

# TAXATION

## CHAPTER 439

### SENATE BILL NO. 2093

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

AN ACT to amend and reenact section 57-01-15 of the North Dakota Century Code, relating to the use of tax information by the tax commissioner to enforce the tax laws in title 57.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-01-15 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-01-15. Use of tax information to administer tax laws.**

For the purpose of properly administering the tax laws of this state, information filed by or on behalf of a person with the tax commissioner ~~pursuant to a tax law of this state under this title, including information obtained for the purpose of the valuation and assessment of centrally assessed property,~~ and any other information relating to that person which was either obtained by the tax commissioner pursuant to that tax law or furnished to the tax commissioner pursuant to section 6103 of the United States Internal Revenue Code of 1954, as amended [26 U.S.C. 6103], may be used by the tax commissioner to determine or enforce the tax liability, if any, of that person under any other tax law of this state that is administered by the tax commissioner under this title. This section does not apply to statements of full consideration filed with the state board of equalization under section 11-18-02.2.

Approved March 14, 2013  
Filed March 15, 2013

## CHAPTER 440

### SENATE BILL NO. 2338

(Senators Cook, Hogue, Laffen, Schneider)  
(Representatives Bellew, Kreun)

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to a conditional exemption and payments in lieu of taxes for affordable rental residential property; to amend and reenact subsection 8 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for property owned by institutions of public charity; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>187</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit.
  - a. The exemption provided by this subsection includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.
  - b. ~~For purposes of this subsection and section 5 of article X of the Constitution of North Dakota, property is not used wholly or in part for public charity or charitable or other public purposes if that property is residential rental units leased to tenants based on income levels that enable the owner to receive a federal low-income housing income tax credit.~~

<sup>188</sup> **SECTION 2.** A new subsection to section 57-02-08 of the North Dakota Century Code is created and enacted as follows:

All residential rental property, inclusive of land and administrative and auxiliary buildings, used as affordable housing shall be exempt from taxation for the property's period of affordability.

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<sup>187</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1300, chapter 441, and section 2 of Senate Bill No. 2338, chapter 440.

<sup>188</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1300, chapter 441, and section 1 of Senate Bill No. 2338, chapter 440.

- a. The property is exempt under this section if the housing finance agency certifies to the county director of tax equalization that on January 1, 2013, or thereafter, the residential rental property complies with the following:
  - (1) The property is subject to and in compliance with a land use restriction agreement that enumerates the mandatory income and rent restrictions;
  - (2) The property is owned by a qualified nonprofit entity, as defined in section 2 of the Internal Revenue Code [26 U.S.C. 421]. If under a partnership agreement or other legally enforceable instrument, a for-profit entity, such as a limited partner, has an ownership interest in the property, then the agreement must provide that the nonprofit entity must have the right of first refusal in any transfer of the ownership interest in the property. The partnership agreement or other legally enforceable instrument also must provide that any transfer of the ownership interest by the for-profit entity must be without financial gain; and
  - (3) The general partner or other ownership entity is owned or controlled by a nonprofit entity or a political subdivision.
- b. For projects beginning after December 31, 2012, the exemption begins for the first taxable year after the owners of the rental property receive a building permit from the local jurisdiction in which the affordable housing residential rental property will be located.
- c. If part of the residential rental property is not eligible to receive assistance through local, state, or federal affordable housing programs, the exemption under this section is calculated by dividing the number of income and rent-restricted units by the total number of rental units.
- d. In lieu of the ad valorem taxes that would otherwise be assessed, the project owners shall make a payment equal to five percent of the balance of the total annual rents collected during the preceding calendar year, minus the utility costs for the property paid by the owner of the property.
- e. If an affordable housing rental property fails to comply with the requirements of this section, or fails to comply with rent and household income restrictions under a local, state, or federal affordable housing program, on or before March fifteen of each calendar year, the housing finance agency shall notify the director of tax equalization and the state supervisor of assessments that the property is no longer eligible for the exemption.
- f. For the purposes of this subsection, "affordable housing" includes property eligible for or receiving assistance through a local, state, or federal affordable housing program and in which rent and household income restrictions apply, and which is owned by nonprofit entities organized for the purpose of providing affordable housing. Affordable housing is limited to residential rental property owned by or with a controlling ownership or management interest by an organization organized and operated exclusively for exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c) (3)].

