

TAXATION

CHAPTER 542

HOUSE BILL NO. 1107

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

TREASURY OFFSET PROGRAM PARTICIPATION

AN ACT to create and enact a new subsection to section 57-01-02 of the North Dakota Century Code, relating to participation by the tax commissioner in the treasury offset program; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-01-02 of the North Dakota Century Code is created and enacted as follows:

16. May participate in the treasury offset program administered by the United States department of treasury as prescribed by federal law and regulation. An amount equal to the amount of fees for participation in this program and any repayment of refunds erroneously received is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under this program and any required repayments.

Approved March 9, 2005
Filed March 9, 2005

CHAPTER 543**SENATE BILL NO. 2132**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

REFUND OF TAX BASED ON UNCONSTITUTIONALITY

AN ACT to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to refunds or credit of taxes based on a claim of unconstitutionality; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Claim of unconstitutionality - Refund or credit of taxes paid.

Notwithstanding any provision relating to claims for refund or credit of state taxes paid contained in title 57, any claim for a refund or credit of taxes paid based upon a claim that the tax or any provision thereof is unconstitutional under the federal or state constitution must be made within one hundred eighty days of the due date of the return or payment of the tax, whichever occurs first, for which the refund or credit is claimed. A claim for refund or credit of taxes paid before January 1, 2005, based upon a claim that the tax or any provision thereof is unconstitutional that is not filed with the commissioner before July 1, 2005, must be denied. This section does not apply to ad valorem property taxes.

SECTION 2. EFFECTIVE DATE. This Act is effective for tax returns filed or tax payments made after December 31, 2004.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 544

HOUSE BILL NO. 1517

(Representatives Vigesaa, Carlisle, Haas, Metcalf, Nicholas)
(Senator Syverson)

GREENHOUSES AS AGRICULTURAL PROPERTY

AN ACT to amend and reenact subsection 1 of section 57-02-01 and subdivision a of subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to classification of greenhouse property as agricultural property for assessment purposes and property exempt from taxation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁵ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
 - a. The land is platted by the owner.
 - b. Public improvements including sewer, water, or streets are in place.
 - c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - d. Property is zoned other than agricultural.
 - e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.

²⁵⁵ Section 57-02-01 was also amended by section 4 of House Bill No. 1175, chapter 545.

- g. The property sells for more than four times the county average true and full agricultural value.

SECTION 2. AMENDMENT. Subdivision a of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- a. All farm structures and improvements located on agricultural lands.
- (1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
 - (2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.
 - (3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.
 - ~~(3)~~ (4) The following factors may not be considered in application of the exemption under this subsection:
 - (a) Whether the farmer grows or purchases feed for animals raised on the farm.
 - (b) Whether animals being raised on the farm are owned by the farmer.
 - (c) Whether the farm's replacement animals are produced on the farm.
 - (d) Whether the farmer is engaged in contract feeding of animals on the farm.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

CHAPTER 545

HOUSE BILL NO. 1175

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

PROPERTY TAX LIENS

AN ACT to amend and reenact sections 11-13-12, 11-18-02, and 40-63-05, subsection 4 of section 57-02-01, subsection 3 of section 57-02-08.3, and sections 57-06-19, 57-12-09, 57-14-08, and 57-55-01 of the North Dakota Century Code, relating to liens noted in auditor's certificates on deeds and other instruments for the transfer of property, recording of certain instruments related to the transfer of property affected by liens, the status of property tax exemptions within renaissance zones, the definition of centrally assessed property, duties of recorders regarding property upon which liens have been created under the homestead credit for special exemptions, references to true and full value for ad valorem assessments, duties of special assessors to notify real estate owners when reassessing land and improved property, and the definition of utility services as applied to the taxation of mobile homes; to repeal sections 57-06-17 and 57-45-03 of the North Dakota Century Code, relating to the allocation of the assessment of operative property constituting a single and continuous property and the furnishing of lists of lands added to or taken from tax rolls; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-13-12 of the North Dakota Century Code is amended and reenacted as follows:

11-13-12. Auditor's certificate of taxes and special assessments on deeds, contracts for deed, plats, replats, and patents.

1. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are delinquent taxes ~~or~~, special assessments, or an unsatisfied lien created under section 57-02-08.3 against the land described in the instrument, or whether the land has been sold for taxes.
 - a. If there are delinquent taxes ~~or~~, special assessments, or an unsatisfied lien created under section 57-02-08.3 against lands described in the instrument, the auditor shall certify the same. When the receipt of the county treasurer is produced for the delinquent and current taxes or special assessments, the auditor shall enter "Taxes and special assessments paid and transfer accepted".
 - b. If the land described has been sold for taxes to a purchaser other than the county, the auditor shall enter "Taxes paid by sale of the land described within and transfer accepted".
 - c. If the instrument presented is entitled to record without regard to taxes, the auditor shall enter "Transfer accepted".

- d. Acceptances required under this subsection must be accompanied by the auditor's signature.
2. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office whether there are current taxes or, current special assessments, or an unsatisfied lien created under section 57-02-08.3 against the land described in the instrument. If there are current taxes or, current special assessments, or an unsatisfied lien created under section 57-02-08.3 against the land described in the instrument, the auditor shall place a statement on the instrument showing the amount of any current taxes or, current special assessments, or unsatisfied lien created under section 57-02-08.3. When the receipt of the county treasurer is produced showing payment of delinquent and current taxes and special assessments, and satisfaction of all liens created under section 57-02-08.3, if any, the auditor shall enter "Taxes and special assessments paid, all liens created under section 57-02-08.3 satisfied, if any, and transfer accepted". For purposes of this subsection:
 - a. "Current special assessments" means special assessments that have been certified to the county auditor for collection but are not yet delinquent and have become due on the first day of January under section 57-20-01.
 - b. "Current taxes" means real estate taxes, as shown on the most recent tax list prepared by the county auditor, which are not yet delinquent and have become due on the first day of January under section 57-20-01.
 3. Whenever a plat, replat, auditor's lot, or any instrument that changes the current property description, including condominium ownership established under chapter 47-04.1, is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are current or delinquent taxes, special assessments, or an unsatisfied lien created under section 57-02-08.3 and, after February first of each year, the tax estimate for that year against the land described in the instrument or whether the land has been sold for taxes. If there are current taxes, delinquent taxes, delinquent special assessments, installments of special assessments, an unsatisfied lien created under section 57-02-08.3 or tax estimates against lands described in the instrument, the auditor shall certify the same.

SECTION 2. AMENDMENT. Section 11-18-02 of the North Dakota Century Code is amended and reenacted as follows:

11-18-02. Recorder not to record certain instruments unless they bear auditor's certificate of transfer. Except as otherwise provided in section 11-18-03, the recorder shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent and current taxes and delinquent and current special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments have been

paid by sale of the land, or that the instrument is entitled to record without regard to taxes. The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under section 57-02-08.3.

SECTION 3. AMENDMENT. Section 40-63-05 of the North Dakota Century Code is amended and reenacted as follows:

40-63-05. Property tax exemptions.

1. A municipality may grant a partial or complete exemption from ad valorem taxation on single-family residential property, exclusive of the land on which it is situated, if the property was purchased or rehabilitated by an individual for the individual's primary place of residence as a zone project. An exemption granted under this subsection may not extend beyond five taxable years following the date of acquisition or completion of rehabilitation.
2. A municipality may grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements purchased or rehabilitated as a zone project for any business or investment purpose. An exemption under this subsection may not extend beyond five taxable years following the date of purchase or completion of rehabilitation.

²⁵⁶ **SECTION 4. AMENDMENT.** Subsection 4 of section 57-02-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Centrally assessed property" means all property ~~except railroad operating property,~~ which is assessed by the state board of equalization ~~pursuant to~~ under chapters 57-05, 57-06₁, and 57-32.

SECTION 5. AMENDMENT. Subsection 3 of section 57-02-08.3 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Any credit allowed under subsection 1, plus interest in the amount of nine percent per year from June first of the year for which the special assessment installment for which a credit is taken becomes payable, creates a lien in favor of the state against the property upon which the special assessment credit is allowed and remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.
- b. (1) Except as otherwise provided in this subdivision, a transfer of title to the homestead because of sale, death, or otherwise may not be made without the lien being satisfied. When a credit under subsection 1 is allowed, the county auditor shall

²⁵⁶ Section 57-02-01 was also amended by section 1 of House Bill No. 1517, chapter 544.

cause a notice of lien of record to be filed against subject property with the recorder.

- (2) The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under this section, except for a transfer between spouses because of the death of one of them as provided in paragraph 3.
 - (3) When a transfer occurs between spouses because of the death of one of them, the lien allowed by this section need not be satisfied until the property is again transferred.
- c. This lien has precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. A mistake in the description of the property covered by this lien or in the name of the owner of the property does not defeat the lien if the property can be identified by the description in the special assessment list.

SECTION 6. AMENDMENT. Section 57-06-19 of the North Dakota Century Code is amended and reenacted as follows:

57-06-19. Certification of assessment. The state tax commissioner shall certify to the county auditor of each county in which the company assessed owns property:

- 1- ~~The the total assessed true and full valuation of the company's property not constituting a single and continuous line, with information as to the amount in each assessment district within such the county.~~
- 2- ~~The number of miles [kilometers] of line, valuation per mile [1-64 kilometers], and total valuation of any property constituting a single and continuous line within each taxing district in each county.~~

SECTION 7. AMENDMENT. Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

57-12-09. Written notice of increased assessment to real estate owner.

When any assessor has increased the ~~assessed~~ true and full valuation of any lot or tract of land together with any improvements thereon by fifteen percent or more of the last assessment, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered by ~~such the~~ assessor to the property owner or mailed to the property owner at the property owner's last-known address except that no ~~such~~ notice need be delivered or mailed if the ~~assessed true and full~~ valuation is increased by less than ~~one thousand five hundred three thousand~~ one thousand five hundred dollars. The tax commissioner shall prescribe suitable forms for this notice and ~~such~~ the notice must ~~also~~ show the true and full value as defined by law of the property, including ~~such~~ improvements, that the assessor used in making the assessment for the current year and for the year in which the last assessment was made and must also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. ~~Such~~ The notice must be mailed or delivered to the property owner at least ten days in advance of the meeting date of the local equalization board and must be mailed or delivered at the expense of the assessment district for which the assessor is employed.

