system,~~ the commissioner shall ~~file with the recorder~~ index a satisfaction of ~~tax and the recorder shall enter the satisfaction on the notice on file and indicate the fact on the index~~ the lien in the central indexing system.

²⁴² **SECTION 4. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

²⁴² Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2099, chapter 529, section 2 of Senate Bill No. 2367, chapter 526, and section 1 of Senate Bill No. 2101, chapter 530.

57-38-30.3. Simplified method of computing tax.

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection. For a nonresident individual, estate, or trust, the tax is equal to the tax determined in accordance with the applicable schedule in subdivisions a through e multiplied by the fraction under subdivision f.

- a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050:2.10%	
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

- b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200:2.10%	
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

- c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

- d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250:2.10%	
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:
 Not over \$1,800
 Over \$1,800 but not over \$4,250
 Over \$4,250 but not over \$6,500
 Over \$6,500 but not over \$8,900
 Over \$8,900

The tax is equal to:
 2.10%
 \$37.80 plus 3.92% of amount over \$1,800
 \$133.84 plus 4.34% of amount over \$4,250
 \$231.49 plus 5.04% of amount over \$6,500
 \$352.45 plus 5.54% of amount over \$8,900

- f. For a nonresident individual, estate, or trust, the tax determined under the applicable schedule in subdivisions a through e must be multiplied by a fraction in which:
- (1) The numerator is the individual's federal adjusted gross income derived from North Dakota sources; and
 - (2) The denominator is the individual's federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 3.
- g. If married individuals who file a joint federal income tax return are required to file separate state income tax returns under any provision of this chapter, the tax under this subsection for each spouse must be determined by applying the rates under subdivision b to the spouses' joint North Dakota taxable income and prorating the result between the spouses based on their separate North Dakota taxable incomes.
- h. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is

exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

- c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
 - d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended.
 - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
 - f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
3. ~~Each adjustment in subsection 2 may be allowed only to the extent the adjustment is attributable to income allocated and apportioned to this state.~~
4. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
- ~~5.~~ 4. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.
- b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return.
- ~~6.~~ 5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
- ~~7.~~ 6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this

section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

- ~~8.~~ 7. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.
- ~~9.~~ 8. A taxpayer filing a return under this section is entitled to the exemptions or credits provided under sections 40-63-04, 40-63-06, and 40-63-07.
- ~~10.~~ 9.
- a. A taxpayer is entitled to a credit against the tax imposed by this section for any unused federal credit for prior year minimum tax. "Unused federal credit for prior year minimum tax" means the amount of the federal credit for prior year minimum tax attributable to federal alternative minimum tax included in the taxpayer's federal income tax liability for purposes of this section for taxable years beginning before January 1, 2001, reduced by the total amount of the federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return for all taxable years beginning after December 31, 2000.
 - b. The credit under this subsection is equal to fourteen percent of the portion of the unused federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return and may not exceed the taxpayer's tax liability under this section for the taxable year. For a nonresident taxpayer, the credit determined under this subsection must be multiplied by the percentage that the nonresident taxpayer's North Dakota adjusted gross income is of the nonresident's federal adjusted gross income.
 - c. The credit under this subsection is not allowed for taxable years beginning after December 31, 2004.
- ~~11.~~ 10.
- a. At the election of an individual taxpayer engaged in a farming business, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
 - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
 - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.
 - b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended.

- c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
- d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
42. 11. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.
43. 12. An individual, estate, or trust is entitled to a credit against the tax determined under this section as calculated under section 57-38.6-03.
44. 13. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.

²⁴³ **SECTION 5. AMENDMENT.** Subsection 15 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

15. Gross receipts from sales in which a contractor furnishes to the retailer a certificate which includes the contractor's license number assigned to the contractor under the provisions of chapter 43-07 ~~and the use tax account number assigned to the contractor by the commissioner pursuant to section 43-07-04.~~ Such certificate shall be in the form prescribed by the commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. Any contractor furnishing such certificate must report and remit the tax to the commissioner on purchases taxable under this chapter made by the contractor in the same manner as retailers remit such tax under this chapter.

SECTION 6. AMENDMENT. Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of ~~six hundred~~ one thousand pounds [~~272.15~~ 453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

²⁴³ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, and section 10 of Senate Bill No. 2096, chapter 539.

SECTION 7. AMENDMENT. Section 57-51-02.2 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.2. Gross production tax - Gas. A gross production tax is levied upon all gas produced within North Dakota ~~less any part thereof, the ownership or right to which~~ except gas that is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. The gas tax rate is four cents times the gas base rate adjustment for each fiscal year as calculated under subsection 2.
2.
 - a. The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for each fiscal year beginning on July first.
 - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
 - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first.
 - d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
 - e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code are amended and reenacted as follows:

1. The tax herein provided for must be paid to the commissioner and the person paying the tax shall file with the commissioner at the time the tax is required to be paid a statement ~~under oath~~ on forms prescribed by the commissioner. The commissioner may require a purchaser to file the statement or report by electronic data interchange or other electronic media.

2. Any person engaged in the production, within this state, of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement ~~under oath~~ upon forms prescribed by the commissioner. The commissioner may waive the requirement that a producer file a well production report. A waiver by the commissioner of the requirement to file a well production report does not release the producer from any obligation to remit the tax under this chapter. A waiver does not release the producer from any duty or obligation under section 57-51-07 to maintain production records for inspection by the commissioner.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 525**HOUSE BILL NO. 1269**
(Representatives Porter, Price, Uglem)
(Senator Fischer)**NONCOMPLIANT TOBACCO PRODUCT SALE
PROHIBITED**

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to the sale and distribution of tobacco products manufactured by tobacco product manufacturers not in compliance with state or federal law; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Sale of noncompliant tobacco products. A dealer, distributor, or other person may not knowingly sell or distribute in this state any tobacco product manufactured by a tobacco product manufacturer not in compliance with subsection 2 of section 51-25-02.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2003
Filed April 18, 2003

CHAPTER 526

SENATE BILL NO. 2367

(Senators Heitkamp, Grindberg, Krauter)
(Representatives DeKrey, Gulleason, Warnke)

ARMED FORCES INCOME TAX DEDUCTION

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2 and a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for members of the reserve components of the armed forces of the United States when called to federal active service; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁴ **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount received by the taxpayer as payment for services performed when called or ordered to title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. An individual claiming the reduction under this subdivision may not also claim the reduction under subdivision k for the time the individual was under federal orders for active duty and may not claim a reduction on income already excluded from federal taxation due to service in a combat or hazardous duty zone. This subdivision does not apply to federal service while attending annual training, basic military training, professional military education, or active guard and reserve tours for which the member has volunteered.

²⁴⁵ **SECTION 2.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount received by the taxpayer as payment for services performed when called or ordered to title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, professional military education, or active guard and reserve tours for which the member has volunteered.

²⁴⁴ Section 57-38-01.2 was also amended by section 102 of House Bill No. 1183, chapter 138, and section 3 of Senate Bill No. 2099, chapter 529.

²⁴⁵ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2099, chapter 529, section 1 of Senate Bill No. 2101, chapter 530, and section 4 of Senate Bill No. 2159, chapter 524.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 527

SENATE BILL NO. 2098

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

INCOME TAX CREDIT

AN ACT to create and enact a new subdivision to subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to requirements for claiming a credit for income tax paid to another state; to amend and reenact subsections 2 and 6 of section 57-38-04 of the North Dakota Century Code, relating to requirements for claiming a credit for income tax paid to another state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

2. Except as provided in subsection 1:
 - 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 must 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 may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
 - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual 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 the individual's 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" must 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.

6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains therefrom, must be assigned to this state without regard to the situs of the property.
- b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
- c. 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 the payment is furnished to the tax commissioner~~; provided, that this credit for the tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof shall be provided in a form and manner as determined by the tax commissioner.

²⁴⁶ **SECTION 2.** A new subdivision to subsection 5 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

²⁴⁶ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2099, chapter 529, section 2 of Senate Bill No. 2367, chapter 526, section 1 of Senate Bill No. 2101, chapter 530, and section 4 of Senate Bill No. 2159, chapter 524.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 528

SENATE BILL NO. 2091

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

CORPORATE INCOME TAX REVISIONS

AN ACT to amend and reenact sections 57-38-11, 57-38-14, and 57-38-30 of the North Dakota Century Code, relating to obsolete corporate income tax provisions; and to repeal sections 57-38-12 and 57-38-13 of the North Dakota Century Code, relating to obsolete corporate income tax provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-11 of the North Dakota Century Code is amended and reenacted as follows:

57-38-11. Annual tax on corporations. The tax imposed by this chapter must be levied, collected, and paid annually with respect to its North Dakota ~~net~~ income, as hereinafter defined, received by every corporation doing business in this state.