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2012.

Approved April 26, 2013

Filed April 26, 2013

## CHAPTER 441

### HOUSE BILL NO. 1300

(Representatives K. Koppelman, Hatlestad,  
Heilman, Karls, B. Koppelman, Ruby, Streyle)  
(Senators Larsen, Luick, Sitte)

AN ACT to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for property of churches; and to provide for retroactive application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>189</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

9. a. All buildings owned by any religious corporation or organization and used for the religious ~~services~~purposes of the organization, and if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, improved off-street parking or reasonable landscaping or sidewalk area adjoining the main church building, and up to a maximum of ~~two~~five additional acres [~~.84 hectare~~2.02 hectares] must be deemed to be property used exclusively for religious ~~services~~purposes, and exempt from taxation, whether the real property consists of one tract or more. If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation.
- b. The exemption for a building used for the religious ~~services~~purposes of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent.

**SECTION 2. RETROACTIVE APPLICATION.** This Act is retroactively effective and applies for taxable years beginning after December 31, 2010. The board of county commissioners may abate or refund taxes under this Act on its own motion or upon application of a property owner under chapter 57-23.

Approved April 29, 2013  
Filed April 29, 2013

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<sup>189</sup> Section 57-02-08 was also amended by section 1 of Senate Bill No. 2338, chapter 440, and was also amended by section 2 of Senate Bill No. 2338, chapter 440.

## CHAPTER 442

### SENATE BILL NO. 2171

(Senators Klein, Sorvaag, Dotzenrod)  
(Representatives Dockter, Headland, Schmidt)

AN ACT to amend and reenact subsection 1 of section 57-02-08.1 of the North Dakota Century Code, relating to the homestead property tax credit; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>190</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Any person sixty-five years of age or older or permanently and totally disabled, in the year in which the tax was levied, with an income 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. An exemption under this subsection applies 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 must be determined according to the following schedule:
  - (1) If the person's income is not in excess of ~~eighteen~~twenty-two thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of four thousand five hundred dollars of taxable valuation.
  - (2) If the person's income is in excess of ~~eighteen~~twenty-two thousand dollars and not in excess of ~~twenty~~twenty-six thousand dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of three thousand six hundred dollars of taxable valuation.
  - (3) If the person's income is in excess of ~~twenty~~twenty-six thousand dollars and not in excess of ~~twenty-two~~thirty thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand seven hundred dollars of taxable valuation.

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<sup>190</sup> Section 57-02-08.1 was also amended by section 27 of House Bill No. 1015, chapter 15, and section 4 of House Bill No. 1106, chapter 443.

- (4) If the person's income is in excess of ~~twenty-two~~thirty thousand dollars and not in excess of ~~twenty-four~~thirty-four thousand dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand eight hundred dollars of taxable valuation.
- (5) If the person's income is in excess of ~~twenty-four~~thirty-four thousand dollars and not in excess of ~~twenty-six~~thirty-eight thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of nine hundred dollars of taxable valuation.
- d. Persons residing together, as spouses or when one or more is a dependent of another, are entitled to only one exemption between or among them under this subsection. 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 does not reduce the liability of any person for special assessments levied upon any property.
- f. Any person claiming the exemption under this subsection shall sign a verified statement of facts establishing the person's eligibility.
- g. A person is ineligible for the exemption under this subsection if the value of the 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,~~ exceeds seventy-five ~~five~~ hundred thousand dollars, including the value of any assets divested within the last three years. ~~For purposes of this subdivision, the unencumbered valuation of the homestead is limited to one hundred thousand dollars.~~
- h. The assessor shall attach the statement filed under subdivision f to the assessment sheet and shall show the reduction on the assessment sheet.
- i. An exemption under this subsection terminates at the end of the taxable year of the death of the applicant.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2012.