SECTION 8. AMENDMENT. Section 57-14-08 of the North Dakota Century Code is amended and reenacted as follows:

57-14-08. General reassessment of property - Allowance. A reassessment may be made as follows:

1. Upon the filing of a petition signed by not less than ten freeholders in a political subdivision, or by the governing body of that subdivision, requesting a reassessment of property in the subdivision or upon investigation by the board of county commissioners, the board of county commissioners, before October first, may order a reassessment of any class of property, or of all property, located within the subdivision or within any subdivision if, in its opinion, taxable property located within the subdivision has escaped assessment in whole or in part, or has been assessed unfairly, or has not been assessed according to law.
2. The board of county commissioners then may appoint a competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the board, and who shall proceed in accordance with the provisions of law governing assessors. The special assessor may be selected by competitive bidding or a process determined by the board of county commissioners. The special assessor is entitled to reasonable compensation by the board of county commissioners for the special assessor's services, together with meals and lodging as allowed by law, and mileage expense at the rate allowed by law for each mile [1.61 kilometers] actually and necessarily traveled in the performance of that person's duties, which must be audited and allowed by the board of county commissioners and paid out of the county treasury upon warrant of the county auditor. If the reassessment was ordered by the tax commissioner, the commissioner shall appoint a competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the commissioner and who shall proceed in accordance with the provisions of the law governing assessors; the special assessor is entitled to reasonable compensation by the commissioner for that person's services plus meals, lodging, and mileage expense at the rates provided by law, and the commissioner shall audit and allow the bill, and the same must be paid out of the county treasury. In either case, the compensation must be charged to the political subdivision in which the reassessment was made and must be deducted by the county treasurer from funds coming into the treasurer's hands apportionable to the subdivision. The board of county commissioners or tax commissioner who appoints a special assessor may authorize such assistants as may be necessary to aid the special assessor and shall allow reasonable compensation for each of the assistants plus meals, lodging, and mileage expense at the rates provided by law, which amounts must be audited, allowed, and paid and must be charged to the political subdivision reassessed in the manner provided for the special assessor.
3. Upon completion of the reassessment, the assessor shall certify the result to the county auditor, who forthwith shall give notice by mail to the state tax commissioner and the board of county commissioners and the governing boards of each township, city, and school district which is wholly or partially within the reassessment district, that a reassessment has been completed in the named assessment district and that a meeting for the purpose of equalizing the assessment will be held in the

county courthouse on the day and at the time specified in the notice. Each board shall appoint one of its members to attend the equalization meeting and the tax commissioner shall attend or appoint a representative from the commissioner's office to attend the meeting. The group of persons comprise the special board of equalization for the reassessment. The member representing the board of county commissioners serves as chairman and the county auditor serves as secretary for the special board of equalization. The meeting must be held not later than thirty days from the date of the written notice of the meeting mailed by the county auditor. A notice of the special meeting and its purpose must be published at least once in the official newspaper of the county in which the reassessment was made not less than one week prior to the meeting. Each person, except the tax commissioner or the commissioner's appointee, serving on this special board of equalization is entitled to compensation at the rate of up to forty-five dollars per day plus mileage expense and necessary expenses for meals and lodging at the rate allowed by law for attendance at the meeting. Claims therefor must be audited and allowed by the board of county commissioners and must be paid, charged, and deducted in the same manner as the claim of the special assessor. The claims for mileage expense and necessary expenses for meals and lodging of the tax commissioner or the commissioner's appointee in attending the special equalization meeting must be audited, allowed, and paid as are other similar claims made by them.

4. When any special assessor has increased the true and full valuation of any lot or tract of land together with any improvements to that lot or tract of land by fifteen percent or more of the last assessment, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered by the special assessor to the property owner or mailed to the property owner at the property owner's last-known address except that no notice need be delivered or mailed if the true and full valuation is increased by less than three thousand dollars. The tax commissioner shall prescribe suitable forms for this notice and the notice must also show the true and full value as defined by law of the property, including improvements, that the special assessor used in making the reassessment and must also show the date prescribed by law for the meeting of the special board of equalization of the assessment district in which the property is located. This notice must be mailed or delivered to the property owner at least ten days in advance of the meeting date of the special board of equalization and must be mailed or delivered at the expense of the assessment district for which the special assessor is employed.
5. At the meeting, the special board of equalization shall hear all grievances and complaints in regard to the reassessment and shall proceed to equalize the same. All tax lists must be corrected to comply with the action.

SECTION 9. AMENDMENT. Section 57-55-01 of the North Dakota Century Code is amended and reenacted as follows:

57-55-01. Definitions. For the purposes of this chapter, "mobile home" means a structure, either single or multisectional, which is built on a permanent chassis, ordinarily designed for human living quarters, either on a temporary or permanent basis, owned or used as a residence or place of business of the owner or

occupant, which is either attached to utility services or is twenty-seven feet [8.23 meters] or more in length. For purposes of this chapter "utility services" means services purchased by the occupant from a utility company under the jurisdiction of the public service commission, a rural electric cooperative, or a political subdivision of the state.

SECTION 10. REPEAL. Sections 57-06-17 and 57-45-03 of the North Dakota Century Code are repealed.

SECTION 11. EFFECTIVE DATE. This Act is effective for all taxable years beginning after December 31, 2004.

Approved March 23, 2005
Filed March 23, 2005

CHAPTER 546

SENATE BILL NO. 2157

(Senators Wardner, Lindaas, Syverson)
(Representatives Drovdal, Headland)

HOMESTEAD TAX CREDIT

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to eligibility for and application of the homestead property tax credit; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁷ **SECTION 1. AMENDMENT.** Section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income Homestead credit.

1. a. Any person sixty-five years of age or older ~~in the year in which the tax was levied, or any person who~~ is permanently and totally disabled, in the year in which the tax was levied, ~~as certified by a licensed physician approved by the local governing body,~~ with an income of fourteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, that does not exceed the limitations of subdivision c is entitled to receive a reduction in the assessment on the taxable valuation on the person's homestead as defined in section 47-18-04, except that this. An exemption under this subsection applies to any person ~~who otherwise qualifies under this subsection~~ regardless of whether the person is the head of a family.
- b. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person.
- c. The exemption ~~to which any person may be entitled~~ must be determined according to the following schedule:
 - a. (1) If the person's income is not in excess of eight thousand five hundred dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a

²⁵⁷ Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2081, chapter 547.

- maximum reduction of ~~two~~ three thousand thirty-eight dollars of taxable valuation.
- b- (2) If the person's income is in excess of eight thousand five hundred dollars and not in excess of ~~nine~~ ten thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~one~~ two thousand six four hundred thirty dollars of taxable valuation.
- e- (3) If the person's income is in excess of ~~nine~~ ten thousand five hundred dollars and not in excess of eleven thousand five hundred dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two eight hundred twenty-three dollars of taxable valuation.
- e- (4) If the person's income is in excess of eleven thousand five hundred dollars and not in excess of ~~twelve~~ thirteen thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight one thousand two hundred fifteen dollars of taxable valuation.
- e- (5) If the person's income is in excess of twelve thirteen thousand five hundred dollars and not in excess of fourteen thousand five hundred dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~four~~ six hundred eight dollars of taxable valuation.
- d. In no case may a husband and wife who are living Persons residing together both be, as spouses or when one or more is a dependent of another, are entitled to the credit as provided for in only one exemption between or among them under this subsection upon their homestead. The provisions of this Persons residing together, who are not spouses or dependents, who are coowners of the property are each entitled to a percentage of a full exemption under this subsection equal to their ownership interests in the property.
- e. This subsection may does not reduce the liability of any person for special assessments levied upon any property.
- f. Any person eligible for claiming the exemption herein provided under this subsection shall sign a verified statement that the person is sixty-five years of age or older or is permanently and totally disabled, that the person's income, including that of any dependent, as determined in this chapter does not exceed fourteen thousand dollars per annum and that of facts establishing the person's eligibility.
- g. A person is ineligible for the exemption under this subsection if the value of the person's assets of the person and any dependent residing with the person, excluding the unencumbered value of the person's residence that the person claims as a "homestead" as

~~treasurer, who shall issue the refund refunds to applicants from the state general fund to the applicant. In no case may this~~

- e. This subsection does not apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared those living quarters are exempt from property taxation and the owner is not making a payment in lieu of property taxes.
 - f. A person may not receive a refund under this section for a taxable year in which that person received an exemption under subsection 1.
3. All forms necessary to effectuate this section must be prescribed, designed, and made available by the tax commissioner. The county directors of tax equalization shall make these forms available upon request.
4. ~~In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.~~
5. ~~No A person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may not receive any property tax credit under this section.~~
6. 5. For the purposes of this section, "permanently:
- a. "Dependent" has the same meaning it has for federal income tax purposes.
 - b. "Homestead" has the same meaning as provided in section 47-18-01.
 - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
 - d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
 - e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically

determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the tax commissioner for the purpose of homestead tax credit reimbursement in addition to other funds available for that purpose, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004, for ad valorem property taxes and for taxable years beginning after December 31, 2005, for mobile home taxes.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 547

SENATE BILL NO. 2081 (Finance and Taxation Committee) (At the request of the State Treasurer)

TAX REFUND PROCEDURES

AN ACT to amend and reenact subsection 2 of section 57-02-08.1 and subsection 3 of section 57-37.1-08 of the North Dakota Century Code, relating to the procedures for the refund of certain taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁸ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a licensed physician approved by the local governing body, with an income of fourteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters is eligible for refund for that part of the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of the person's income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether ~~or not~~ expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, the applicant is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. In no case may a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund, but the tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall ~~certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall~~ issue the refund ~~from the state general fund~~ to the applicant. In no case may this subsection apply to rents or fees paid by

²⁵⁸ Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2157, chapter 546.

a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation and is not making a payment in lieu of property taxes.

SECTION 2. AMENDMENT. Subsection 3 of section 57-37.1-08 of the North Dakota Century Code is amended and reenacted as follows:

3. In case an overpayment of such tax has been made for the estate of a decedent, such overpayment must be repaid out of any undistributed estate taxes in the hands of the state treasurer upon an order of the tax commissioner. Any overpayment to be repaid must bear interest at the Bank of North Dakota's money market demand account rate on the date of the tax commissioner's order to the state treasurer. Interest is to be computed from the time the tax was paid until the overpayment is repaid. Any interest owed by the state must be paid by the state treasurer from the general fund appropriation for miscellaneous refunds approved by the legislative assembly. The state treasurer shall thereupon present and file with the appropriate county treasurers and city auditors a verified claim of such overpayment accompanied by a copy of the order of the tax commissioner for such refund and the county treasurers and city auditors shall pay such claim to the state treasurer.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 548

SENATE BILL NO. 2188

(Senators Cook, Fischer, Kringstad)
(Representatives N. Johnson, Svedjan, Timm)

AGRICULTURAL PROPERTY CAPITALIZATION RATE

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 used for valuation and assessment of agricultural lands 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 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~~ eight and nine-tenths percent for taxable year 2005 and eight and three-tenths percent for taxable years after 2005. 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 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, 2004.

Approved April 26, 2005

Filed April 27, 2005

CHAPTER 549**HOUSE BILL NO. 1333**

(Representatives Brandenburg, Boe, Nicholas, Weisz)
(Senators Erbele, Klein)

**RAILROAD ASSESSMENT INFORMATION
CONFIDENTIALITY**

AN ACT to amend and reenact section 57-05-11 of the North Dakota Century Code, relating to confidentiality of information relating to assessment of railroad property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-05-11 of the North Dakota Century Code is amended and reenacted as follows:

57-05-11. Information deemed confidential. It is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge or to make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars set forth or disclosed in any report, or to permit any report or copy or any book containing any abstract of particulars to be seen or examined by any person except as provided by law. Notwithstanding the provisions of this section, hearings held by the state board of equalization under chapter 57-05 or 57-13 must be open to the public under section 44-04-19. The commissioner may authorize examination of such reports by other state officers, and may furnish to the tax officials of another state, the multistate tax commission, or the United States any information contained in the reports and related schedules and documents filed under this chapter, and in the report of an audit or investigation made with respect to an audit, provided that that information be furnished solely for tax purposes. The multistate tax commission may make that information available to the tax officials of any other state and the United States for tax purposes. This section applies only to a class II and class III railroad as defined by the surface transportation board in 49 Code of Federal Regulations, part 1201.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 550**HOUSE BILL NO. 1398**

(Representatives Nelson, Metcalf, Wieland)
(Senators Lyson, Tallackson)

CORRECTIONS CENTERS MILL LEVY

AN ACT to amend and reenact section 57-15-06.6 and subsection 19.1 of section 57-15-06.7 of the North Dakota Century Code, relating to the county levy limitation for regional or county corrections centers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-06.6 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06.6. Levy authorized for regional or county correction centers. The board of county commissioners of each county may levy an annual tax not exceeding the limitation in subsection 19.1 of section 57-15-06.7 for the purpose of constructing, equipping, operating, and maintaining regional or county corrections centers and for the purpose of contracting services from another public or private entity.