SECTION 2. AMENDMENT. Section 57-38-14 of the North Dakota Century Code is amended and reenacted as follows:

57-38-14. ~~Allocation in special cases~~ General provisions relating to corporate income. ~~In the special cases mentioned in this section, the~~ The following principles may be applied in ~~allocating corporate~~ determining North Dakota income:

1. Any corporation organized under the laws of North Dakota and subject to a tax under the provisions of this chapter, which maintains no regular place of business outside this state, except a statutory office, must be taxed upon its entire ~~net~~ income.
2. Corporations engaged in business within and without this state may be taxed only on such income as is derived from business transacted and property located within this state. The amount of such income apportionable to North Dakota ~~may~~ must be determined by ~~an allocation and separate accounting thereof, when in the judgment of the tax commissioner that method will reasonably reflect the income properly assignable to this state~~ as provided in chapter 57-38.1.
3. Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, substantially all of the voting capital stock of another corporation, or of other corporations, may be required to make a consolidated report showing the combined ~~net~~ income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.
4. Any corporation liable to report under this chapter and owned or controlled either directly or indirectly by another corporation may be

required to make a report consolidated with the owning company, showing the combined ~~net~~ income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.

5. In case it appears to the tax commissioner that any arrangement exists in such a manner as to reflect improperly the business done, the segregable assets, or the entire ~~net~~ income earned from business done in this state, the tax commissioner is authorized and empowered, in such manner as the tax commissioner may determine, to adjust the tax equitably.
6. The tax commissioner may permit or require the filing of a combined report if substantially all the voting capital stock of two or more corporations liable to report under this chapter is owned or controlled by the same interests. The tax commissioner may impose the tax provided by this chapter as though the combined entire ~~net~~ income and segregated assets were those of one corporation, but in the computation, dividends received from any corporation whose assets, as distinguished from shares of stock, are included in the segregations may not be included in the ~~net~~ income.
7. When any corporation required to make a return under this chapter conducts the business, whether under agreement or otherwise, in such manner as directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons, directly or indirectly interested in such business, by selling its products, or the goods or commodities in which it deals, at less than a fair price which might be obtained therefor, or if such a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation owning the substantial portion of its capital stock, in such manner as to create a loss or improper ~~net~~ income, the tax commissioner may require such facts as the tax commissioner deems necessary for the proper computation provided by this chapter, and for the purposes of this chapter may determine the amount which must be deemed to be the entire ~~net~~ income, of the business of such corporation for the calendar or fiscal year. In determining such entire ~~net~~ income, the tax commissioner shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods, or commodities.
8. If it appears to the tax commissioner that the segregation of assets shown by any report made under this chapter does not reflect properly the corporate activity or business done, or the income earned from corporate activity, or from business done in this state because of the character of the corporation's business and the character and location of its assets, the tax commissioner is authorized and empowered to adjust the tax equitably.
9. ~~In determining the entire net income for purposes of equitable taxation under this section, the tax commissioner may determine the portion of net income derived from business done within this state by an allocation upon the basis of sales, purchases, expenses of manufacture, payroll, value and situs of tangible property, or by reference to these or other~~

factors, or by such other method of allocation as is fairly calculated to assign to this state the portion of net income reasonably attributable to the business done within this state. In determining the entire net income for purposes of equitable taxation under this chapter, the tax commissioner may include income from any source, if the assets from which the income was derived shall be included in any segregation for the purpose of computing the tax.

40. In case any corporation or individual uses leased property in its business, the value of the leasehold interest of the lessee must be included in the value of the tangible property of the corporation and computed at eight times the net annual rental rate for purposes of allocation or apportionment of the net income.
44. Notwithstanding any other provision of law, two or more North Dakota domestic corporations, affiliated as parent and subsidiary, and filing a federal consolidated tax return, shall file a combined report and consolidated return for income tax under this chapter.

²⁴⁷ **SECTION 3. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income of every domestic and foreign corporation ~~received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14,~~ which must be levied, collected, and paid annually as in this chapter provided:

1.
 - a. For the first three thousand dollars of taxable income, at the rate of three percent.
 - b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.
 - c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
 - d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.
 - e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
 - f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative

²⁴⁷ Section 57-38-30 was also amended by section 4 of House Bill No. 1471, chapter 523.

minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

SECTION 4. REPEAL. Sections 57-38-12 and 57-38-13 of the North Dakota Century Code are repealed.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 529

SENATE BILL NO. 2099

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

INCOME TAX ROUNDING

AN ACT to create and enact a new section to chapter 57-38 and a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to the authority of the tax commissioner to provide for the rounding of dollar amounts on income tax returns, statements, forms, or other documents and an individual income tax deduction for the new and expanding business exemption; to repeal subdivision b of subsection 2 of section 57-35.3-02, subdivision i of subsection 1 of section 57-38-01.2, and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to the tax deduction for dividends; to provide an effective date; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Rounding. With respect to any amount required to be shown on any return, form, statement, or other document required to be filed with the tax commissioner and for purposes of amounts in tax tables prescribed under subsection 12 of section 57-38-30.3 and subsection 3 of section 57-38-59, the amount may be rounded to the nearest dollar. The cents must be disregarded if the cents amount to less than one-half dollar. If the cents amount to one-half dollar or more, the amount must be increased to the next whole dollar.

²⁴⁸ **SECTION 2.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.

²⁴⁸ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2367, chapter 526, section 1 of Senate Bill No. 2101, chapter 530, and section 4 of Senate Bill No. 2159, chapter 524.

²⁴⁹ **SECTION 3. REPEAL.** Subdivision b of subsection 2 of section 57-35.3-02, subdivision i of subsection 1 of section 57-38-01.2, and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code are repealed.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 5. RETROACTIVE APPLICATION. Section 3 of this Act applies retroactively to taxable years beginning after December 31, 1999.

Approved April 11, 2003

Filed April 14, 2003

²⁴⁹ Section 57-35.3-02 was also amended by section 1 of House Bill No. 1471, chapter 523, and section 2 of Senate Bill No. 2159, chapter 524. Section 57-38-01.2 was also amended by section 1 of Senate Bill No. 2367, chapter 526, and section 102 of House Bill No. 1183, chapter 138. Section 57-38-01.3 was also amended by section 2 of House Bill No. 1471, chapter 523, and section 3 of House Bill No. 1471, chapter 523.

CHAPTER 530

SENATE BILL NO. 2101

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

FARM INCOME AVERAGING

AN ACT to amend and reenact subdivisions a and b of subsection 11 of section 57-38-30.3 of the North Dakota Century Code, relating to income averaging for farmers for income tax purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁰ **SECTION 1. AMENDMENT.** Subdivisions a and b of subsection 11 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

11. a. ~~At the election of~~ If an individual taxpayer engaged in a farming business, elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
 - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

²⁵⁰ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2099, chapter 529, section 2 of Senate Bill No. 2367, chapter 526, and section 4 of Senate Bill No. 2159, chapter 524.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 531

HOUSE BILL NO. 1309

(Representatives Gulleson, Mueller, Nelson, Nicholas)
(Senators Heitkamp, Thane)

BIODIESEL RETROFIT AND INCOME TAX CREDIT

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a corporate income tax credit for a portion of the cost of retrofitting an existing facility or adapting a new facility for producing or blending diesel fuel containing biodiesel fuel; to amend and reenact sections 24-02-01.5, 57-43.2-01, 57-43.2-02, and 57-43.2-03 of the North Dakota Century Code, relating to a special fuels tax reduction for fuel containing biodiesel; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. (Contingent effective date - See note - Effective through June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

(Effective after June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 5 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Corporate income tax credit for biodiesel production equipment costs.

A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or adapting a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year production or blending begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production or blending begins.

SECTION 3. AMENDMENT. Section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. (Contingent effective date - See note - Effective through June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Biodiesel" means a biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.

7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
13. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
17. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;

- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
20. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or

- subject to restricted travel due to construction, reconstruction, repair, or maintenance.
26. "Rack" means a mechanism used to dispense special fuel from a terminal.
 27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
 28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
 29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
 30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
 31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
 32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
 33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
 34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
 35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
 36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers,

"terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

(Effective after June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Director" means the director of the department of transportation.
7. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
9. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
10. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.

11. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
12. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
13. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
14. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
15. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
16. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
17. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

18. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation

of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.

19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
21. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
24. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack" means a mechanism used to dispense special fuel from a terminal.
26. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.