Approved May 3, 2013  
Filed May 7, 2013

## CHAPTER 443

### HOUSE BILL NO. 1106

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

AN ACT to create and enact two new sections to chapter 57-02, three new sections to chapter 57-06, a new subsection to section 57-13-04, a new section to chapter 57-33.2, sections 57-36-09.6, 57-38-60.3, 57-39.2-15.3, 57-40.2-15.3, 57-43.1-17.5, 57-43.2-16.4, and 57-43.3-21.1 of the North Dakota Century Code, relating to notice of township, city, and county equalization meetings, collection and certification of electric generation, transmission, and distribution taxes, appeals to the state board of equalization, and the liability of a general partner of a limited liability limited partnership for unpaid taxes; to amend and reenact section 23-27-04.7, subsection 5 of section 57-02-08.1, subsection 17 of section 57-06-06, sections 57-06-17.3, 57-33.2-16, 57-35.3-07, and 57-38-01, subsection 5 of section 57-38-01.21, sections 57-38-01.22 and 57-38-01.23, subsection 2 of section 57-38-01.24, subsection 5 of section 57-38-01.25, subsections 2, 3, and 7 of section 57-38-01.26, subsection 9 of section 57-38-01.27, subsection 2 of section 57-38-01.31, subsection 9 of section 57-38-01.32, subsection 7 of section 57-38-01.33, subsections 6 and 12 of section 57-38-30.5, section 57-38.5-01, subsection 4 of section 57-38.5-03, section 57-38.6-01, subsection 4 of section 57-38.6-03, subsection 2 of section 57-39.2-04.8, and sections 57-40.2-15.2, 57-43.3-20, and 57-43.3-21 of the North Dakota Century Code, relating to the emergency medical services levy, the permanent and totally disabled property tax exemption certifications, public utility reports, collection and certification of transmission line property tax, liability of a general partner of a limited liability limited partnership for unpaid taxes, financial institutions tax credit for contributions to the housing incentive fund, income tax credit for blending biodiesel or green diesel fuel in this state, qualifying investments in angel funds, the definition of passthrough entity for income tax purposes, and the sales tax exemption for equipment and machinery used in a new coal mine; to repeal section 57-23-02 of the North Dakota Century Code, relating to notice of township and city equalization meetings; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 23-27-04.7 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-27-04.7. County reporting - Use of property tax levies.**

The board of county commissioners of every county in this state shall conduct an annual review of the emergency medical services coverage within that county and shall submit an annual report to the state health officer in a format approved by the state department of health. A taxing district that levies a special emergency medical services or ambulance service levy shall ensure that every ambulance service that has portions of its service area in that taxing district receives a portion of the revenue from this tax. The taxing district shall allocate all of the special tax levy revenue to each ambulance service based upon the taxable value of the property within each



township of the taxing district, allocating the taxable value of each township collected in a particular township to the ambulance service that serves the largest area within that township.

**SECTION 2.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

**Notice of township and city equalization meetings to be published - Date of equalization meeting.**

Each year the county auditor shall publish in the official county newspaper for two successive weeks, a notice that proceedings for the equalization of assessments will be held by the several local equalization boards. The first publication of the notice may not be earlier than March first and the second publication may not be later than March twentieth. The notice must contain a statement that the proceedings will be held at the regular meeting place of the governing board or other place designated by that board of the township or city, as the case may be. The notice must also contain a statement that each taxpayer has the right to appear before the appropriate board of review or equalization and petition for correction of the taxpayer's assessment. The equalization proceedings in an organized township must be held on the second Monday in April and in a city on the second Tuesday in April.

**SECTION 3.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

**Notice of county equalization meetings to be published - Date of equalization meeting.**

Each year the county auditor shall publish in the official county newspaper for two successive weeks, a notice that proceedings for the equalization of assessments for all real property in the county will be held by the county board of equalization. The first publication of the notice may not be earlier than May first and the second publication may not be later than May twentieth, however, the second notice must be published more than ten days prior to the date of the meeting. The notice must contain the date, time, and location of the meeting. The notice must also contain a statement that each taxpayer has the right to appear before the appropriate board of review or equalization and petition for correction of the taxpayer's assessment. The county equalization proceedings must be held no later than June tenth.

<sup>191</sup> **SECTION 4. AMENDMENT.** Subsection 5 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section:
  - 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

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<sup>191</sup> Section 57-02-08.1 was also amended by section 27 of House Bill No. 1015, chapter 15, and section 1 of Senate Bill No. 2171, chapter 442.

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 statefederal 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 or a written determination of disability from the social security administration, or any federal or state agency that has authority to certify an individual's disability.