²⁵⁹ **SECTION 2. AMENDMENT.** Subsection 19.1 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

- 19.1. A county levying a tax for regional or county corrections centers according to section 57-15-06.6 may levy a tax not exceeding five ten mills.

Approved March 31, 2005
Filed March 31, 2005

²⁵⁹ Section 57-15-06.7 was also amended by section 1 of House Bill No. 1354, chapter 551.

CHAPTER 551**HOUSE BILL NO. 1354**

(Representatives Metcalf, D. Johnson, Mueller, Nicholas)
(Senators Andrist, Robinson)

VETERANS' SERVICE OFFICER MILL LEVY

AN ACT to amend and reenact subsection 18 of section 57-15-06.7 of the North Dakota Century Code, relating to the county levy for a county veterans' service officer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁰ **SECTION 1. AMENDMENT.** Subsection 18 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

18. A county levying a tax for a county veterans' service officer's salary, traveling, and office expenses in accordance with section 57-15-06.4 may levy a tax not exceeding ~~one and one-fourth~~ two mills.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 31, 2005

Filed March 31, 2005

²⁶⁰ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1398, chapter 550.

CHAPTER 552

HOUSE BILL NO. 1263

(Representative Wall)

(Senator Thane)

MERCURY AND HAZARDOUS SUBSTANCE REMOVAL LEVY

AN ACT to amend and reenact section 57-15-17.1 of the North Dakota Century Code, relating to school district property tax levies for mercury and other hazardous substance abatement or removal; to provide for a transfer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶¹ **SECTION 1. AMENDMENT.** Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. School board levies - Multiyear ~~asbestos abatement - Lead paint mercury and hazardous substance abatement or removal - Required remodeling - Alternative education programs.~~

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of:
 - a. Providing funds for the ~~abatement or removal of asbestos or lead paint~~ mercury and other hazardous substances from school buildings ~~or the abatement of asbestos or lead paint substances in school buildings under any other~~ in accordance with any method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from ~~removal of the~~ abatement or removal of ~~asbestos~~ such substances;
 - b. Any remodeling required to meet specifications set by the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to 28 CFR 36;
 - c. Any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school; and
 - d. Providing alternative education programs.

²⁶¹ Section 57-15-17.1 was also amended by section 1 of Senate Bill No. 2212, chapter 553.

2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3 and 4, must be placed in a separate fund known as the ~~asbestos and lead paint abatement mercury and hazardous substance abatement or removal~~ fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of ~~asbestos or lead paint abatement mercury and hazardous substance abatement or removal~~.
3. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.
4. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program but may not be used to construct or remodel facilities used to accommodate an alternative education program.
5. Any moneys remaining in the ~~asbestos and lead paint abatement mercury and hazardous substance abatement or removal~~ fund after completion of the principal and interest payments for any bonds issued for any school ~~asbestos or lead paint abatement mercury and hazardous substance abatement or removal~~ project, any funds remaining in the required remodeling fund after completion of the remodeling projects, and any funds remaining in the alternative education program fund at the termination of the program must be transferred to the general fund of the school district upon the order of the school board.

SECTION 2. EFFECTIVE DATE - TRANSFER. This Act is effective for taxable years beginning after December 31, 2004. Any funds in the asbestos and lead paint abatement fund after the effective date of this Act must be transferred to the mercury and hazardous substance abatement or removal fund, but any funds remain obligated for payment of principal and interest of any bonds for which the funds were obliged before the transfer.

Approved March 31, 2005
Filed March 31, 2005

CHAPTER 553

SENATE BILL NO. 2212

(Senators Grindberg, Schobinger, Wardner)
(Representatives Brandenburg, Grande, N. Johnson)

HEATING AND AIR SYSTEM LEVY

AN ACT to amend and reenact section 57-15-17.1 of the North Dakota Century Code, relating to use of a school district tax levy for heating, ventilation, and air-conditioning systems; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶² **SECTION 1. AMENDMENT.** Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. School board levies - Multiyear asbestos abatement - Lead paint removal - Required remodeling - Alternative education programs - Heating, ventilation, and air-conditioning systems.

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of:
 - a. Providing funds for the removal of asbestos or lead paint substances from school buildings or the abatement of asbestos or lead paint substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from removal or abatement of asbestos substances;
 - b. Any remodeling required to meet specifications set by the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to 28 CFR 36;
 - c. Any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school; ~~and~~
 - d. Providing alternative education programs; and
 - e. Providing funds for the repair, replacement, or modification of any heating, ventilation, or air-conditioning systems and required ancillary systems to provide proper indoor air quality that meets

²⁶² Section 57-15-17.1 was also amended by section 1 of House Bill No. 1263, chapter 552.

american society of heating, refrigerating and air-conditioning engineers, incorporated standards.

2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3 ~~and~~, 4, and 5, must be placed in a separate fund known as the asbestos and lead paint abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos or lead paint abatement.
3. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.
4. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program but may not be used to construct or remodel facilities used to accommodate an alternative education program.
5. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 2, 3, and 4, must be placed in a separate fund known as the heating, ventilation, and air-conditioning upgrade fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of improving indoor air quality.
6. Any moneys remaining in the asbestos and lead paint abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos or lead paint abatement project, any funds remaining in the required remodeling fund after completion of the remodeling projects, ~~and~~ any funds remaining in the alternative education program fund at the termination of the program, and any funds remaining in the heating, ventilation, and air-conditioning upgrade fund after completion of the principal and interest payments for any bonds issued for any indoor air quality project must be transferred to the general fund of the school district upon the order of the school board.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 554**HOUSE BILL NO. 1182**

(Representatives Keiser, Delmore, Wieland)
(Senator J. Lee)

INSURANCE RESERVE FUND LEVY USE

AN ACT to amend and reenact subsection 2 of section 57-15-28.1 of the North Dakota Century Code, relating to use of political subdivision levies for insurance reserve funds for political subdivision workforce safety and insurance premiums; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶³ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A political subdivision, except a school district or park district, levying a tax for an insurance reserve fund according to section 32-12.1-08 may levy a tax not exceeding five mills. A political subdivision, except a school district or park district, may use all or part of the levy under this subsection and the insurance reserve fund for payment of workforce safety and insurance contributions, premiums, judgments, and claims of the political subdivision.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 9, 2005
Filed March 9, 2005

²⁶³ Section 57-15-28.1 was also amended by section 1 of Senate Bill No. 2065, chapter 555.

CHAPTER 555**SENATE BILL NO. 2065**

(Senators J. Lee, Warner)
(Representatives Wieland, Nicholas)

COUNTY HEALTH INSURANCE LEVY

AN ACT to amend and reenact subsection 6 of section 57-15-28.1 of the North Dakota Century Code, relating to county mill levy limitations for comprehensive health insurance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁴ **SECTION 1. AMENDMENT.** Subsection 6 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

6. A county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding ~~four~~ eight mills and the limitation in subsection 36 of section 57-15-06.7.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 14, 2005

Filed March 14, 2005

²⁶⁴ Section 57-15-28.1 was also amended by section 1 of House Bill No. 1182, chapter 554.

CHAPTER 556**SENATE BILL NO. 2158**

(Senators Taylor, Espeguard, Klein)
(Representatives Boe, Drovdal, N. Johnson)

RURAL LEADERSHIP TUITION TAX CREDIT

AN ACT to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institutions tax credit for contributions made for tuition scholarships to rural leadership North Dakota; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 557

SENATE BILL NO. 2362

(Senators Dever, Cook, Wardner)
(Representatives Carlisle, L. Meier, Thoreson)

MILITARY INCOME TAX DEDUCTION

AN ACT to amend and reenact subdivision u of subsection 1 of section 57-38-01.2 and subdivision g of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to income tax deduction for income of national guard and reserve volunteers for federal active duty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁵ **SECTION 1. AMENDMENT.** Subdivision u of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- u. Reduced by the amount received by the taxpayer as payment for services performed when ~~called or ordered to~~ mobilized under 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, or professional military education; ~~or active guard and reserve tours for which the member has volunteered.~~

²⁶⁶ **SECTION 2. AMENDMENT.** Subdivision g of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- g. Reduced by the amount received by the taxpayer as payment for services performed when ~~called or ordered to~~ mobilized under 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, or

²⁶⁵ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1474, chapter 558, section 7 of Senate Bill No. 2032, chapter 151, and section 2 of Senate Bill No. 2391, chapter 560.

²⁶⁶ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

professional military education; ~~or active guard and reserve tours for which the member has volunteered.~~

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 558

HOUSE BILL NO. 1474

(Representatives Kerzman, Gulleson, L. Meier)
(Senators Dever, Kilzer)

ORGAN DONOR 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 individual income tax deduction for expenses and lost wages incurred by an individual who makes a donation of a human organ; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁷ **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 up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:

- (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
- (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
- (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions, and not already deducted under subdivision e.

²⁶⁷ Section 57-38-01.2 was also amended by section 7 of Senate Bill No. 2032, chapter 151, section 1 of Senate Bill No. 2362, chapter 557, and section 2 of Senate Bill No. 2391, chapter 560.

²⁶⁸ **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 up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:

- (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
- (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
- (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 14, 2005
Filed March 14, 2005

²⁶⁸ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

CHAPTER 559

HOUSE BILL NO. 1108

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

CORPORATE INCOME TAX ADJUSTMENTS

AN ACT to create and enact two new subdivisions to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to adjustments to federal taxable income for corporate income tax purposes; to amend and reenact subdivision e of subsection 1 of section 57-38-30 of the North Dakota Century Code, relating to the imposition and rate of tax on corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subdivisions to subsection 1 of section 57-38-01.3 of the North Dakota Century Code are created and enacted as follows:

Increased by the amount of the deduction allowable under section 199 of the Internal Revenue Code [26 U.S.C. 199], but only to the extent of the deduction taken to determine federal taxable income.

For tax years 2005 and 2006, increased by the amount of extraterritorial income as defined in section 114 of the Internal Revenue Code [26 U.S.C. 114], that is excluded under sections 101(d), 101(e), and 101(f) of Pub. L. 108-357 [118 Stat. 1418], but only to the extent the income was excluded in determining federal taxable income.

SECTION 2. AMENDMENT. Subdivision e of subsection 1 of section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

- e. On all taxable income above thirty thousand dollars, at the rate of ~~seven~~ six and one-half percent.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for taxable years beginning after December 31, 2004. Section 2 of this Act is effective for taxable years beginning after December 31, 2006.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 560

SENATE BILL NO. 2391

(Senators Syverson, Brown, Espegard, Grindberg, Nelson)
(Representative Iverson)

PLANNED GIFTS INCOME TAX CREDIT

AN ACT to create and enact a new section to chapter 57-38, a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 2 of section 57-38-30.3, and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for individuals for planned gifts to qualified North Dakota nonprofit organizations; and to provide an effective date.