29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

SECTION 4. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Contingent effective date - See note - Effective through June 30, ~~2003~~ 2005) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.

2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, ~~2003~~ 2005) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 5. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. (Contingent effective date - See note - Effective through June 30, 2003 2005) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02. The tax under this subsection is reduced to one and nine-tenths percent on all sales of diesel fuel that contains at least two percent biodiesel fuel by weight.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003 ~~2005~~) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 6. EFFECTIVE DATE. Sections 1, 3, 4, and 5 of this Act are effective on the first day of the first month after the tax commissioner certifies to the governor and the office of the legislative council that a refining facility is operational in this state which has a production capacity of at least ten million gallons [37854000 liters] of biodiesel per year. Section 2 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 7. EXPIRATION DATE. Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, 2005, and are thereafter ineffective.

Approved April 21, 2003

Filed April 21, 2003

CHAPTER 532

SENATE BILL NO. 2100

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

INCOME TAX ASSESSMENTS

AN ACT to amend and reenact subsection 9 of section 57-38-38 of the North Dakota Century Code, relating to the time period for the assessment of additional income tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 57-38-38 of the North Dakota Century Code is amended and reenacted as follows:

9. Except for an amended return required to be filed under section 57-38-34.4, if a person files an amended state income tax return within the time periods prescribed in subsections 1 ~~and 2, and 3~~ or subsection 1 of section 57-38-40, the tax commissioner has two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax ~~found to be due~~ attributable to the changes or corrections on the amended return, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired at the end of the two-year period prescribed in this subsection.

SECTION 2. EFFECTIVE DATE. This Act is effective for amended returns filed after December 31, 2002.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 533**HOUSE BILL NO. 1108**

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

PAYROLL SERVICE PROVIDER TAX WITHHOLDING

AN ACT to create and enact a new subsection to section 57-38-60 of the North Dakota Century Code, relating to the filing of income tax withholding returns and income tax withholding payments by payroll service providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-60 of the North Dakota Century Code is created and enacted as follows:

A payroll service provider authorized under the provisions of this chapter to file and remit withholding taxes on behalf of an employer shall file the returns required by subsections 2, 3, and 4, and pay any tax due, by electronic data interchange or other electronic media as determined by the commissioner. As used in this subsection, a "payroll service provider" means a person that, for federal tax purposes, electronically processes and transmits an employer's withholding returns and taxes, including wage information returns. The commissioner may waive, upon a showing of good cause, the requirement to file a return or pay the tax electronically.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 534**SENATE BILL NO. 2102**
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)**RENTAL MOTOR VEHICLE SURCHARGES**

AN ACT to amend and reenact subsection 2 of section 57-39.2-03.7 of the North Dakota Century Code, relating to the surcharge on rental motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-03.7 of the North Dakota Century Code is amended and reenacted as follows:

2. On February fifteenth of each year, a company that collects surcharges under this section shall file a report with the commissioner stating the total amount of excise taxes paid under chapter 57-40.3 on ~~its~~ the rental vehicles for the preceding calendar year and the total amount of rental motor vehicle revenues earned on rentals in this state for the preceding calendar year. All surcharge revenues collected during the calendar year by the company in excess of the total amount of excise taxes paid under chapter 57-40.3 during the calendar year by the company on rental motor vehicles must be remitted to the commissioner with the report and considered sales tax collections under this chapter.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 535

SENATE BILL NO. 2337

(Senators Thane, Krauter, Wardner)
(Representatives Glassheim, N. Johnson, R. Kelsch)

LODGING TAX FOR LEWIS AND CLARK PROMOTION

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to an additional sales tax on lodging for promotion of the Lewis and Clark bicentennial celebration; to provide an appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Separate and additional sales tax on lodging. A separate and additional tax of one percent is imposed upon the gross receipts of retailers from all sales at retail within this state from the leasing or renting of hotel, motel, or tourist court accommodations for periods of fewer than thirty consecutive days. The tax imposed under this section does not apply to leasing or renting of bed and breakfast accommodations licensed under chapter 23-09.1. Revenue from the tax imposed by this section must not be considered to be a portion of sales, use, and motor vehicle excise tax collections under section 57-39.2-26.1.

SECTION 2. APPROPRIATION - DEPARTMENT OF COMMERCE - TOURISM DIVISION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,900,000, or so much of the sum as may be necessary, to the department of commerce division of tourism for the purpose of defraying the expenses of out-of-state marketing relating to the Lewis and Clark bicentennial celebration, for the biennium beginning July 1, 2003, and ending June 30, 2005. The amount spent pursuant to this section may not exceed the amount of revenue generated from the separate and additional tax imposed under section 1 of this Act, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is effective for taxable events occurring after June 30, 2003, and before July 1, 2007, and is thereafter ineffective.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 536

HOUSE BILL NO. 1328

(Representatives Clark, Pietsch, Porter)
(Senators Brown, Wardner)

RAFFLE PRIZE SALES AND EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to a sales, use, and motor vehicle excise tax exemption for the acquisition by a charitable organization of property to be awarded as a raffle prize; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵¹ **SECTION 1.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of tangible personal property purchased by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if the winner of the tangible personal property will be subject to sales or use taxes upon receiving the property.

²⁵² **SECTION 2.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

Any motor vehicle acquired by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if upon registration the motor vehicle will be subject to taxes under this chapter or the motor vehicle is registered in another state.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2003.

Approved March 7, 2003

Filed March 7, 2003

²⁵¹ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

²⁵² Section 57-40.3-04 was also amended by section 1 of House Bill No. 1205, chapter 540.

CHAPTER 537

HOUSE BILL NO. 1025

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

STATE AID DISTRIBUTION FUND ALLOCATION

AN ACT to amend and reenact section 57-39.2-26.1 of the North Dakota Century Code, relating to the allocation of sales, use, and motor vehicle excise tax collections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. (Effective through July 31, 2003) Allocation of revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. Ten and four-tenths percent of the amount must be allocated among counties with a population of one hundred thousand or more, based upon the proportion each such county's population bears to the total population of all such counties.
 - b. Eighteen percent of the amount must be allocated among counties with a population of forty thousand or more but fewer than one hundred thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - c. Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - d. Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.

- e. Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- f. Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- g. Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

- 2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
 - a. Fifty-three and nine-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more, based upon the proportion each such city's population bears to the total population of all such cities.
 - b. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - c. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - d. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.

- e. Six and four-tenths percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- f. Three and five-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.
- g. Two and two-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

3. The population figures used for the allocation of revenues to counties and cities under subsections 1 and 2 must be the population figures determined by the 1990 federal decennial census unless an official special census was conducted between the 1990 federal decennial census and January 1, 1997.

(Effective after July 31, 2003) Allocation of revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. ~~Ten and four-tenths~~ Sixty-four percent of the amount must be allocated among the seventeen counties with a the greatest population of one hundred thousand or more, in the following manner:
 - (1) Thirty-two percent of the amount must be allocated equally among the counties; and

- (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
- b. ~~Eighteen~~ Thirty-six percent of the amount must be allocated among all counties with a population of forty thousand or more but fewer than one hundred thousand, excluding the seventeen counties with the greatest population, in the following manner:
 - (1) Forty percent of the amount must be allocated equally among the counties; and
 - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
- e. ~~Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- d. ~~Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- e. ~~Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- f. ~~Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- g. ~~Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.~~

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
 - a. ~~Fifty-three and nine-tenths~~ Nineteen and four-tenths percent of the amount must be allocated among cities with a population of eighty thousand or more, based upon the proportion each city's population bears to the total population of all such cities.
 - b. Thirty-four and five-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more but fewer than eighty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - ~~b.~~ c. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - ~~e.~~ d. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - ~~d.~~ e. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - ~~e.~~ f. Six and ~~four-tenths~~ one-tenth percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - f. g. Three and ~~five-tenths~~ four-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.
 - ~~g.~~ h. Two and ~~two-tenths~~ six-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 538

SENATE BILL NO. 2095

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

STREAMLINED SALES AND USE TAX AGREEMENT ADOPTION

AN ACT to create and enact chapter 57-39.4 of the North Dakota Century Code, relating to adoption of the streamlined sales and use tax agreement as adopted by member states of the streamlined sales tax project; to repeal chapter 57-39.4 of the North Dakota Century Code, relating to participation in multistate discussions and entering the streamlined sales and use tax agreement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

57-39.4-01. Adoption of streamlined sales and use tax agreement. North Dakota adopts the streamlined sales and use tax agreement as adopted November 12, 2002, by the member states of the streamlined sales tax project. The entire agreement is adopted by reference with the exception of article III, which is adopted as set out in this chapter.