**SECTION 5.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Deposit of revenue - Report to treasurer.**

The commissioner shall transfer revenue collected under section 57-06-17.3 to the state treasurer for deposit in the electric generation, transmission, and distribution tax fund. At the time of the transfer, the commissioner shall provide a report showing the information necessary for the state treasurer to allocate the revenue transferred under this section.

**SECTION 6.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Allocation - Continuing appropriation.**

1. The electric generation, transmission, and distribution tax fund is appropriated as a continuing appropriation to the state treasurer for allocation and distribution to counties by April first of each year as provided in this section. The state treasurer shall make the necessary allocations to the counties based on the report received from the tax commissioner. The county auditors shall make the necessary allocations to the taxing districts.
2. Revenue from the tax on transmission lines under section 57-06-17.3 must be allocated among counties based on the mileage of transmission lines within each county. Revenue received by a county under this subsection must be allocated one-third to the county and two-thirds among the county and other taxing districts in the county based on the mileage of that transmission line where that line is located within each taxing district. Revenue from that portion of a transmission line located in more than one taxing district must be allocated among those taxing districts in proportion to the taxing district's most recent property tax mill rates that apply where the transmission line is located.

**SECTION 7.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

### **Delinquent taxes - Penalty.**

Taxes under section 57-06-17.3 are due January first for the preceding taxable year and are delinquent if not received by the commissioner by March first following the due date. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon an additional audit additional tax is found to be due, there must be added to the tax due a penalty at the rate of one percent of the tax due for each month or fraction of a month during the first year during which the tax remains unpaid, computed from March first. Beginning on January first of the year following the year in which the taxes become due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until the taxes and penalties are paid, with the interest charges to be prorated to the nearest full month for a fractional year of delinquency.

**SECTION 8. AMENDMENT.** Subsection 17 of section 57-06-06 of the North Dakota Century Code is amended and reenacted as follows:

17. ~~Such other~~Other facts and information as the tax commissioner may require in ~~the form of returns prescribed by the tax commissioner or which the company may deem material upon the question of relating to the~~ taxation of its property in this state.

**SECTION 9. AMENDMENT.** Section 57-06-17.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-06-17.3. New transmission line property tax exemption.**

A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is not taxable under chapter 57-33.2 and is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and the taxable valuation as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

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

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to allocation among counties in the proportion that the miles of that transmission line in the county bears to the miles of that transmission line in the state. ~~Revenues received by each county must be deposited in the county general fund.~~

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

**SECTION 10.** A new subsection to section 57-13-04 of the North Dakota Century Code is created and enacted as follows:

A property owner may appeal the assessment, classification, and exempt status of the owner's property to the state board of equalization if the property owner was foreclosed from attending assessment proceedings because of the failure to substantially comply with the notice requirements in chapters 57-02 or 57-12, or because of an irregularity in the township, city, or county assessment proceedings.

**SECTION 11.** A new section to chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

**General partner in a limited liability limited partnership liability.**

If a limited liability limited partnership taxable under this chapter fails for any reason to file the required returns or to pay the tax due, the general partners, jointly or severally, charged with the responsibility for the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the limited liability limited partnership.

**SECTION 12. AMENDMENT.** Section 57-33.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**57-33.2-16. Corporate officer and limited liability company governor or manager liability.**

If a corporation or limited liability company taxable under this chapter fails for any reason to file the required returns or pay the tax due, any of its officers, governors, or managers having control or supervision of, or charged with the responsibility for making, the returns and payments, are personally liable for the failure. The dissolution of a corporation or limited liability company does not discharge an officer's, a governor's, or a manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under this chapter for the assessment and collection of other liabilities. If the officers, governors, or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability company must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the corporation or limited liability company.

**SECTION 13. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.3-07. (Effective for the first two taxable years beginning after December 31, 2010) Payment of tax.**

Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, 4, and 5 of section 57-35.3-05, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.

**(Effective after the first two taxable years beginning after December 31, 2010) Payment of tax.** Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, and 4 of section 57-35.3-05 and section 4 of House Bill No. 1029 if approved by the sixty-third legislative assembly, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.

**SECTION 14.** Section 57-36-09.6 of the North Dakota Century Code is created and enacted as follows:

**57-36-09.6. General partner in a limited liability limited partnership liability.**

1. If a limited liability limited partnership taxable under this chapter fails for any reason to file the required returns or to pay the tax due, the general partners, jointly or severally, charged with the responsibility for the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the limited liability limited partnership.