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:

Planned gifts credit - Definitions. For purposes of this section:

1. a. "Planned gift" means an irrevocable contribution to a North Dakota qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:
 - (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
 - (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
 - (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
 - (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
 - (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
 - (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
 - (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

- b. "Qualified nonprofit organization" means a North Dakota incorporated or established organization that is:
 - (1) A tax-exempt organization under 26 U.S.C. 501(c), to which contributions qualify for a federal charitable income tax deduction; and
 - (2) An organization that has an established business presence or situs in North Dakota.
 - c. (1) A contribution using a technique described in paragraph 1 or 2 of subdivision a is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the North Dakota qualified nonprofit organization sooner than the earlier of:
 - (a) The date of death of the beneficiaries; or
 - (b) Five years from the date of the contribution.
 - (2) A contribution using the technique described in paragraph 7 of subdivision a is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.
 - (3) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the North Dakota qualified nonprofit organization sooner than the earlier of:
 - (a) The date of death of the annuitant or annuitants; or
 - (b) Five years after the date of the contribution.
 - (4) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity is a qualified charitable gift annuity.
2. An individual taxpayer is allowed a tax credit against the taxes imposed by section 57-38-29 or 57-38-30.3 in an amount equal to twenty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to any North Dakota qualified nonprofit organization. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is five thousand dollars. The credit allowed under this section may not exceed the taxpayer's income tax liability.
- a. If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in

computing North Dakota taxable income, but only to the extent that the contribution reduced federal taxable income.

- b. The credit must be applied to the tax year in which the contribution is made and any unused portion of the credit may be carried forward for up to two taxable years.

²⁶⁹ **SECTION 2.** A new subdivision to subsection 1 of section 57-38-01.2 is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

²⁷⁰ **SECTION 3.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

²⁷¹ **SECTION 4.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

An individual taxpayer filing a return under this section is entitled to the credit provided under section 1 of this Act.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004, and applies to qualifying planned gifts made after July 31, 2005.

Approved March 16, 2005
Filed March 17, 2005

²⁶⁹ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1474, chapter 558, section 7 of Senate Bill No. 2032, chapter 151, and section 1 of Senate Bill No. 2362, chapter 557.

²⁷⁰ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, and section 4 of Senate Bill No. 2391, chapter 560.

²⁷¹ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, and section 3 of Senate Bill No. 2391, chapter 560.

CHAPTER 561

HOUSE BILL NO. 1145

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

TAX FILING BY MARRIED INDIVIDUALS

AN ACT to amend and reenact subsection 1 of section 57-38-30.3 and subsection 2 of section 57-38-31 of the North Dakota Century Code, relating to the filing of separate income tax returns by married individuals; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷² **SECTION 1. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

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:

Not over \$27,050

Over \$27,050 but not over \$65,550

Over \$65,550 but not over \$136,750

Over \$136,750 but not over \$297,350

Over \$297,350

The tax is equal to:

2.10%

\$568.05 plus 3.92% of amount over \$27,050

\$2,077.25 plus 4.34% of amount over \$65,550

\$5,167.33 plus 5.04% of amount over \$136,750

\$13,261.57 plus 5.54% of amount over \$297,350

²⁷² Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

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:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$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~~ For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the ~~individual's~~ individual's federal adjusted gross income ~~derived from North Dakota sources allocable and apportionable to this state;~~ and
- (2) The denominator is the ~~individual's~~ 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~~ 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

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.

SECTION 2. AMENDMENT. Subsection 2 of section 57-38-31 of the North Dakota Century Code is amended and reenacted as follows:

2. The same filing status and deduction method used by a husband and wife when filing federal income tax returns must be used when filing state income tax returns. ~~If either spouse is a resident and the other is a nonresident, separate state income tax returns must be filed.~~

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 14, 2005
Filed March 14, 2005

CHAPTER 562

HOUSE BILL NO. 1052 (Representatives Maragos, Nicholas) (Senator Wardner)

CAPITAL GAINS INCOME TAX EXCLUSION

AN ACT to amend and reenact subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to the exclusion for capital gains under the simplified method of computing individual income tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷³ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

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. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.

²⁷³ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

- 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.
- g. 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.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 563

SENATE BILL NO. 2045

(Legislative Council)
(Taxation Committee)

PASSTHROUGH ENTITY COMPOSITE TAX RETURN

AN ACT to amend and reenact section 57-38-31.1 of the North Dakota Century Code, relating to filing of composite income tax returns by passthrough entities; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-31.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-31.1. Composite returns. Partnerships and subchapter S corporations may file a composite return on behalf of nonresident individual partners or shareholders in the manner prescribed by the tax commissioner. Any amount of tax paid by the partnership or subchapter S corporation on the composite return on behalf of a nonresident partner or shareholder constitutes a credit on the North Dakota return of the nonresident individual on whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed by a partnership or subchapter S corporation under this section is considered as the return of the nonresident individual partner or shareholder on whose behalf the return is filed. The tax under this section must be computed by multiplying the aggregate of the shares of North Dakota income reportable to North Dakota by the partners or shareholders included in the composite return by five and fifty-four hundredths percent.

1. For purposes of this section, unless the context otherwise requires:
 - a. "Member" means an individual who is a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust.
 - b. "Nonresident" means an individual who is not a resident of or domiciled in the state or a trust not organized in the state.
 - c. "Passthrough entity" means an entity that for the applicable tax year is treated as an S corporation under this chapter or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter.
2. a. A passthrough entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax, at the highest marginal rate provided in section 57-38-30.3 for individuals, on the members' pro rata or distributive shares of income of the passthrough entity from doing business in, or deriving income from sources within, this state.

- b. A nonresident member whose only source of income within the state is from one or more passthrough entities may elect to be included in a composite return filed under this section.
 - c. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the passthrough entity.
- 3. a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3 for individuals, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to any member for the amount withheld and paid over in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax commissioner shall apply tax withheld and paid over by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.
- b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return upon a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax commissioner may require. A passthrough entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the tax commissioner.
- c. Notwithstanding subdivision a. a passthrough entity is not required to withhold tax for a nonresident member if:
 - (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
 - (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;
 - (3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2; or
 - (4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal

Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 564**HOUSE BILL NO. 1041**

(Legislative Council)
(Taxation Committee)

MILITARY NONRESIDENT INCOME TAX TREATMENT

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-40 of the North Dakota Century Code, relating to the filing period for a claim for credit or refund attributable to the Servicemembers Civil Relief Act by a nonresident member of the United States armed services; 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 subdivision to subsection 1 of section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

A claim for credit or refund of an overpayment of tax imposed by this chapter may be made under this subdivision if the overpayment is attributable to application to the taxpayer of section 511 of the Servicemembers Civil Relief Act [Pub. L. 108-189; 117 Stat. 2835; 50 U.S.C. 501 et seq.]. Notwithstanding the time period for filing claims prescribed in this subsection, if a claim for credit or refund under this subdivision is barred because the time period for filing prescribed under this subsection expired before August 1, 2005, the claim for credit or refund may be filed on or before April 15, 2006.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 2000, and before January 1, 2003, and is thereafter ineffective.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 565

HOUSE BILL NO. 1144

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

LOTTERY WINNINGS TAX WITHHOLDING

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to income tax withholding on lottery winnings; and to declare an emergency.

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:

Withholding of lottery winnings. The North Dakota lottery shall deduct and withhold five and fifty-four one-hundredths percent of the total proceeds of state lottery winnings as North Dakota withholding tax if the winnings are subject to withholding. For purposes of this section, "winnings subject to withholding" means the proceeds in excess of five thousand dollars won from a lottery game operated pursuant to chapter 53-12. Every person who receives a payment from the winnings that are subject to withholding shall furnish the lottery director with a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the recipient. The North Dakota lottery shall file returns as provided in section 57-38-60 and is liable for the payment of the tax required to be withheld, but is not liable to any person for the amount of the payment.

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

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 566

SENATE BILL NO. 2140

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

FINANCIAL INSTITUTIONS TAXATION

AN ACT to amend and reenact section 57-35.3-12, subsection 9 of section 57-38-38, and sections 57-38.1-01 and 57-38.1-02 of the North Dakota Century Code, relating to provisions of the corporate income tax applicable to the financial institutions tax, the time period for the assessment of additional income tax, the definition of financial organization for purposes of the Uniform Division of Income for Tax Purposes Act, and applicability of the Uniform Division of Income for Tax Purposes Act; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-35.3-12 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-12. Applicable provisions of chapter 57-38 relating to administration, interest, and penalties. The provisions of subsection 9 of section 57-38-14, section 57-38-33, subsection 1 of section 57-38-34, sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49, 57-38-50, 57-38-51, 57-38-53, 57-38-54, 57-38-56, and 57-38-57, insofar as consistent therewith, govern the administration of sections 57-35.3-01 through 57-35.3-12. For this purpose, the term "corporation", as used in the sections listed in this section, includes a financial institution.

SECTION 2. 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, 2, and 3 or ~~subsection~~ subsections 1 and 2 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 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 3. AMENDMENT. Section 57-38.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
2. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
3. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.
4. ~~"Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company.~~
5. "Nonbusiness income" means all income other than business income.
6. 5. "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas.
7. 6. "Sales" means all gross receipts of the taxpayer not allocated under sections 57-38.1-04 through 57-38.1-08.
8. 7. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

SECTION 4. AMENDMENT. Section 57-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-02. Taxpayers - Applicability. Any taxpayer having income from business activity which is taxable both within and without this state, including a public utility, ~~but other than activity as a financial organization or the rendering of purely personal service by an individual,~~ shall allocate and apportion the taxpayer's net income as provided in this chapter.

SECTION 5. EFFECTIVE DATE. Section 2 of this Act is effective for amended returns filed after December 31, 2004.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 567

SENATE BILL NO. 2103 (Finance and Taxation Committee) (At the request of the Supreme Court)

INCOME TAX SETOFFS BY COURT ORDER

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 and sections 57-38.3-05 and 57-38.3-06 of the North Dakota Century Code, relating to definitions and procedures for purposes of income tax setoffs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, ~~or a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state.~~ On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 2. AMENDMENT. Section 57-38.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-38.3-05. Procedure - Notification of taxpayer.

1. Within a time specified by the commissioner, a claimant agency seeking to collect a debt through setoff shall supply the information necessary, in a form and in the manner prescribed by the commissioner, to identify each debtor whose refund is sought to be set off and certify the amount of the debt or debts owed by each debtor.
2. If a debtor identified by a claimant agency is determined by the commissioner to be entitled to a refund of at least twenty-five dollars, the commissioner shall approve the transfer of an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. When the refund owed exceeds the claimed debt, the commissioner shall send the excess amount to the debtor within a reasonable time after such excess is determined.

3. At the time of the approval of the transfer of funds to a claimant agency pursuant to subsection 2, the commissioner shall notify the claimant agency and the taxpayer or taxpayers whose refund is sought to be set off of the amount approved for setoff.
4. Upon receipt of notice from the commissioner pursuant to subsection 3, the claimant agency shall provide the taxpayer with written notice setting forth:
 - a. The name of the debtor.
 - b. The manner in which the debt arose.
 - c. The amount of the claimed debt.
 - d. The intention to set off the taxpayer's refund against the debt.
 - e. The amount of the refund in excess of the claimed debt.
 - f. The taxpayer's opportunity to give written notice to contest the setoff within thirty days of the date of mailing of the notice.
 - g. The name and mailing address to which the application for a hearing must be sent.
 - h. The fact that failure to apply for such a hearing, in writing within the thirty-day period, will be deemed a waiver of the opportunity to contest the setoff.
5. In the case of a joint return, a notice provided pursuant to subsection 4 must also set forth:
 - a. The name of the taxpayer named in the return, if any, against whom no debt is claimed.
 - b. The fact that a debt is not claimed against such taxpayer.
 - c. The fact that such taxpayer may be entitled to receive a refund if it is due the taxpayer regardless of the debt asserted against the taxpayer's spouse.
 - d. That in order to obtain a refund due to the taxpayer, such taxpayer must apply, in writing, for a hearing with the claimant agency named in the notice within thirty days of the date of the mailing of the notice.
 - e. The fact that failure to apply for such a hearing within thirty days of the mailing of such notice will be deemed a waiver of the opportunity to contest the setoff.
6. Upon Subdivisions f, g, and h of subsection 4 do not apply to debts submitted by the state court administrator for collection through setoff.
7. Except as provided in this subsection, upon receipt of funds transferred pursuant to subsection 2, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity

of the debt. The state court administrator shall submit the transferred funds upon receipt to the state treasurer for deposit in the manner provided by law unless an application for a hearing under subsection 5 is received.