57-39.4-02. (301) State level administration. Each member state shall provide state level administration of sales and use taxes. The state level administration may be performed by a member state's tax commission, department of revenue, or any other single entity designated by state law. Sellers are only required to register with, file returns with, and remit funds to the state level authority. Each member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the sellers registered under the agreement for that state's tax and the tax of its local jurisdictions, and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered under the agreement.

57-39.4-03. (302) State and local tax bases. Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

57-39.4-04. (303) Seller registration. Each member state shall participate in an on-line sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement is registered in each of the member states.

2. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.
3. A written signature from the seller is not required.
4. An agent may register a seller under uniform procedures adopted by the member states.
5. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

57-39.4-05. (304) Notice for state tax changes.

1. Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:
 - a. Provide sellers with as much advance notice as practicable of a rate change.
 - b. Limit the effective date of a rate change to the first day of a calendar quarter.
 - c. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.
2. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.

57-39.4-06. (305) Local rate and boundary changes. Each member state that has local jurisdictions that levy a sales or use tax shall:

1. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.
2. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to sellers.
3. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.
4. Provide and maintain a data base that describes boundary changes for all taxing jurisdictions. This data base shall include a description of the change and the effective date of the change for sales and use tax purposes.
5. Provide and maintain a data base of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of

states, counties, cities, and parishes, codes corresponding to the rates must be provided according to federal information processing standards as developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.

6. Provide and maintain a data base that assigns each five-digit and nine-digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code of the purchaser.
7. Participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C. Sec. 119]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based system provided by that member state. If any member state develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in subsection 6.

57-39.4-07. (306) Relief from certain liability. Each member state shall relieve sellers and certified service providers from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. A member state that provides an address-based system for assigning taxing jurisdictions under subsection 7 of section 57-39.4-06 or under the federal Mobile Telecommunications Sourcing Act will not be required to provide liability relief for errors resulting from the reliance on the information provided by the member state under subsection 6 of section 57-39.4-06.

57-39.4-08. (307) Data base requirements and exceptions.

1. The electronic data bases provided for in subsections 4, 5, 6, and 7 of section 57-39.4-06 shall be in a downloadable format approved by the governing board.
2. The provisions of subsections 6 and 7 of section 57-39.4-06 do not apply when the purchased product is received by the purchaser at the business location of the seller.
3. The data bases provided by subsections 4, 5, and 6 of section 57-39.4-06 are not a requirement of a state prior to entering into the

agreement. The governing board shall establish the effective dates for availability and use of the data bases.

57-39.4-09. (308) State and local tax rates.

1. No member state shall have multiple state sales and use tax rates on items of personal property or services after December 31, 2005, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the agreement.
2. A member state that has local jurisdictions that levy a sales or use tax shall not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates must be identical.
3. The provisions of this section do not apply to sales or use taxes levied on electricity, piped natural or artificial gas or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

57-39.4-10. (309) Application of general sourcing rules and exclusions from the rules.

1. Each member state shall agree to require sellers to source the retail sale of a product in accordance with section 57-39.4-11. The provisions of section 57-39.4-11 apply regardless of the characterization of a product as tangible personal property, a digital good, or a service. The provisions of section 57-39.4-11 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.
2. Section 57-39.4-11 does not apply to sales or use taxes levied on the following:
 - a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
 - b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4 of section 57-39.4-11. The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to subsection 3 of section 57-39.4-11.
 - c. Telecommunications services, as set out in section 57-39.4-16, shall be sourced in accordance with section 57-39.4-15.

57-39.4-11. (310) General sourcing rules.

1. The retail sale, excluding lease or rental, of a product shall be sourced as follows:
 - a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 - b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
 - c. When subdivisions a and b do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
 - d. When subdivisions a, b, and c do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
 - e. When none of the previous rules of subdivisions a, b, c, and d apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.
2. The lease or rental of tangible personal property, other than property identified in subsection 3 or 4, shall be sourced as follows:
 - a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection 1. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

- b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.
 - c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
 3. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4, shall be sourced as follows:
 - a. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.
 - b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.
 - c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.
 4. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection 1, notwithstanding the exclusion of lease or rental in subsection 1. "Transportation equipment" means any of the following:
 - a. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
 - b. Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds [4535.92 kilograms] or greater, trailers, semitrailers, or passenger buses that are:
 - (1) Registered through the international registration plan; and
 - (2) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
 - c. Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
 - d. Containers designed for use on and component parts attached or secured on the items set forth in subdivisions a, b, and c.

57-39.4-12. (311) General sourcing definitions. For the purposes of subsection 1 of section 57-39.4-11, the terms "receive" and "receipt" mean:

1. Taking possession of tangible personal property;
2. Making first use of services; or
3. Taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

57-39.4-13. (312) Multiple points of use. Notwithstanding the provisions of section 57-39.4-11, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact, called a multiple points of use exemption form.

1. Upon receipt of the multiple points of use exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
2. A purchaser delivering the multiple points of use exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.
3. The multiple points of use exemption form will remain in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subsection 2 and the facts existing at the time of the sale, until it is revoked in writing.
4. A holder of a direct pay permit shall not be required to deliver a multiple points of use exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection 2 in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.

57-39.4-14. (313) Direct mail sourcing.

1. Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.
 - a. Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

- b. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction in which the seller has collected tax pursuant to the delivery information provided by the purchaser.
2. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection 1, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.
3. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

57-39.4-15. (314) Telecommunications sourcing.

1. Except for the defined telecommunications services in subsection 3, the sale of telecommunications services sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.
2. Except for the defined telecommunications services in subsection 3, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.
3. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:
 - a. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
 - b. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system, or information received by the seller from its service provider, if the system used to transport such signals is not that of the seller.
 - c. A sale of prepaid calling service is sourced in accordance with section 57-39.4-11. However, in the case of a sale of mobile telecommunications services that is a prepaid telecommunications services, the rule provided in subdivision e of subsection 1 of section 57-39.4-11 shall include as an option the location associated with the mobile telephone number.
 - d. A sale of a private communication service is sourced as follows:

- (1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.
- (2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.
- (3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.
- (4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

57-39.4-16. (315) Telecommunications sourcing definitions. For the purpose of section 57-39.4-15, the following definitions apply:

1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
2. "Call-by-call basis" means any method of charging for telecommunications services in which the price is measured by individual calls.
3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
4. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications services is the customer of the telecommunications services, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section 57-39.4-15. "Customer" does not include a reseller of telecommunications services or for mobile telecommunications services of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
5. "Customer channel termination point" means the location where the customer either inputs or receives the communications.
6. "End user" means the person who utilizes the telecommunications services. In the case of an entity, "end user" means the individual who utilizes the services on behalf of the entity.

7. "Home service provider" means the same as that term is defined in section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
8. "Mobile telecommunications service" means the same as that term is defined in section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
9. "Place of primary use" means the street address representative of where the customer's use of the telecommunications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
10. "Post-paid calling service" means the telecommunications services obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications services. A post-paid calling service includes telecommunications services that would be a prepaid calling service except it is not exclusively telecommunications services.
11. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
12. "Private communication service" means telecommunications services that entitle the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
13. "Service address" means:
 - a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
 - b. If the location in subdivision a is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
 - c. If the location in subdivisions a and b are not known, the service address means the location of the customer's place of primary use.

57-39.4-17. (316) Enactment of exemptions.

1. A member state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.
2. A member state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.
3. For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

57-39.4-18. (317) Administration of exemptions.

1. Each member state shall observe the following provisions when a purchaser claims an exemption:
 - a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
 - b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
 - c. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
 - d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
 - e. A member state may utilize a system in which the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
 - f. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
 - g. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an

exemption certificate, or another means that does not burden sellers.

2. Each member state shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.

57-39.4-19. (318) Uniform tax returns. Each member state shall:

1. Require that only one tax return for each taxing period for each seller be filed for the member state and all the taxing jurisdictions within the member state.
2. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
3. Allow any model 1, model 2, or model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.
4. Allow any seller that is registered under the agreement, which does not have a legal requirement to register in the member state, and is not a model 1, model 2, or model 3 seller, to submit its sales and use tax returns as follows:
 - a. Upon registration, a member state shall provide to the seller the returns required by that state.
 - b. A member state may require a seller to file a return any time within one year of the month of initial registration and future returns may be required on an annual basis in succeeding years.
 - c. In addition to the returns required in subdivision b, a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.
 - d. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.
 - e. Require, at each member state's discretion, all model 1, model 2, and model 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004.