**SECTION 15. AMENDMENT.** Section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite

duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.

2. "Corporation" includes associations, business trusts, joint stock companies, and insurance companies.
3. "Developmental disability" has the same meaning as defined in section 25-01.2-01.
4. "Domestic" when applied to a corporation means created or organized under the laws of North Dakota.
5. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1986, as amended. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
  - a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances when the minimum investment by the lessor is less than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.
  - b. Provided, that one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.
  - c. Provided, that the depreciation adjustments allowed in subdivision b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.

- d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.
6. "Foreign" when applied to a corporation means created or organized outside of North Dakota.
7. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
  - a. Conditions which are primarily those of drug abuse, alcoholism, or intellectual disability, unless in addition to one or more of these conditions, the person has a mental disorder.
  - b. The declining mental abilities that accompany impending death.
  - c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.
8. "Passthrough entity" means a corporation that for the applicable tax year is treated as an S corporation under the Internal Revenue Code, a limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes, a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or a similar entity that passes its income, deductions, and credits through to its owners.
9. "Person" includes individuals, fiduciaries, partnerships, corporations, and limited liability companies, and other entities recognized by the laws of this state.
- 9-10. "Qualified investment fund" means any regulated investment company as defined under the Internal Revenue Code, which for the calendar year in which the distribution is paid:
  - a. Has investments in interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or the United States government; and
  - b. Has provided the tax commissioner with a detailed schedule of the assets contained in its investment portfolio and a schedule of the income attributable to each asset in its investment portfolio for the calendar year.
- 40-11. "Resident" applies only to natural persons and includes, for the purpose of determining liability for the tax imposed by this chapter upon or with reference to the income of any income year, any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode

within the state and spends in the aggregate more than seven months of the income year within the state. A full-time active duty member of the armed forces assigned to a military installation in this state, or the ~~member's spouse of such a person~~, is not a "resident" of this state for purposes of this chapter simply by reason of having voted in an election in this state.

44-12. "Tax commissioner" means the state tax commissioner.

42-13. "Taxable income" in the case of individuals, estates, trusts, and corporations means the taxable income as computed for an individual, estate, trust, or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus ~~such~~the adjustments as may be provided by this chapter or other provisions of law. Except as otherwise expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.

43-14. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax imposed by this chapter.

44-15. Any term, as used in this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

**SECTION 16. AMENDMENT.** Subsection 5 of section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

5. A ~~partnership, subchapter S corporation, or limited liability company treated like a partnership~~passthrough entity is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit that may be claimed by the entity under this subsection for charitable gifts made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the charitable gifts under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the ~~partnership, subchapter S corporation, or limited liability company~~passthrough entity ends. Subsections 6 and 7 apply to the partner, shareholder, or member.

**SECTION 17. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel or green diesel fuel.**

A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel or green diesel fuel in this state is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of five cents per gallon [3.7 liters] of biodiesel fuel or green diesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" and "green diesel" mean fuel as defined in section 57-43.2-01. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.



~~A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.~~

**SECTION 18. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel or green diesel sales equipment costs.**

A seller of biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel or green diesel fuel seller's direct costs incurred ~~after December 31, 2004~~, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume. For purposes of this section, "biodiesel fuel" and "green diesel fuel" mean fuel as defined in section 57-43.2-01. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel or green diesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel or green diesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel or green diesel fuel containing at least two percent biodiesel or green diesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel or green diesel fuel begin.

~~A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.~~

**SECTION 19. AMENDMENT.** Subsection 2 of section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. ~~A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership passthrough entity~~ that is entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The

total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Subsection 5 of section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

5. A partnership, ~~subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership~~passthrough entity that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

<sup>192</sup> **SECTION 21. AMENDMENT.** Subsections 2, 3, and 7 of section 57-38-01.26 of the North Dakota Century Code are amended and reenacted as follows:

2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability limited partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.
  - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.

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<sup>192</sup> Section 57-38-01.26 was also amended by section 1 of Senate Bill No. 2156, chapter 451, and section 9 of Senate Bill No. 2325, chapter 449.

- d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
    - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
    - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
    - (3) The date the payment was received by the angel fund for the investment.
  - j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
7. ~~a. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.~~
- b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
  - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a

credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.