SECTION 3. AMENDMENT. Section 57-38.3-06 of the North Dakota Century Code is amended and reenacted as follows:

57-38.3-06. Hearing procedure.

1. If the claimant agency receives written application contesting the setoff or the claim upon which the setoff is based, it shall grant a hearing to the taxpayer to determine whether the setoff is proper or the claim is valid. A hearing to contest a setoff sought by the state court administrator is governed by supreme court rule. If the sum asserted as due and owing is not correct, an adjustment to the claimed sum may be made.
2. No issues may be reconsidered at the hearing which have been previously litigated in a court or in any administrative proceeding.
3. Appeals from actions taken at the hearing allowed under this section must be in accordance with the provisions of chapter 28-32. An appeal from a hearing requested under subsection 5 of section 58-38.3-05 to contest a setoff sought by the state court administrator is governed by supreme court rule.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 568

SENATE BILL NO. 2281

(Senators Klein, Grindberg, Taylor)
(Representatives Belter, Mueller, Pollert)

AGRICULTURAL BUSINESS INVESTMENT TAX CREDIT

AN ACT to create and enact a new subsection to section 57-38.6-03 of the North Dakota Century Code, relating to agricultural business investment income tax credits; to amend and reenact sections 57-38.6-01, 57-38.6-02, 57-38.6-03, and 57-38.6-04 of the North Dakota Century Code, relating to agricultural business investment income tax credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
 - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
 - b. ~~Is~~ Has been certified by the securities commissioner to be in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; and
 - d. ~~Has a majority of its ownership interests owned by producers of unprocessed agricultural commodities~~ Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.
4. "Taxpayer" means an individual, estate, ~~or trust,~~ corporation, partnership, or limited liability company.

SECTION 2. AMENDMENT. Section 57-38.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-02. Certification - Investment reporting by qualified businesses.

The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director is not required to recertify a business as a qualified business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5.

SECTION 3. AMENDMENT. Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The ~~aggregate maximum~~ annual investment for which credit a taxpayer may obtain a ~~tax credit~~ under this section is ~~not more than twenty fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years.~~ This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to ~~fifteen~~ five taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to a ~~partnership's~~ the passthrough entity's investment in a qualified business must be determined at the ~~partnership~~ passthrough entity level. The amount of the total credit determined at the ~~partnership~~ passthrough entity level must be allowed to the ~~partners,~~ limited to individuals, estates, and trusts passthrough entity's owners, in proportion to their respective ownership interests in the ~~partnership~~ passthrough entity.
5. The investment must be at risk in the business. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business

for at least three years. An investment placed in escrow does not qualify for the credit.

6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

SECTION 4. A new subsection to section 57-38.6-03 of the North Dakota Century Code is created and enacted as follows:

A taxpayer whose investment in an agricultural commodity processing facility was made before January 1, 2005, and did not qualify for the tax credit because of the two million five hundred thousand dollar credit limitation in section 57-38.5-02, is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of thirty percent of the amount invested by the taxpayer in a qualified business, subject to the following:

- a. The aggregate investment for which a taxpayer may obtain a credit under this subsection is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
- b. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this subsection which is attributable to an investment made before January 1, 2005.
- c. Any amount of credit under this subsection not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.

SECTION 5. AMENDMENT. Section 57-38.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-04. Taxable year for agricultural business investment tax credit.

The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which ~~full consideration for~~ the investment in the qualified business was received by the qualified business.

SECTION 6. EFFECTIVE DATE. Section 1 of this Act is effective for any business certified by the director after December 31, 2004. Sections 2, 3, and 5 of this Act are effective for taxable years beginning after December 31, 2004. Section 4 of this Act is effective for tax year 2004 and is thereafter ineffective, except any unused credit may be carried forward as provided in section 4 of this Act.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 569

HOUSE BILL NO. 1055

(Representatives Sitte, Iverson, Pollert, Belter)
(Senators Wardner, Bowman)

TAXATION OF PROPERTY PURCHASED WITH INSURANCE PROCEEDS

AN ACT to amend and reenact sections 57-39.2-01, 57-39.5-03, and 57-40.2-01 and subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to farm machinery gross receipts tax and sales, use, and motor vehicle excise tax exemptions for purchase of replacement property using the amount of insurance compensation for a motor vehicle or farm machinery that has been stolen or totally destroyed; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁴ **SECTION 1. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-01. (Effective through December 31, 2005) 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. "Commissioner" means the tax commissioner of the state of North Dakota.
3. "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~~
 - a. 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~~

²⁷⁴ Section 57-39.2-01 was also amended by section 4 of House Bill No. 1043, chapter 580, and section 2 of Senate Bill No. 2050, chapter 582.

- b. 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.
- c. 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 against one or more replacement purchases in an a cumulative 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~~ If the full amount of the credit under this subdivision has not been used, the seller shall retain a copy of the notarized statement and, if the full amount of the credit has been used, the seller shall retain the original notarized statement ~~must be retained by the seller~~ to verify the amount of credit or trade-in credit allowed.
- d. "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.
- e. 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.
4. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
5. "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.
6. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, 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. "Retailer" 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. "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.

(Effective after December 31, 2005) 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.
8. a. "Gross receipts" means the 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.

10. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
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.
13. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.

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 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.
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.

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.

²⁷⁵ **SECTION 2. AMENDMENT.** Section 57-39.5-03 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-03. (Effective after December 31, 2005) 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 against one or more replacement purchases in an a cumulative 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~~ If the full amount of the credit under this section has not been used, the seller shall retain a copy of the notarized statement and, if the full amount

²⁷⁵ Section 57-39.5-03 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

of the credit has been used, the seller shall retain the original notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

²⁷⁶ **SECTION 3. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-01. (Effective through December 31, 2005) Definitions. In this chapter, unless the context and subject matter otherwise require:

1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons", "relief agency", "retail sale", "sale", each has the meaning given to it in section 57-39.2-01.
2. Property used in "processing", as that term is used in subsection 9, means any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.
3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
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 against one or more replacement purchases in ~~an~~ a cumulative 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~~ If the full amount

²⁷⁶ Section 57-40.2-01 was also amended by section 14 of House Bill No. 1043, chapter 580, and section 2 of Senate Bill No. 2050, chapter 582.

of the credit under this subsection has not been used, the seller shall retain a copy of the notarized statement and, if the full amount of the credit has been used, the seller shall retain the original notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

5. "Purchased at retail" includes, but is not limited to:
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision 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.
 - d. The severance of sand or gravel from the soil.
 - e. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
 - f. The purchase of an item of tangible personal property by 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, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. 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.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.
8. "Tangible personal property" means:
 - a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision 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.
 - d. The severance of sand or gravel from the soil.
9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.

(Effective after December 31, 2005) Definitions. In this chapter, unless the context and subject matter otherwise require:

1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons", "relief agency", "retail sale", "sale", each has the meaning given to it in section 57-39.2-01.
2. Property used in "processing", as that term is used in subsection 9, means any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination, shall become an integral or an ingredient or

component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.

3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
4. "Purchase price" applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.
5. "Purchased at retail" includes, but is not limited to:
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision 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.
 - d. The severance of sand or gravel from the soil.
 - e. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
 - f. The purchase of an item of tangible personal property by 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, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor,

employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. 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.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.
8. "Tangible personal property" means:
 - a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision 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.
 - d. The severance of sand or gravel from the soil.
9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.
10. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

²⁷⁷ **SECTION 4. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed against one or more replacement motor vehicle purchases in an a cumulative amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. If the full amount of the credit under this subsection has not been used, the director of the department of transportation shall record on the face of the notarized statement the necessary information to identify the partial use of the credit and shall retain a copy and return the original to the purchaser. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

²⁷⁷ Section 57-40.3-01 was also amended by section 14 of House Bill No. 1342, chapter 344, and section 4 of Senate Bill No. 2101, chapter 324.

SECTION 5. EFFECTIVE DATE. This Act is effective for property stolen or totally destroyed after June 30, 2004. Section 2 of this Act is effective for property stolen or totally destroyed for which replacement property is purchased after December 31, 2005.

Approved March 23, 2005

Filed March 23, 2005

CHAPTER 570**SENATE BILL NO. 2379**

(Senators Nething, Christmann, Cook)
(Representatives Monson, Wald)

**BUNDLED TELECOMMUNICATIONS SERVICES
TAXATION**

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to separation of bundled telecommunications services to identify services exempt from sales and use taxes; and to provide an effective 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:

Bundled telecommunications services including exempt services. In the case of a bundled transaction of services that includes telecommunications services, if the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services is subject to tax under this chapter and chapter 57-40.2 unless the provider can reasonably identify the nontaxable portion of the services from its books and records kept in the regular course of business.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 571

HOUSE BILL NO. 1179

(Representatives Devlin, Herbel, Vigesaa)
(Senators Fischer, J. Lee, Robinson)

ASSISTED LIVING FACILITY SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for assisted living facilities; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁸ **SECTION 1. AMENDMENT.** Subsection 24 of section 57-39.2-04 of the North Dakota Century Code, as effective through December 31, 2005, is amended and reenacted as follows:

24. Gross receipts from all sales when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services.

²⁷⁹ **SECTION 2. AMENDMENT.** Subsection 24 of section 57-39.2-04 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

24. Gross receipts from all sales when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services.

²⁷⁸ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

²⁷⁹ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 21, 2005

Filed March 22, 2005

CHAPTER 572**HOUSE BILL NO. 1368**

(Representatives Uglem, Iverson, Kreidt, Potter)
(Senators Klein, Taylor)

**EMERGENCY MEDICAL SERVICES SALES TAX
EXEMPTION**

AN ACT to amend and reenact subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for sales made to an emergency medical services provider; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁰ **SECTION 1. AMENDMENT.** Subsection 24 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

24. Gross receipts from all sales when made to an eligible facility or emergency medical services provider for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health and "emergency medical services provider" means an emergency medical services operation licensed by the state department of health under chapter 23-27.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 31, 2005
Filed March 31, 2005

²⁸⁰ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 573**SENATE BILL NO. 2176**

(Senator Wardner)

BULLION SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 31 of section 57-39.2-04 of the North Dakota Century Code, relating to sales and use tax exemption for sales of precious metal bullion; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸¹ **SECTION 1. AMENDMENT.** Subsection 31 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

31. Gross receipts from the sale of money including all legal tender coins and currency and from the sale of precious metal bullion that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand and is in such form or condition that its value depends upon its precious metal content and not its form.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years or events occurring after June 30, 2005.