57-39.4-20. (319) Uniform rules for remittance of funds. Each member state shall:

1. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.
2. Require, at each member state's discretion, all remittances from sellers under model 1, model 2, and model 3 to be remitted electronically.
3. Allow for electronic payments by both automated clearinghouse credit and automated clearinghouse debit.
4. Provide an alternative method for making same day payments if an electronic funds transfer fails.
5. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are due to that state on the next succeeding business day.
6. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

57-39.4-21. (320) Uniform rules for recovery of bad debts. Each member state shall use the following to provide a deduction for bad debts to a seller. To the extent a member state provides a bad debt deduction to any other party, the same procedures will apply. Each member state shall:

1. Allow a deduction from taxable sales for bad debts. Any deduction taken that is attributed to bad debts shall not include interest.
2. Utilize the federal definition of "bad debt" in 26 U.S.C. 166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.
3. Allow bad debts to be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

4. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.
5. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the member state's otherwise applicable statute of limitations for refund claims. However, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.
6. When filing responsibilities have been assumed by a certified service provider, allow the certified service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.
7. Provide that, for the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon and secondly to interest, service charges, and any other charges.
8. When the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, permit the allocation.

57-39.4-22. (321) Confidentiality and privacy protections under model 1.

1. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with model 1 sellers.
2. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges, the term "personally identifiable information" means information that identifies a person, and the term "anonymous data" means information that does not identify a person.
3. The member states agree that a fundamental precept in model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.
4. The governing board may certify a certified service provider only if that certified service provider certifies that:
 - a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
 - b. That personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

- c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the certified service provider;
 - d. Its collection, use, and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and
 - e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.
5. Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.
6. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision d of subsection 4, such information shall no longer be retained by the member states.
7. When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to the individual's own information in the state's possession and a right to correct any inaccurately recorded information.
8. If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from which the information is sought should make a reasonable and timely effort to notify the individual of such request.
9. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.
10. Each member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the agreement does not enlarge or limit the member states' authority to:
 - a. Conduct audits or other review as provided under the agreement and state law.
 - b. Provide records pursuant to a member state's freedom of information act, disclosure laws with governmental agencies, or other regulations.
 - c. Prevent, consistent with state law, disclosures of confidential taxpayer information.

- d. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the internal revenue service.
 - e. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.
11. This privacy policy does not preclude the governing board from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement.

57-39.4-23. (322) Sales tax holidays.

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
 - a. Not apply an exemption after December 31, 2003, unless the items to be exempted are specifically defined in the agreement and the exemptions are uniformly applied to state and local sales and use taxes.
 - b. Provide notice of the exemption period at least sixty days' prior to the first day of the calendar quarter in which the exemption period will begin.
2. A member state may establish a sales tax holiday that utilizes price thresholds set by such state and the provisions of the agreement on the use of thresholds shall not apply to exemptions provided by a state during a sales tax holiday. In order to provide uniformity, a price threshold established by a member state for exempt items shall include only items priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.
3. The governing board shall establish procedures to provide uniformity for the administrative issues involved with the implementation of a sales tax holiday. These issues include:
 - a. Treatment of layaway purchases;
 - b. Exempt and nonexempt items that are packaged together;
 - c. Treatment of coupons or discounts;
 - d. Splitting of items normally sold together;
 - e. Treatment of rainchecks;
 - f. Exchanges;
 - g. Shipping and handling charges;
 - h. Service charges;
 - i. Restocking fees; and

- j. Order date and back orders.

57-39.4-24. (323) Caps and thresholds.

1. Each member state shall:
 - a. Not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.
 - b. Not have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.
2. Each member state that has local jurisdictions that levy a sales or use tax shall not place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.
3. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances when the burden of administration has been shifted from the retailer.

57-39.4-25. (324) Rounding.

1. After December 31, 2005, each member state shall adopt a rounding algorithm that meets the following criteria:
 - a. Tax computation must be carried to the third decimal place; and
 - b. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.
2. Each state shall allow sellers to elect to compute the tax due on a transaction on an item or an invoice basis and shall allow the rounding rule to be applied to the aggregated state and local taxes. No member state shall require a seller to collect tax based on a bracket system.

57-39.4-26. (325) Customer refund procedures.

1. This section applies when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller.
2. Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.
3. This section provides the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A

cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

4. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller uses either a provider or a system, including a proprietary system, which is certified by the state and has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

57-39.4-27. (326) Direct pay permits. Each member state shall provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit will make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each state can set its own limits and requirements for the direct pay permit. The governing board shall advise member states when setting state direct pay limits and requirements and shall consider use of the model direct payment permit regulation as developed by the task force on EDI audit and legal issues for tax administration.

57-39.4-28. (327) Library of definitions. Each member state shall utilize common definitions as provided in this section. The terms defined are set out in the library of definitions, in appendix C of the agreement adopted by section 57-39.4-01. A member state shall adhere to the following principles:

1. If a term defined in the library of definitions appears in a member state's sales and use tax statutes or administrative rules or regulations, the member state shall enact or adopt the library definition of the term in its statutes or administrative rules or regulations in substantially the same language as the library definition.
2. A member state shall not use a library definition in its sales or use tax statutes or administrative rules or regulations that is contrary to the meaning of the library definition.
3. Except as specifically provided in section 57-39.4-15 and the library of definitions, a member state shall impose a sales or use tax on all products or services included within each definition or exempt from sales or use tax all products or services within each definition.

57-39.4-29. (328) Taxability matrix.

1. To ensure uniform application of terms defined in the library of definitions, each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.

2. A member state shall relieve sellers and certified service providers from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix.

57-39.4-30. (329) Effective date for rate changes. Each member state shall provide that the effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows:

1. For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.
2. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

SECTION 2. REPEAL. Chapter 57-39.4 of the North Dakota Century Code, as it exists on July 31, 2003, is repealed.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for taxable events occurring after December 31, 2005.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 539

SENATE BILL NO. 2096

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

STREAMLINED SALES AND USE TAX AGREEMENT IMPLEMENTATION

AN ACT to create and enact sections 57-39.2-29, 57-39.2-30, 57-39.2-31, and 57-39.2-32, chapters 57-39.5 and 57-39.6, a new subsection to section 57-40.2-01, and a new subsection to section 57-40.2-02.1 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, sections 57-01-02.1, 57-39.2-01, and 57-39.2-02.1, subsections 7, 10, 11, 26, and 45 of section 57-39.2-04, sections 57-39.2-04.1, 57-39.2-05, and 57-39.2-08.2, subsection 1 of section 57-39.2-14, subsection 4 of section 57-40.2-01, and subsection 14 of section 57-40.2-04 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; to repeal sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵³ **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede

²⁵³ Section 11-09.1-05 was also amended by section 1 of House Bill No. 1246, chapter 87.

section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2 and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

SECTION 2. AMENDMENT. Subsection 16 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16. To impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2 and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

SECTION 3. AMENDMENT. Section 57-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-01-02.1. Tax collection agreements with home rule cities or counties
- Limitations on city or county authority.**

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1; or of any county which has adopted the home rule provisions of chapter 11-09.1; and must enter a contract with the tax commissioner ~~are hereby authorized and empowered to enter into contractual agreements whereby giving the tax commissioner has authority to collect any sales or use taxes assessed by such incorporated city or county.~~
2. ~~It is the duty of the~~ The tax commissioner shall deposit with the state treasurer all money collected under a contract under this section and ~~to~~ accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of ~~the several~~ cities or counties the money to which ~~they~~ cities or counties are entitled under a contract under this section.
3. ~~The agreements entered into~~ Contracts under this section ~~may also~~ shall provide for an agreed amount to be allowed the tax commissioner for services ~~rendered in connection with such collections.~~ Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.
4. A person required to collect and remit sales or use taxes may not be required to register with, file returns with, or remit funds to anyone other than the tax commissioner or the tax commissioner's authorized agent. A city or county may not conduct an independent sales or use tax audit of a seller registered under the agreement adopted under chapter 57-39.4.

SECTION 4. AMENDMENT. Section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit or advantage, either direct or indirect.
2. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
3. "Commissioner" means the tax commissioner of the state of North Dakota.
4. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing.

5. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
- a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
 - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
 - c. Intended to affect the structure or any function of the body.
6. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
7. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
- ~~3.~~ 8. a. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise. Provided, discounts for any purposes allowed and taken on sales are not included, nor is the sale price of property returned by customers when the full sale price is refunded either in cash or by credit. Provided, further, 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, will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer are not gross receipts. Provided, further, on all sales of retailers, valued in money, when the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is to be extended over a period longer than sixty days from the date of sale that only the portion of the sale amount shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein. When a farm machine is purchased as a replacement for machinery which

was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from an insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine is a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed. "Gross receipts" also means, 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 tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. For the purpose of this chapter, gross receipts shall also include the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) The seller's cost of the property sold;
 - (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
 - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
 - (4) Delivery charges;
 - (5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
 - (6) Credit for any trade-in, as determined by state law.
- b. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- c. "Gross receipts" does not include:
- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
 - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
- (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. 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 tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.

9. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;
- b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
- c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

- 4. 10. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
- 5. 11. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
- 12. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.
- 6. 13. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.

7. 14. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes 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, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; 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, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must 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 in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a ~~purchaser who rents or leases it to~~ a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.
8. 15. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and

the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

- 9- 16. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
17. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
18. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, gas, steam, and prewritten computer software.

SECTION 5. AMENDMENT. Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes ~~and new farm machinery and new irrigation equipment used exclusively for agricultural purposes.~~

- b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. 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 chapter 57-40.2.
- g. Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.
- h. Sale, lease, or rental of computer software and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
 - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
 - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific

purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within this state to consumers or users.~~
3. ~~In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.~~

²⁵⁴ **SECTION 6. AMENDMENT.** Subsection 7 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Gross receipts from the sale, ~~by any drugstore,~~ of drugs sold under a doctor's prescription.

²⁵⁵ **SECTION 7. AMENDMENT.** Subsection 10 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

²⁵⁴ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

²⁵⁵ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

10. Gross receipts from the sale of motor vehicles, farm machinery, alcoholic beverages, gasoline, insurance premiums, gaming tickets, or any other article or product, except as otherwise provided, upon which the state of North Dakota imposes a special tax.

²⁵⁶ **SECTION 8. AMENDMENT.** Subsection 11 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

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

²⁵⁷ **SECTION 9. AMENDMENT.** Subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

26. Gross receipts from sales of prosthetic devices, durable medical equipment, or mobility-enhancing equipment. For purposes of this subsection:
 - a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
 - (1) Can withstand repeated use;
 - (2) Is primarily and customarily used to serve a medical purpose;
 - (3) Generally is not useful to a person in the absence of illness or injury; and
 - (4) Is not worn in or on the body.

²⁵⁶ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

²⁵⁷ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

- b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment, including repair and replacement parts for mobility-enhancing equipment, which:
- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
 - (2) Is not generally used by persons with normal mobility; and
 - (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
- c. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such a device, worn on or in the body to:
- (1) Artificially replace a missing portion of the body;
 - (2) Prevent or correct a physical deformity or malfunction; or
 - (3) Support a weak or deformed portion of the body.
- d. "Prosthetic device" and "durable medical equipment" include:
- (1) Artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual.
 - ~~b.~~ (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.
 - ~~c.~~ (3) Artificial teeth sold by a dentist.
 - ~~d.~~ (4) Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
 - ~~e.~~ (5) Crutches and wheelchairs for the use of disabled persons.
 - ~~f.~~ (6) Equipment, including manual control units, van lifts, van door opening units, and raised roofs, for attaching to or modifying a motor vehicle for use by a permanently physically disabled person.
 - ~~g.~~ (7) Equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling.
 - ~~h.~~ (8) Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- i- (9) Devices and supplies designed or intended for ostomy care and management to include collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- j- (10) Supplies, equipment, and devices to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, and other items used for the care and management of bladder dysfunction.

²⁵⁸ **SECTION 10. AMENDMENT.** Subsection 45 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

45. Gross receipts from the sale or lease of ~~used~~ farm machinery, farm machinery repair parts, or ~~used~~ irrigation equipment used exclusively for agricultural purposes. ~~For purposes of this subsection, "used" means:~~
- a- ~~Tax under this chapter has been paid on a previous sale;~~
 - b- ~~Originally purchased outside this state and previously owned by a farmer; or~~
 - e- ~~Has been under lease or rental for three years or more.~~

SECTION 11. AMENDMENT. Section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.1. Sales tax exemption for food and food ~~products~~ ingredients. Gross receipts from sales for human consumption of food and food ~~products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar and sugar products when purchased by consumers for consumption off the premises where purchased, are exempt from the sales tax imposed by this chapter~~ ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the sales tax imposed by this chapter. ~~Purchases made with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.~~ For purposes of this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or

²⁵⁸ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

dehydrated form, that are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food products ingredients" do not include:
 - ~~1.~~ a. ~~Alcoholic beverages or mixed drinks made from alcoholic beverages.~~
 - ~~2.~~ b. ~~Candy or chewing gum.~~
 - ~~3.~~ c. ~~Carbonated beverages~~ Dietary supplements.
 - d. Prepared food.
 4. e. ~~Beverages commonly referred to as soft~~ Soft drinks containing less than ~~seventy~~ fifty percent fruit juice.
- ~~5.~~ Powdered drink mixes.
- ~~6.~~ Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.
- ~~7.~~ Coffee and coffee substitutes.
- ~~8.~~ Tea.
- ~~9.~~ Cocoa or cocoa products.
 - f. Tobacco.
2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.

- d. "Prepared food" means:
- (1) Food sold in a heated state or heated by the seller;
 - (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.
- e. "Prepared food" does not mean:
- (1) Food that is only cut, repackaged, or pasteurized by the seller.
 - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11 of its food code so as to prevent food-borne illness.
 - (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.
 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

SECTION 12. AMENDMENT. Section 57-39.2-05 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-05. Credit or refund for taxes paid on worthless accounts and repossessions.

1. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax must be paid upon the amount so collected. If a retailer's filing responsibility has been assumed by a certified service provider, the certified provider

may claim on behalf of the retailer any bad debt allowance provided under this section. The certified service provider shall credit or refund to the retailer the full amount of any bad debt allowance or refund received under this section.

2. If a retailer has remitted the sales tax due on the full amount of an installment sales contract rather than on only the installment payments received ~~as provided in subsection 3 of section 57-39.2-04~~, the retailer may deduct as a credit against the retailer's sales tax liability on the next return that the retailer is required to file the amount of sales tax the retailer paid on the installment contract payments which were not made by the purchaser of the merchandise sold under such contract; such credit may be deducted by the retailer regardless of whether or not said retailer has assigned the contract, provided, however, that if the retailer has assigned the contract the retailer must have assigned it subject to an agreement to repurchase the contract in the event of default by the purchaser under the contract or subject to a guarantee that the payments under the contract would be made. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess must be allowed as credit against future sales tax due from the retailer. If in any case the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

SECTION 13. AMENDMENT. Section 57-39.2-08.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-08.2. Sales tax to be added to purchase price and be a debt.

1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. ~~In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:~~

\$0.01 through \$0.15	no tax
\$0.16 through \$0.20	1- tax
\$0.21 through \$0.40	2- tax
\$0.41 through \$0.60	3- tax
\$0.61 through \$0.80	4- tax
\$0.81 through \$1.00	5- tax

~~Each additional \$1.00 - 5- additional tax, or each additional 20- or fraction thereof over \$1.00 - 1- additional tax.~~

A retailer shall determine the amount of tax charged to and received from each purchaser by use of a formula that applies the applicable tax rate to each taxable item or total purchase and the product must be

carried to the third decimal place. Amounts of tax less than one-half of one cent must be disregarded and amounts of tax of one-half of one cent or more must be considered an additional cent of tax. When a local sales tax applies, the determination of tax charged to and received from each customer will be applied to the aggregated state and local taxes.

2. On retail sales of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it three percent of such price or charge.

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

1. A person may not engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to that person as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association, partnership, or limited liability company, by a member or partner thereof; and in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of that person's authority. Any person registering under the agreement adopted under chapter 57-39.4 shall register in this state. Any person who is registered under the agreement is not required to sign the application and may register through an agent. Any person who is registered under such agreement may cancel its registration at any time but is liable for remitting any sales taxes collected before cancellation. Registration under the agreement and collection of tax does not in and of itself create nexus for other taxes or fees imposed by this state.

SECTION 15. Section 57-39.2-29 of the North Dakota Century Code is created and enacted as follows:

57-39.2-29. Sourcing - Multiple points of use exemption. Sourcing of retail sales, leases, or rentals must be determined in accordance with the provisions of the agreement adopted under chapter 57-39.4. Notwithstanding any other provisions of law or the sourcing provisions of the agreement adopted under chapter 57-39.4, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the

seller in conjunction with its purchase a form prescribed by the commissioner disclosing this fact, referred to as a multiple points of use exemption form.