Approved March 9, 2005

Filed March 9, 2005

²⁸¹ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 574

SENATE BILL NO. 2170

(Senators Wardner, Lyson, O'Connell)
(Representatives Froseth, Rennerfeldt, Solberg)

CARBON DIOXIDE TAX EXEMPTION AND GEOPHYSICAL EXPLORATION

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for carbon dioxide used for enhanced recovery of oil or natural gas; to amend and reenact sections 38-08.1-01 and 38-08.1-04.1 of the North Dakota Century Code, relating to definitions and exploration permit requirements to conduct geophysical exploration; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Commission" means the industrial commission.
2. "Geophysical exploration" means any method of obtaining petroleum-related geophysical surveys.
3. "Operator of the land" means the surface owner or the surface owner's tenant of the land upon or within one-half mile [.80 kilometer] of the land on which geophysical operations are to be conducted.
4. "Permitting agent" means a person who secures a permit from an operator of the land to conduct geophysical exploration activities.
5. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

SECTION 2. AMENDMENT. Section 38-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-04.1. Exploration permit.

1. Upon filing a complete application for permit to explore pursuant to section 38-08.1-04, the commission may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit". A person may not engage in geophysical exploration activities in this

state without having first obtained a geophysical exploration permit from the commission.

2. The permit must show, at a minimum:
 - a. The name of the person.
 - b. The name and address of the resident agent for service of process.
 - c. That an application to engage in geophysical exploration has been duly filed.
 - d. That a good and sufficient surety bond has been filed by the person, naming the surety company and giving its address.
3. The permit must be signed by the director of the commission's oil and gas division or the director's designee. The permit is valid for one year.
4. Within seven days of initial contact between the permitting agent and the operator of the land, the permitting agent shall provide the operator of the land and each landowner owning land within one-half mile [.80 kilometer] of the land on which geophysical exploration activities are to be conducted a written copy of section 38-08.1-04.1 and chapter 38-11.1.
5. The ~~permitholder~~ permitting agent shall notify the operator of the land at least ~~three~~ seven days ~~prior to~~ before the commencement of any geophysical exploration activity, unless waived by mutual agreement of both parties. The notice must include the approximate time schedule and the location of the planned activity.
- 6- 6. The permit or a photostatic copy thereof must be carried at all times by a member of the crew during the period of geophysical exploration and must be exhibited upon demand of the landowner or tenant operator or county or state official.
- 6- 7. The permitholder shall notify the county auditor or the auditor's designee at least twenty-four hours, excluding Saturdays and holidays, before the permitholder commences geophysical exploration in the county. Notice must include the approximate time schedule and location of the planned activity.

²⁸² **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

²⁸² Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas.

²⁸³ **SECTION 4.** A new subsection to section 57-40.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 22, 2005

Filed March 25, 2005

²⁸³ Section 57-40.2-04 was also amended by section 17 of House Bill No. 1043, chapter 580, and section 2 of Senate Bill No. 2050, chapter 582.

CHAPTER 575

HOUSE BILL NO. 1496

(Representatives Nelson, S. Kelsh, Monson)
(Senators Seymour, Tollefson)

HYDROGEN TAX EXEMPTIONS

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to a sales and use tax exemption for sales of hydrogen and production, storage, and transportation equipment used by a facility engaged in hydrogen generation and a special fuels tax exemption for the sale of hydrogen; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁴ **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 the sale at retail of hydrogen to power an internal combustion engine or fuel cell and equipment used directly and exclusively in production and storage of the hydrogen by a hydrogen generation facility in this state. For purposes of this subsection, "storage" means stationary and portable hydrogen containers or pressure vessels, piping, tubing, fittings, gaskets, controls, valves, gauges, pressure regulators, safety relief devices, and other accessories intended for hydrogen storage containers or pressure vessels.

SECTION 2. A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

Special fuels tax exemption for hydrogen. Sales of hydrogen to power an internal combustion engine or fuel cell are exempt from the taxes imposed by sections 57-43.2-02 and 57-43.2-03.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2005, and before July 1, 2010, and is thereafter ineffective.

Approved April 22, 2005
Filed April 25, 2005

²⁸⁴ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 576

HOUSE BILL NO. 1498

(Representatives Porter, Belter, Drovdal, R. Kelsch)
(Senators Christmann, Cook)

REFINERY EQUIPMENT SALES TAX EXEMPTION

AN ACT to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2 of the North Dakota Century Code, relating to sales and use tax exemption for machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of equipment of a new or existing oil refinery or gas processing plant; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁵ **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.2. Reduced rate and exemption for power plant construction and production equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:
 - a. "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
 - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
 - ~~b.~~ c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

²⁸⁵ Section 57-39.2-04.2 was also amended by section 1 of House Bill No. 1268, chapter 577.

b- c. "Power plant" means:

- (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
- (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.

e- e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

2. Sales of production or environmental upgrade equipment used exclusively in power plants or processing units that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the ~~five percent sales~~ applicable tax rate imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2007.

Approved March 9, 2005
Filed March 10, 2005

CHAPTER 577

HOUSE BILL NO. 1268

(Representatives Belter, Delzer, Kerzman)
(Senators Christmann, Freborg, O'Connell)

COAL CONVERSION FACILITY TAX REDUCTION

AN ACT to create and enact a new subsection to section 57-60-01 of the North Dakota Century Code, relating to definitions for coal conversion facilities privilege tax purposes; to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2, subsection 3 of section 57-60-01, and section 57-60-02 of the North Dakota Century Code, relating to sales, use, and coal conversion facilities privilege tax exemptions and rate reductions for environmental upgrade and repowering of a power plant; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁷ **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.2. Reduced rate and exemption for power plant construction and, production, environmental upgrade, and repowering equipment.

1. As used in this section, unless the context otherwise requires:
 - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - b. "Operator" means any person owning, holding, or leasing a power plant.
 - ~~b.~~ c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single

²⁸⁷ Section 57-39.2-04.2 was also amended by section 1 of House Bill No. 1498, chapter 576.

electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

- e. d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
 - e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.
- 2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
- 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
- 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the ~~five percent sales~~ applicable tax rate imposed by this chapter and apply to the commissioner for a refund.
- 5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

²⁸⁸ **SECTION 2. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.2. Reduced rate and exemption for power plant construction and, production, environmental upgrade, and repowering equipment.

- 1. As used in this section, unless the context otherwise requires:
 - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in

²⁸⁸ Section 57-40.2-04.2 was also amended by section 2 of House Bill No. 1498, chapter 576.

machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.

- b. "Operator" means any person owning, holding, or leasing a power plant.
- b- c. "Power plant" means:
- (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
- e- d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
- e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.
2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the ~~five percent sales applicable tax rate~~ imposed by this chapter and apply to the commissioner for a refund.
 5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

²⁸⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Coal conversion facility" means any of the following:
 - a. A plant, other than an electrical generating plant or a coal beneficiation plant, with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products, and which uses or is designed to use over five hundred thousand tons [453592.37 metric tons] of coal per year;
 - b. An electrical generating plant, with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ten thousand kilowatts or more; or
 - c. A plant, with all additions thereto, which is designed for coal beneficiation.
 - d. A gas-fired electrical generating facility, and all additions to the facility, which generates electrical power through the consumption of gas produced by the conversion of lignite from its natural form into gas and has a capacity of ten thousand kilowatts or more.

²⁹⁰ **SECTION 4.** A new subsection to section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

"Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.

SECTION 5. AMENDMENT. Section 57-60-02 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax must be computed as follows:

1. For all coal conversion facilities, except as otherwise provided in this section, the tax is measured by the gross receipts derived from such facility for the preceding month and is in the amount of four and one-tenth percent of such gross receipts. For purposes of this

²⁸⁹ Section 57-60-01 was also amended by section 4 of House Bill No. 1268, chapter 577.

²⁹⁰ Section 57-60-01 was also amended by section 3 of House Bill No. 1268, chapter 577.

subsection, "gross receipts" of a coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.

2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction or completed repowering after June 30, 1991, are exempt from eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 1991, partial or complete exemption from the remaining fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction or completed repowering after June 30, 1991, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant.
4. For coal gasification plants, the tax is the greater of either the amount provided in subsection 1 or thirteen and one-half cents on each one thousand cubic feet [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day.
5.
 - a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility or for a period of five years from April 20, 1987, whichever is later. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
 - b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete

exemption from the remaining fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted.

6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess of eighty percent of the design capacity of the coal beneficiation plant is exempt from such tax.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 21, 2005
Filed March 23, 2005

CHAPTER 578

SENATE BILL NO. 2267

(Senators Erbele, Andrist, Thane)
(Representatives Brandenburg, Maragos, Pietsch)

SENIOR CITIZEN PROGRAMS

AN ACT to create and enact section 57-39.2-26.2 of the North Dakota Century Code, relating to allocation of sales, use, and motor vehicle excise tax revenues to a state matching program for senior citizen services and programs; to amend and reenact subsection 5 of section 57-15-56 and section 57-39.2-26 of the North Dakota Century Code, relating to a state matching program for senior citizen services and programs; to provide a continuing appropriation; to provide a statement of legislative intent; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-15-56 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~The department of human services state treasurer shall provide matching funds as provided in this subsection for the amounts levied by counties and cities for senior citizen services and programs operated pursuant to funded as required by this section. The grants must be made on or before March first of each year and must be equal to the amount levied for the previous taxable year by each county or city within the limitations of legislative appropriations, provided that no such to each eligible county. A county receiving a grant under this section which has not levied a tax under this section shall transfer the amount received to a city within the county which has levied a tax under this section. A grant may not be made to any county or city which that has not filed with the department of human services state treasurer a required written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the department of human services state treasurer on or before February first of each year following a year in which the reporting county or city received grant funds under this subsection. A matching fund grant must be provided from the senior citizen services and programs fund to each eligible county equal to two-thirds of the amount levied in dollars in the county under this section for the taxable year, but the matching fund grant applies only to a levy of up to one mill under this section.~~

It is the intent of the legislative assembly that counties or cities allocate an amount equal to one-third of one mill of property tax revenue from their funds raised or received under section 57-15-06, 57-15-08, or 57-39.2-26.1, or any combination of those fund sources, for senior citizen services and programs for each taxable year. A continuing appropriation of state matching funds and expectation of a local matching fund effort is initiated because of the anticipated increase in state aid distribution fund allocations, with the intent of stabilizing matching funds for senior citizen services and programs at a funding

level of one mill for all participating counties. A county is not required to provide the one-third of one mill matching funds if the county program can be covered with the funding from the state and the levy under this section in the county. It is also anticipated that this change in funding will allow reduction of mill levies under this section in some counties, which will allow allocation of unused amounts under section 57-39.2-26.2 among counties levying the statutory maximum amount for taxable year 2004.

SECTION 2. AMENDMENT. Section 57-39.2-26 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26. Allocation of revenue. All Except as provided by sections 57-39-26.1 and 57-39.2-26.2, all moneys collected and received under this chapter must be paid into the state treasury and must be credited by the state treasurer to the general fund. Moneys deposited with the commissioner as security for the payment of tax, penalties, or costs due must be deposited and accounted for as provided in subsection 3 of section 57-39.2-12.

SECTION 3. Section 57-39.2-26.2 of the North Dakota Century Code is created and enacted as follows:

57-39.2-26.2. Allocation of revenues to senior citizen services and programs matching fund - Continuing appropriation. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to the amount of revenue that would have been generated by a levy of two-thirds of one mill on the taxable valuation of all property in the state subject to a levy under section 57-15-56 in the previous taxable year must be deposited by the state treasurer in the senior citizen services and programs fund during the period from July first through December thirty-first of each year. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax revenues which must be deposited in the fund as determined under this section. Revenues deposited in the senior citizen services and programs fund are provided as a standing and continuing appropriation for allocation as provided in subsection 5 of section 57-15-56. Any unexpended and unobligated amount in the senior citizen services and programs fund at the end of the 2005-07 biennium must be allocated among counties that levied the statutory maximum mill levy for taxable year 2004 in proportion to the dollars generated by those levies in those counties for that year but the allocation to any county may not exceed the difference between combined funding for the county's senior citizen services and programs for taxable year 2004 and the combined funding for those services and programs for taxable year 2006 and any remaining unexpended and unobligated amount at the end of any biennium must be transferred by the state treasurer to the state general fund.