1. Upon receipt of the multiple points of use exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
2. A purchaser delivering the multiple points of use exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of consumption of the sale.
3. The multiple points of use exemption form remains in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subsection 2 and the facts existing at the time of the sale, until it is revoked in writing.
4. A holder of a direct pay permit shall not be required to deliver a multiple points of use exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection 2 in apportioning the tax due on a digital good or service that will be concurrently available for use in more than one jurisdiction.

SECTION 16. Section 57-39.2-30 of the North Dakota Century Code is created and enacted as follows:

57-39.2-30. Conditional sales contract. For purposes of the tax imposed by this chapter, on any sale made under a conditional sales contract or under other forms of sale in which the payment of the principle sum is extended over a period longer than sixty days from the date of sale, only the portion of the sale amount that has actually been received in cash by the retailer during each reporting period is subject to the tax imposed by this chapter during that reporting period.

SECTION 17. Section 57-39.2-31 of the North Dakota Century Code is created and enacted as follows:

57-39.2-31. Seller and certified service provider limited immunity. A seller or certified service provider is immune from civil liability for charging and collecting the incorrect amount of sales or use tax in reliance on incorrect information provided by the tax commissioner regarding tax rates, boundaries, or taxing jurisdiction assignments. The tax commissioner will not be required to provide liability relief for errors resulting from the reliance on an address-based system for assigning tax jurisdictions as provided under the agreement adopted under chapter 57-39.4.

SECTION 18. Section 57-39.2-32 of the North Dakota Century Code is created and enacted as follows:

57-39.2-32. Confidentiality of information obtained by certified service providers. A certified service provider or any agent, employee, or other person acting under the authority of a certified service provider may not divulge or make known in any manner whatsoever the business affairs, operations, or information obtained by the certified service provider in the discharge of its duties under this chapter.

SECTION 19. Chapter 57-39.5 of the North Dakota Century Code is created and enacted as follows:

57-39.5-01. Definitions. Words used in this chapter have the same meaning as provided in chapter 57-39.2. As used in this chapter:

1. "Attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
2. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment.

57-39.5-01.1. Trade-in deduction. When tangible personal property is taken in trade or in a series of trades as a credit or partial payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to gross receipts taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2, or motor vehicle excise taxes imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not gross receipts.

57-39.5-02. Imposition - Exemptions. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm machinery or irrigation equipment used exclusively for agricultural purposes. Gross receipts from sales at retail of farm machinery or irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this chapter the gross receipts from the sale or lease of used farm machinery, farm machinery repair parts, or used irrigation equipment used exclusively for agricultural purposes. For purposes of this section, "used" means:

1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous sale;
2. Originally purchased outside this state and previously owned by a farmer; or
3. Has been under lease or rental for three years or more.

57-39.5-03. Replacement of insured machinery credit. When new farm machinery is purchased as a replacement for machinery on which the insurant has previously paid the gross receipts, sales, or use tax and which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser

shall provide the seller with a notarized statement from the insurance company verifying that the original farm machinery was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

57-39.5-04. Administration. The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in compliance with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 20. Chapter 57-39.6 of the North Dakota Century Code is created and enacted as follows:

57-39.6-01. Definitions. Words used in this chapter have the same meaning as in chapter 57-39.2. For purposes of this chapter:

1. "Alcoholic beverage" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume. This includes beverages 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.
2. "Gross receipts", in addition to the meaning provided in chapter 57-39.2, includes the full retail purchase price, including any taxes imposed on such merchandise or its use or on the retail or other sale of the merchandise, excluding taxes imposed under this chapter.

57-39.6-02. Gross receipts tax on alcoholic beverages - Exemption. There is imposed a tax of seven percent on the gross receipts of retailers from all sales at retail of alcoholic beverages. Gross receipts from sales at retail of alcoholic beverages are exempted from the tax imposed by this chapter when the sale is made to a purchaser who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales.

57-39.6-03. Gross receipts tax inclusion in purchase price. Taxes imposed by this chapter may be included in the purchase price of the alcoholic beverages.

57-39.6-04. Administration. The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 21. AMENDMENT. Subsection 4 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts and trade-ins allowed and taken on sales shall not be included. "Purchase price" also means, in those instances when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight

cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.

SECTION 22. A new subsection to section 57-40.2-01 of the North Dakota Century Code is created and enacted as follows:

"Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

SECTION 23. A new subsection to section 57-40.2-02.1 of the North Dakota Century Code is created and enacted as follows:

An excise tax is imposed on the fair market value of sand or gravel severed when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel.

SECTION 24. AMENDMENT. Subsection 14 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

14. The leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid pursuant to the election of the purchaser pursuant to subsection 7 14 of section 57-39.2-01 or subsection 5 of section 57-40.2-01.

SECTION 25. REPEAL. Sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota Century Code are repealed.

SECTION 26. EFFECTIVE DATE. This Act is effective for taxable events occurring after December 31, 2005.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 540

HOUSE BILL NO. 1205 (Representatives Maragos, Drovdal) (Senators Trenbeath, Wardner)

MOTOR VEHICLE TAX EXEMPTION FOR TRUSTS

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for transfers of vehicles from certain trusts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁹ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

5. a. ~~Motor vehicles~~ A motor vehicle acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it; ~~the~~
- b. The transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee; ~~the~~
- c. The transfer of a motor vehicle ~~vehicles~~ vehicle by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships; ~~the~~
- d. The transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed; ~~and the~~
- e. The transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization in which the ownership of the reorganized business remains in the same person or persons as prior to the reorganization, but only if the title transfer is completed within one hundred eighty days from the effective date of the reorganization; and
- f. The transfer of a motor vehicle without monetary consideration from a revocable living trust to the spouse, child, or sibling of the trustor.

²⁵⁹ Section 57-40.3-04 was also amended by section 2 of House Bill No. 1328, chapter 536.

SECTION 2. EFFECTIVE DATE. This Act is effective for transfers of motor vehicles occurring after June 30, 2003.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 541

SENATE BILL NO. 2192

(Senators Krebsbach, Schobinger, Seymour)

(Representatives M. Klein, Maragos, Thorpe)

AUTOMATED NOTIFICATION SYSTEM

AN ACT to create and enact a new subsection to section 57-40.6-01 of the North Dakota Century Code, relating to the definition of automated notification system; and to amend and reenact section 57-40.6-08 of the North Dakota Century Code, relating to liability for emergency services communication systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-40.6-01 of the North Dakota Century Code is created and enacted as follows:

"Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.

SECTION 2. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-08. Emergency services communication system, automated notification system, or emergency instructions - Liability.

1. A public agency, public safety agency, telephone exchange access service provider, ~~or~~ wireless service provider, or person that provides access to an emergency services communication system or an automated notification system, or any officer, agent, or employee of any public agency, public safety agency, telephone exchange access service provider, ~~or~~ wireless services provider, or person is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.
2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.

3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 542**HOUSE BILL NO. 1145**

(Natural Resources Committee)
(At the request of the Governor)

**SHALLOW GAS WELL PRODUCTION TAX
EXEMPTION**

AN ACT to create and enact two new subsections to section 57-51-01 and a new section to chapter 57-51 of the North Dakota Century Code, relating to a temporary exemption from the gross production tax for gas produced from shallow gas wells; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 57-51-01 of the North Dakota Century Code are created and enacted as follows:

"Shallow gas" means gas produced from a gas well completed in or producing from a shallow gas zone, as certified to the tax commissioner by the industrial commission.

"Shallow gas zone" means a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters] below the surface but above the top of the Rierdon formation, from which gas is or may be produced.

SECTION 2. A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Shallow gas - Gross production tax exemption. Shallow gas produced during the first twenty-four months of production from and after the date of first sales of gas from a well completed or recompleted in a shallow gas zone after June 30, 2003, is exempted from the gross production tax levied under section 57-51-02.2. Gas produced from such a well during testing prior to well completion or connection to a pipeline is also exempt from the gross production tax.

SECTION 3. EXPIRATION DATE. This Act is effective for gas wells completed or recompleted through June 30, 2007, and is thereafter ineffective.

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 543

HOUSE BILL NO. 1210

(Representatives Weiler, F. Klein, Meier, Onstad)
(Senators Nichols, Urlacher)

OIL EXTRACTION TAX INACTIVE WELL EXEMPTION

AN ACT to create and enact a new subsection to section 57-51.1-03.1 of the North Dakota Century Code, relating to eligibility of a two-year inactive well for exemption from the oil extraction tax; and to amend and reenact subsection 12 of section 57-51.1-01 and subsection 4 of section 57-51.1-03 of the North Dakota Century Code, relating to the definition of a two-year inactive well and eligibility of a work-over project for exemption from the oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51.1-03.1 of the North Dakota Century Code is created and enacted as follows:

To receive, from the first day of eligibility, a tax exemption under subsection 6 of section 57-51.1-03 on production from a two-year inactive well, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the two-year inactive well's qualification period.