SECTION 4. LEGISLATIVE INTENT - HOME-DELIVERED MEALS. It is the intent of the fifty-ninth legislative assembly that the department of human services encourage providers, to the extent possible, to allocate additional resources to make available more home-delivered meals for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. EFFECTIVE DATE. This Act is effective for tax collections received after June 30, 2005.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 579**HOUSE BILL NO. 1042**

(Legislative Council)
(Taxation Committee)

**STREAMLINED SALES TAX GOVERNING BOARD
REPRESENTATION**

AN ACT to create and enact a new section to chapter 57-39.4 of the North Dakota Century Code, relating to North Dakota representation on the streamlined sales tax governing board and state and local advisory council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

Membership of streamlined sales tax governing board and state and local advisory council.

1. Two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative council, shall represent the state of North Dakota on the streamlined sales tax governing board.
2. One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative council, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.
3. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board or council.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 580

HOUSE BILL NO. 1043

(Legislative Council)
(Taxation Committee)

STREAMLINED SALES TAX COMPLIANCE

AN ACT to create and enact sections 57-39.2-03.9, 57-39.5-05, and 57-39.6-05 and chapter 57-39.7 of the North Dakota Century Code, relating to application of sales taxes to tobacco products, use taxes and credits for storage, use, or consumption in this state of farm machinery or alcoholic beverages, and a lodging gross receipts tax; to amend and reenact subsection 2 of section 11-09.1-05, sections 40-05.1-06, 57-01-02.1, and 57-39.2-01, subdivision h of subsection 1 of section 57-39.2-02.1, subsection 26 of section 57-39.2-04, subdivision d of subsection 2 of section 57-39.2-04.1, section 57-39.2-26.1, subsection 8 of section 57-39.4-16, section 57-40.2-01, subsection 2 of section 57-40.2-02.1, and sections 57-40.2-03.2, 57-40.2-04, and 57-40.2-04.1 of the North Dakota Century Code, relating to sales and use tax amendments to conform with the provisions of the Streamlined Sales Tax Act; to repeal section 57-39.2-03.8 and subsection 33 of section 57-39.2-04 of the North Dakota Century Code, relating to elimination of provisions in conflict with the Streamlined Sales Tax Act; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota Century Code, as effective after December 31, 2005, 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, farm machinery gross receipts taxes, alcoholic beverage gross receipts 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

²⁹¹ Section 11-09.1-05 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

act of the governing body of a home rule county may not supersede 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, farm machinery gross receipts taxes, and alcoholic beverage gross receipts 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, 57-39.5, 57-39.6, 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, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

²⁹² **SECTION 2. AMENDMENT.** Section 40-05.1-06 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

40-05.1-06. (Effective after December 31, 2005) Powers. From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

²⁹² Section 40-05.1-06 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. The authority to levy taxes under this subsection does not include authority to impose income taxes.
3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits; to provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.

12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and gross receipts 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, 57-39.5, 57-39.6, 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, except for farm machinery gross receipts tax.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used

exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

²⁹³ **SECTION 3. AMENDMENT.** Section 57-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-01-02.1. (Effective through December 31, 2005) Tax collection agreements with home rule cities or counties.

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 the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby 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 tax commissioner to deposit with the state treasurer all money collected 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 are entitled under this section.
3. The agreements entered into under this section may also 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.

(Effective after December 31, 2005) 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 must enter a contract with the tax commissioner giving the tax commissioner authority to collect any sales ~~or~~, use, or gross receipts taxes assessed by such incorporated city or county.
2. The tax commissioner shall deposit with the state treasurer all money collected under a contract under this section and 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 cities or counties the money to which cities or counties are entitled under a contract under this section.
3. Contracts under this section shall provide for an agreed amount to be allowed the tax commissioner for services. Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.

²⁹³ Section 57-01-02.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

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.
5. A retailer shall collect city and county sales and use taxes without regard to any cap or threshold on purchases provided by city or county ordinance, resolution, or charter and a taxpayer is eligible for refund from the tax commissioner of the difference between the amount of city and county sales, use, or gross receipts taxes paid and the amount that would have been due by application of a cap or threshold provided by city or county ordinance, resolution, or charter.

²⁹⁴ **SECTION 4. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-39.2-01. (Effective after December 31, 2005) 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. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:
 - a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or
 - b. The total weight of the taxable property compared to the total weight of all property in the shipment.

²⁹⁴ Section 57-39.2-01 was also amended by section 1 of House Bill No. 1055, chapter 569, and section 2 of Senate Bill No. 2050, chapter 582.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

5. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.
6. "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.~~ 7. "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.~~ 8. "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.
- ~~8.~~ 9. a. "Gross receipts" means the 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. 10. "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.

- ~~40-~~ 11. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
- ~~44-~~ 12. "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.
- ~~42-~~ 13. "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.
- ~~43-~~ 14. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
- ~~44-~~ 15. "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 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.

- 45- 16. "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.
- 46- 17. "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.

- ~~47.~~ 18. "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.
- ~~48.~~ 19. "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, water, gas, steam, and prewritten computer software.

²⁹⁵ **SECTION 5. AMENDMENT.** Subdivision h of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

- h. Sale, lease, or rental of a 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

²⁹⁵ Section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

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".

SECTION 6. Section 57-39.2-03.9 of the North Dakota Century Code is created and enacted as follows:

57-39.2-03.9. (Effective January 1, 2006) Sales tax on tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars and other tobacco products includes any other taxes imposed on such merchandise or its use or on the retail or other sale of such merchandise.

²⁹⁶ **SECTION 7. AMENDMENT.** Subsection 26 of section 57-39.2-04 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

26. Gross receipts from sales of prosthetic devices, durable medical equipment, ~~or~~ mobility-enhancing equipment, or supplies for ostomy care or bladder dysfunction. 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

²⁹⁶ Section 57-39.2-04 was also amended by section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582 section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

- (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction.

- 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.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, 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, 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, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- 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.

"Prosthetic device" includes 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, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Prosthetic device" and "durable medical equipment" include "Supplies for ostomy care or bladder dysfunction" includes:

- (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 Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body Supplies 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.
- (3) Artificial teeth sold by a dentist.
- (4) Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
- (5) Crutches and wheelchairs for the use of disabled persons.
- (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.
- (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.
- (8) Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.
- (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.
- (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.

²⁹⁷ **SECTION 8. AMENDMENT.** Subdivision d of subsection 2 of section 57-39.2-04.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

- 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. A plate does not include a container or packaging used to transport the food.

SECTION 9. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, gross receipts, 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, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 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, gross receipts, 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. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, 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.

²⁹⁷ Section 57-39.2-04.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

- b. Thirty-six percent of the amount must be allocated among all counties, 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.

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. 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.
 - 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.
 - 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.
 - 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.
 - f. Six and 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.

- g. Three and 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.
- h. Two and 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.

²⁹⁸ **SECTION 10. AMENDMENT.** Subsection 8 of section 57-39.4-16 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

8. "Mobile telecommunications service" means the same as that term is defined in section ~~424(5)~~ 124(7) of Public Law 106-252, Mobile Telecommunications Sourcing Act.

SECTION 11. Section 57-39.5-05 of the North Dakota Century Code is created and enacted as follows:

57-39.5-05. (Effective after December 31, 2005) Use tax and credit for taxes paid.

1. A person who receives farm machinery for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that farm machinery at the rate imposed under section 57-39.5-02.
2. A person subject to taxes under subsection 1 who has paid taxes to another state or political subdivision of a state as required by law on the purchase of the farm machinery is entitled to a credit against the tax due under subsection 1 equal to the lesser of the tax actually paid to the other state or political subdivision or the amount of tax imposed under subsection 1.

²⁹⁸ Section 57-39.4-16 was also amended by section 1 of Senate Bill No. 2050, chapter 582.

SECTION 12. Section 57-39.6-05 of the North Dakota Century Code is created and enacted as follows:

57-39.6-05. (Effective after December 31, 2005) Use tax and credit for taxes paid.

1. A person who receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate imposed under section 57-39.6-02.
2. A person subject to taxes under subsection 1 who has paid taxes to another state or political subdivision of a state as required by law on the purchase of the alcoholic beverages is entitled to a credit against the tax due under subsection 1 equal to the lesser of the tax actually paid to the other state or political subdivision or the amount of tax imposed under subsection 1.

SECTION 13. Chapter 57-39.7 of the North Dakota Century Code is created and enacted as follows:

57-39.7-01. (Effective from January 1, 2006, through June 30, 2007) Imposition - Exemptions. There is imposed a tax of one percent 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 chapter does not apply to leasing or renting of bed and breakfast accommodations licensed under chapter 23-09.1.

57-39.7-02. (Effective from January 1, 2006, through June 30, 2007) Administration. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including refund or credit, provided therein, not in conflict with the provisions of this chapter, govern the administration of the tax levied in this chapter.

57-39.7-03. (Effective from January 1, 2006, through June 30, 2007) Allocation of revenue. Revenue from the tax imposed by this chapter must not be considered to be a portion of sales, use, and motor vehicle excise tax collections under section 57-39.2-26.1. Revenue from the tax imposed by this chapter must be deposited in the state general fund.

²⁹⁹ **SECTION 14. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-40.2-01. (Effective after December 31, 2005) Definitions. In this chapter, unless the context and subject matter otherwise require:

1. "Business", "commissioner", "farm machinery", "gross receipts", "lease or rental", "local governmental unit", "~~persons~~ person", "relief agency",

²⁹⁹ Section 57-40.2-01 was also amended by section 3 of House Bill No. 1055, chapter 569, and section 2 of Senate Bill No. 2050, chapter 582.

- "retail sale", "sale", and "tangible personal property", each has the meaning given to it in section 57-39.2-01.
2. Property used in "processing", as that term is used in subsection 9, means any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.
 3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
 4. "Purchase price" applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.
 5. "Purchased at retail" includes, ~~but is not limited to~~:
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - c. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - ~~e.~~ d. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision 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.
 - ~~d.~~ e. The severance of sand or gravel from the soil.
 - ~~e.~~ f. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
 - ~~f.~~ g. The purchase of an item of tangible personal property by 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, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.

6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. 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.
7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.
8. "Tangible personal property" means:
 - a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision 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.
 - d. The severance of sand or gravel from the soil.

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.
- 40- 9. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

³⁰⁰ **SECTION 15. AMENDMENT.** Subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes~~ purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state~~ at the rate of three percent of the fair market value of mobile homes used for residential or business purposes ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes~~ at the time it was brought into this state.