SECTION 2. AMENDMENT. Subsection 12 of section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12. "Two-year inactive well" means any well certified by the industrial commission that has did not produced produce oil in more than one month in the two years any consecutive twenty-four month period before the date of application to the industrial commission for certification as a two-year inactive well being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.

SECTION 3. AMENDMENT. Subsection 4 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator ~~files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and~~ establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production ~~prior to the filing of the notice required by this subsection~~. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 544

SENATE BILL NO. 2153

(Human Services Committee)

(At the request of the Office of Management and Budget)

PROVIDER ASSESSMENT FOR MENTALLY RETARDED CARE

AN ACT to create and enact a new chapter to title 57 of the North Dakota Century Code, relating to a provider assessment for intermediate care facilities for the mentally retarded; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 57 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Business" has the meaning provided in section 31-08.1-01.
2. "Commissioner" means the state tax commissioner.
3. "Facility" includes the operating entity of each intermediate care facility for the mentally retarded located in this state.
4. "Intermediate care facility for the mentally retarded" means a treatment or care center licensed under chapter 25-16 that provides services eligible for coverage as medical assistance under 42 U.S.C. 1396a(a)(31), and also means the developmental center at westwood park, Grafton.
5. "Licensed bed" means a bed licensed under chapter 25-16 or approved by the secretary of health and human services pursuant to 42 U.S.C. 1396i.
6. "Quarter" means one of four calendar quarters beginning January first, April first, July first, or October first.

Imposition of assessment. An assessment must be imposed on each intermediate care facility for the mentally retarded licensed in this state. No waiver otherwise available under this code is applicable to this assessment.

Basis of assessment. Every year beginning July first, each intermediate care facility for the mentally retarded must be assessed a quarterly rate per licensed bed as of the first day of each quarter. The quarterly rate may not exceed a rate calculated by the department of human services as an annual aggregate of gross revenues as of December thirty-first of the preceding year for all intermediate care facilities for the mentally retarded, multiplied by one and one-half percent, and divided by licensed beds as of December thirty-first of the preceding year.

Reports - Extension.

1. On or before the last day of a quarter, each facility required to pay an assessment under this chapter must make out a return for the quarter in the form and manner prescribed by the commissioner. The facility shall report the number of licensed beds as of the first day of the quarter, the amount of the assessment for the quarter covered by the return, and include such further information the commissioner may require to enable the commissioner to correctly compute and remit the assessment levied by this chapter.
2. Upon request by a facility and a proper showing of the necessity, the commissioner may grant to the facility an extension of time not exceeding thirty days for making a return. If an extension is granted to a facility, the time the facility is required to make payment of the assessment liability must be extended for the same period. Interest must be charged upon the amount of the deferred payment at the rate of twelve percent per annum from the date the assessment would have been due if the extension had not been granted to the date the assessment is paid.
3. A return must be signed by a duly authorized agent of the facility and must contain a written declaration that the return is made and subscribed under the penalties of this chapter.

Payment of assessment. An assessment levied under this chapter must be paid on a quarterly basis and is due and payable on the last day of the quarter.

Penalties - Offenses.

1. If a facility's return or corrected return is not filed or the assessment is not paid within the time required by this chapter or, if upon audit, the facility is found to owe an additional assessment, the facility is subject to a penalty of five percent of the amount of assessment due, plus interest of one percent of the assessment for each month of delay or fraction thereof, excepting the first month after the assessment becomes due. If satisfied that the delay was excusable, the commissioner may waive and, if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the assessment imposed under this chapter.
2. A person failing to comply with this chapter or failing to remit the assessment provided by this chapter to the commissioner on a timely basis is guilty of a class B misdemeanor.

Records required. A facility required to pay an assessment under this chapter shall preserve and maintain the records as the commissioner may require for a period of three years and one month. All records must be open to examination at any time by the commissioner or any of the commissioner's duly authorized agents.

Officer and manager liability.

1. If a business that owns or operates a facility fails for any reason to file a required return or to pay an assessment due, any of its officers or managers having control or supervision of, or charged with the responsibility for making a return or payment is personally liable for the failure. The dissolution of a business does not discharge an officer's or manager's liability for a prior failure of the business to make a return or remit the assessment due.
2. If any of the officers or managers elect not to be personally liable for the failure to file the required return or to pay the assessment due, the facility shall make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual assessment liability of the facility.

Commissioner to administer chapter.

1. The commissioner is charged with the administration of this chapter and shall enforce the assessment, levy, and collection of assessments imposed under this chapter.
2. For the purpose of ascertaining the correctness of a return or for the purpose of ascertaining the number of licensed beds of a facility, the commissioner shall examine or cause to be examined by an agent or representative designated by the commissioner any books, papers, records, or memoranda; require by subpoena the attendance and testimony of witnesses; issue and sign subpoenas; administer oaths; examine witnesses and receive evidence; and compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the commissioner has the authority to investigate or determine.
3. If the commissioner finds an officer or manager of a facility has made a fraudulent return, the costs of a hearing must be assessed to the facility. In all other cases, the costs must be paid by the state.
4. The fees and mileage to be paid witnesses and assessed as costs must be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs must be assessed in the manner provided by law in proceedings in civil cases. When the costs are assessed to the facility, the costs must be added to the assessment charged against the facility and must be collected in the same manner. Costs assessed to the state must be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of the costs.
5. In cases of disobedience to a subpoena, the commissioner may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents. The court may issue an order requiring the person to appear before the commissioner and give evidence or produce records, books, papers, and documents. A failure to obey an order of the court may be punished by the court as contempt.

6. Testimony on hearings before the commissioner may be taken by a deposition as in civil cases and an individual may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as provided by this section.

Lien of assessment - Collection - Action authorized.

1. Whenever a facility liable to pay an assessment or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to the assessment, together with the costs that may accrue, is a lien in favor of this state upon all property and rights to property, whether real or personal, belonging to the facility. In the case of property in which a deceased owner, officer, or manager of a facility held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased owner's, officer's, or manager's interest, which interest must be determined by dividing the value of the entire property at the time of the officer's or manager's death by the number of joint tenants or persons interested therein.
2. The lien attaches at the time the assessment becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this subsection, the words "due" and "due and payable" mean the first instant the assessment becomes due.
3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the facility.
 - b. The tax identification number of the facility or social security number of the owner, officer, or manager of the facility.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. A notice of lien filed by the commissioner with the recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.

6. Upon payment of the assessment as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any assessments and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property. The state's attorney of the county in which the action is pending shall assist the attorney general.
8. The remedies of this section are cumulative. Action taken by the commissioner or attorney general may not be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.
9. The technical, legal requirements in this section relating to assessment liens on all real and personal property of the officer or manager of the facility to ensure payment of the assessment, including penalties, interest, and other costs, are self-explanatory.

Commissioner may require bond. When in the commissioner's judgment it is necessary and advisable to do so in order to secure the collection of the assessment levied under this chapter, the commissioner may require a person subject to the assessment to file with the commissioner a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility in an amount the commissioner may fix, to secure the payment of any assessment and penalties due or which may become due from the person. In lieu of the bond, securities approved by the commissioner in the amounts as the commissioner prescribes may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any assessment and penalties due. All moneys deposited as security with the commissioner under this section must be paid by the commissioner to the state treasurer and must be credited by the state treasurer into a special fund to be known as the provider assessment trust fund. If any assessment, penalty, or costs imposed by this chapter are not paid when due, by the person depositing moneys with the commissioner as security for the payment of the assessment, penalty, or costs imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the assessment and penalties due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the entitled person.

Correction of errors. If it appears that, as a result of a mistake, an amount of assessment, penalty, or interest has been paid which was not due under this chapter, the amount must be credited against any assessment due, or to become due, under this chapter from the person who made the erroneous payment, or the amount must be refunded to the person. The person who made the erroneous payment shall present a claim for refund or credit to the commissioner not later than three years after the due date of the return for the period for which the erroneous

payment was made or one year after the erroneous payment was made, whichever is later.

Provider assessment fund. There is a special fund in the state treasury known as the provider assessment fund. The fund includes all revenue received from intermediate care facilities for the mentally retarded for remittance to the fund under this chapter. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the provider assessment fund.

Approved April 4, 2003

Filed April 4, 2003