SECTION 16. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of ~~alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises,~~ and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. ~~Notwithstanding any other provision of law, there is imposed a tax of seven percent on the storage, use, or consumption in this state of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.~~

³⁰⁰ Section 57-40.2-02.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

³⁰¹ **SECTION 17. AMENDMENT.** Section 57-40.2-04 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-40.2-04. (Effective after December 31, 2005) Exemptions. This chapter hereby is declared to be an independent and separate tax law but complementary to the retail sales tax laws of this state provided for by chapter 57-39.2 and does not apply to:

1. Any tangible personal property or taxable service upon the sale of which the retail sales tax imposed by chapter 57-39.2 has been collected by a retailer holding the permit prescribed by section 57-39.2-14.
2. Tangible personal property brought into this state by a nonresident thereof for that person's own storage, use, or consumption while temporarily within this state, except that such property is not exempt if brought into this state for storage, use, or consumption in the conduct of a trade, occupation, business, or profession.
3. Any motor vehicle either subject to or expressly exempted from the motor vehicle excise taxes imposed by chapter 57-40.3.
4. Tangible personal property upon which the state now imposes and collects a special tax, whether in the form of license tax, stamp tax, or otherwise.
5. Railway cars and locomotives used in interstate commerce, and tangible personal property which becomes a component part thereof.
6. Newsprint and ink actually used in the publication of a newspaper.
7. Repealed by S.L. 1981, ch. 582, § 3.
8. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition in this state if the sale of the tickets or admissions to the exhibition of the film is subject to the sales tax imposed by chapter 57-39.2.
9. Adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.
10. Gross receipts from the leasing, or renting, for residential housing, for periods of more than thirty consecutive days, of factory manufactured

³⁰¹ Section 57-40.2-04 was also amended by section 2 of Senate Bill No. 2050, chapter 582, and section 4 of Senate Bill No. 2170, chapter 574.

homes, including mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation.

11. Bibles, hymnals, textbooks, and prayerbooks used by nonprofit religious organizations.
12. 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.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction.

- 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 a person with normal mobility; and
 - (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, 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, 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, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- 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.

"Prosthetic device" includes 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, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Supplies for ostomy care or bladder dysfunction" includes: Artificial devices individually designed, constructed, or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual.
- b. Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.
 - e. Artificial teeth sold by a dentist.
 - d. Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
 - e. Crutches and wheelchairs for the use of invalids and crippled persons.
 - f. 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. 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. Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by permanently physically disabled persons.
- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin

protectors, and other supplies especially designed for use of ostomates.

(2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, and other items used for the care and management of bladder dysfunction.

13. Purchases of electricity.
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 44 15 of section 57-39.2-01 or subsection 5 of section 57-40.2-01.
15. Any tangible personal property or service which would be exempt from the retail sales tax pursuant to an express exemption provided in chapter 57-39.2 if it were purchased in North Dakota.
16. Gross receipts from the sale of money including all legal tender coins and currency.
17. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.
- ~~18. Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.~~
- ~~49.~~ Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota use tax has previously been imposed.
- ~~20.~~ 19. The donation by a retailer of tangible personal property to an organization exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
- ~~24.~~ 20. Air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.

22. 21. Tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.
23. 22. Gross receipts from the initial sale of beneficiated coal.
24. 23. Gross receipts from electronic games of chance licensed by the attorney general under chapter 53-06.1.

SECTION 18. AMENDMENT. Section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.1. Use tax exemption for food and food products. 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 use tax imposed by chapter 57-40.2. 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 use 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 products" do not include: 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 taxes imposed by this chapter. For purposes of this section, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, which 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 ingredients" do not include:
 - a. Alcoholic beverages or mixed drinks made from alcoholic beverages.
 2. b. Candy or chewing gum.
 3. Carbonated beverages.
 4. Beverages commonly referred to as soft drinks containing less than seventy 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.

- c. Dietary supplements.
 - d. Prepared food.
 - e. Soft drinks containing less than fifty percent fruit juice.
 - 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 that 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 subdivision and which is intended for ingestion in tablet, capsule, powder, soft 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 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. A plate does not include a container or packaging used to transport the food.
 - 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.

³⁰² **SECTION 19. REPEAL.** Section 57-39.2-03.8 and subsection 33 of section 57-39.2-04 of the North Dakota Century Code are repealed.

SECTION 20. EFFECTIVE DATE - EXPIRATION DATE. Section 13 of this Act is effective for taxable events occurring from January 1, 2006, through June 30, 2007, and is thereafter ineffective. The remainder of this Act is effective for taxable events occurring after December 31, 2005.

Approved April 11, 2005
Filed April 12, 2005

³⁰² Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 581

SENATE BILL NO. 2359

(Senators Cook, Urlacher)
(Representatives Drovdal, Weiler)

STREAMLINED SALES TAX COLLECTION AGREEMENTS

AN ACT to amend and reenact subsection 2 of section 57-39.2-11, subsection 1 of section 57-39.2-12.1, and subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code, relating to compensation of a remote seller or certified service provider under streamlined sales tax collection agreements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is ~~not~~ allowed under this section unless if the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07. If the retailer's filing responsibility has been assumed by a certified service provider, the retailer may authorize the certified service provider to claim on behalf of the retailer all or part of the compensation to which the retailer is entitled under sections 57-39.2-12.1 and 57-40.2-07.1.

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the tax due under section 57-39.2-12 or chapter 57-39.4 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes.

SECTION 3. AMENDMENT. Subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the tax due under section 57-40.2-07 or chapter 57-39.4 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after September 30, 2005.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 582

SENATE BILL NO. 2050

(Senators Cook, Urlacher)

(Representatives Drovdal, Weiler)

STREAMLINED SALES TAX AGREEMENT IMPLEMENTATION

AN ACT to amend and reenact section 3 of chapter 538 of the 2003 Session Laws and section 26 of chapter 539 of the 2003 Session Laws, relating to the implementation date for streamlined sales and use tax agreement compliance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 3 of chapter 538 of the 2003 Session Laws is amended and reenacted as follows:

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for taxable events occurring after ~~December 31~~ September 30, 2005.

³⁰³ **SECTION 2. AMENDMENT.** Section 26 of chapter 539 of the 2003 Session Laws is amended and reenacted as follows:

³⁰³ Section 11-09.1-05 was also amended by section 1 of House Bill No. 1043, chapter 580, section 40-05.1-06 was also amended by section 2 of House Bill No. 1043, chapter 580, section 57-01-02.1 was also amended by section 3 of House Bill No. 1043, chapter 580, section 57-01-02.1 was also amended by section 3 of House Bill No. 1043, chapter 580, section 57-39.2-01 was also amended by section 4 of House Bill No. 1043, chapter 580, and section 1 of House Bill No. 1055, chapter 569, section 57-39.2-02.1 was also amended by section 5 of House Bill No. 1043, chapter 580, section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94; section 57-39.2-04.1 was also amended by section 8 of House Bill No. 1043, chapter 580, section 57-39.5-03 was also amended by section 2 of House Bill No. 1055, chapter 569, section 57-40.2-01 was also amended by section 14 of House Bill No. 1043, chapter 580, and section 3 of House Bill No. 1055, chapter 569, section 57-40.2-02.1 was also amended by section 15 of House Bill No. 1043, chapter 580, section 57-40.2-04 was also amended by section 17 of House Bill No. 1043, chapter 580, and section 4 of Senate Bill No. 2170, chapter 574.

SECTION 26. EFFECTIVE DATE. This Act is effective for taxable events occurring after ~~December 31~~ September 30, 2005.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 583**SENATE BILL NO. 2123**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

**DISABLED VETERAN MOTOR VEHICLE EXCISE TAX
EXEMPTION**

AN ACT to amend and reenact subsection 1 of section 57-40.3-04 of the North Dakota Century Code, relating to the exemption from motor vehicle excise taxes on the acquisition or lease of a motor vehicle by a disabled veteran.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁴ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 3901] or who has a one hundred percent service-connected disability as determined by the department of veterans affairs who registers the vehicle with a distinctive license plate issued by the department of transportation under subdivision j of subsection 2 of section 39-04-18. ~~The owner or lessor of the motor vehicle who qualifies for the exemption under this subsection is entitled to a refund of taxes paid under this chapter on acquisition or leasing of the vehicle if the distinctive license plate was acquired not more than sixty days after acquisition or leasing of the vehicle.~~

Approved March 7, 2005

Filed March 8, 2005

³⁰⁴ Section 57-40.3-04 was also amended by section 8 of Senate Bill No. 2208, chapter 340.

CHAPTER 584

HOUSE BILL NO. 1478

(Representatives Berg, Belter, Nelson, Pollert)
(Senators Espegard, Klein)

E85 FUEL TAXATION

AN ACT to create and enact a new subsection to section 57-43.1-01 of the North Dakota Century Code, relating to a definition of E85 fuel; to amend and reenact sections 57-43.1-02 and 57-43.1-28 of the North Dakota Century Code, relating to reduced motor vehicle fuels tax rate for sales of E85 fuel, deposit of taxes on that fuel in the township highway aid fund, and to provide for transfer of funds to the highway tax distribution fund; 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 subsection to section 57-43.1-01 of the North Dakota Century Code is created and enacted as follows:

"E85 fuel" means a petroleum product that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains eighty-five percent ethanol by volume, but at a minimum must contain sixty percent ethanol by volume. E85 produced for use as a motor fuel must comply with ASTM specification D 5798-96.

³⁰⁵ **SECTION 2. AMENDMENT.** Section 57-43.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of twenty-one cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. Sale of E85 fuel is exempt from the tax imposed under subsection 1 and is instead subject to a tax of one cent per gallon [3.79 liters] on all E85 fuel sold or used in this state. The tax imposed under this subsection is not subject to refund under section 57-43.1-03 or 57-43.1-03.1. Within the scope of this section, the entire amount of this tax exemption must be available to consumers of E85.
3. A supplier or distributor shall remit the tax imposed by this section on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer.

³⁰⁵ Section 57-43.1-02 was also amended by section 12 of Senate Bill No. 2012, chapter 40.

- ~~3.~~ 4. The tax imposed by this section does not apply on a sale 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 an export, or on a sale to an exempt consumer.
4. 5. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
5. 6. 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 motor vehicle 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. 7. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 3. AMENDMENT. Section 57-43.1-28 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-28. Transfer, deposit, and distribution of funds. Taxes, license fees, penalties, and interest collected under the provisions of this chapter must be transferred to the state treasurer who shall deposit the moneys collected to the highway tax distribution fund, except the entire proceeds of the tax imposed on E85 fuel under subsection 2 of section 57-43.1-02 must be deposited in the township highway aid fund and allocated as provided in section 54-27-19.1. At the time of each transfer for deposit in the highway tax distribution fund, the tax commissioner shall certify to the state treasurer the number of gallons of E85 fuel sold or used in this state during the time period covered by that transfer and exempt from the tax under subsection 1 of section 57-43.1-02. The department of commerce shall seek approval for the transfer to the state treasurer of twenty cents for each gallon certified by the tax commissioner, from the agricultural products utilization commission funding for deposit in the highway tax distribution fund. The highway tax distribution fund must be distributed in the manner prescribed by section 54-27-19.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2005, and through the month in which a cumulative total of 1,200,000 gallons of E85 fuel has been reported to the commissioner as required in section 57-43.1-02, and after that date is ineffective.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 585**HOUSE BILL NO. 1078**
(Finance and Taxation Committee)
(At the request of the State Treasurer)**OIL PRODUCTION TAX CALCULATION**

AN ACT to create and enact a new subsection to section 57-51-05 of the North Dakota Century Code, relating to calculation of the oil and gas gross production tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51-05 of the North Dakota Century Code is created and enacted as follows:

All calculations of the gross production tax on oil or gas, including production, distribution, and claims for credit or refund, are based on the month of production and must be credited to that month.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 586**HOUSE BILL NO. 1404**

(Representatives Rennerfeldt, Drovdal, Iverson, Norland)
(Senators Bowman, Wardner)

OIL AND GAS IMPACT GRANT FUND ALLOCATIONS

AN ACT to amend and reenact subsection 1 of section 57-51-15 of the North Dakota Century Code, relating to oil and gas gross production tax allocations to the oil and gas impact grant fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding ~~five~~ six million dollars per biennium including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2007.

Approved March 30, 2005
Filed March 31, 2005