**SECTION 22. AMENDMENT.** Subsection 9 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

9. A ~~partnership, subchapter S corporation, limited partnership, limited liability company, or any other~~ passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 23. AMENDMENT.** Subsection 2 of section 57-38-01.31 of the North Dakota Century Code is amended and reenacted as follows:

2. A ~~partnership, subchapter S corporation, limited liability company treated like a~~ passthrough entity, or any other similar passthrough entity that is an employer in this state must be considered to be a taxpayer for purposes of this section. The amount of the credit determined at the passthrough entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

<sup>193</sup> **SECTION 24. AMENDMENT.** Subsection 9 of section 57-38-01.32 of the North Dakota Century Code is amended and reenacted as follows:

9. A ~~partnership, subchapter S corporation, limited partnership, limited liability company, or any other~~ passthrough entity making a contribution to the housing incentive fund under this section is considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 25. AMENDMENT.** Subsection 7 of section 57-38-01.33 of the North Dakota Century Code is amended and reenacted as follows:

7. A ~~partnership, subchapter S corporation, limited partnership, limited liability company, or any other~~ passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

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<sup>193</sup> Section 57-38-01.32 was also amended by section 5 of House Bill No. 1029, chapter 406, section 28 of Senate Bill No. 2014, chapter 45, and section 10 of Senate Bill No. 2325, chapter 449.

<sup>194</sup> **SECTION 26. AMENDMENT.** Subsections 6 and 12 of section 57-38-30.5 of the North Dakota Century Code are amended and reenacted as follows:

6. In the case of a taxpayer that is a partner in a partnership, shareholder, or a member in a limited liability company passthrough entity, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
12. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

**SECTION 27.** Section 57-38-60.3 of the North Dakota Century Code is created and enacted as follows:

**57-38-60.3. Liability of a general partner in a limited liability limited partnership.**

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

**SECTION 28. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the department of commerce division of economic development and finance.

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<sup>194</sup> Section 57-38-30.5 was also amended by section 1 of Senate Bill No. 2207, chapter 452.

2. "New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.
3. ~~"Passthrough entity" means a corporation that for the applicable tax year is treated as an S corporation or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company and which for the applicable tax year is not taxed as a corporation under chapter 57-38~~has the same meaning as in section 57-38-01.
4. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth but does not include an agricultural commodity processing facility as defined under section 57-38.6-01.
5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. ~~Is incorporated or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, passthrough entity,~~ or joint venture;
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
  - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
  - d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
  - e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.
6. "Taxpayer" means an individual, estate, or trust or a corporation, passthrough entity, or an angel fund. The term does not include a real estate investment trust.

**SECTION 29. AMENDMENT.** Subsection 4 of section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

4. A 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 the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 30. 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. 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; or
  - b. A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility.
2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
  - a. Involved in production of diesel fuel containing at least five percent biodiesel or green diesel as defined in section 57-43.2-01;
  - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
  - c. Involved in a soybean or canola crushing facility.
3. "Director" means the director of the department of commerce division of economic development and finance.
4. "Passthrough entity" has the same meaning as in section 57-38-01.
5. "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 being an agricultural commodity processing facility;
  - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and
  - c. Has an agricultural commodity processing facility, or intends to locate one, in this state.
- 5.6. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in this state. For purposes of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business.
- 6.7. "Taxpayer" means an individual, estate, trust, corporation, ~~partnership, or limited liability company~~passthrough entity.

**SECTION 31. AMENDMENT.** Subsection 4 of section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

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 the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity.

**SECTION 32. AMENDMENT.** Subsection 2 of section 57-39.2-04.8 of the North Dakota Century Code is amended and reenacted as follows:

2. Purchase of replacement machinery or equipment is exempt if the capitalized investment in the new mine exceeds twenty million dollars using the United States generally accepted accounting principles. Purchases of repair or replacement parts for existing machinery or equipment are not exempt under this section.

**SECTION 33.** Section 57-39.2-15.3 of the North Dakota Century Code is created and enacted as follows:

**57-39.2-15.3. Liability of a general partner in a limited liability limited partnership.**

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

**SECTION 34. AMENDMENT.** Section 57-40.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-15.2. Governor and manager liability.**

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



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

**SECTION 35.** Section 57-40.2-15.3 of the North Dakota Century Code is created and enacted as follows:

**57-40.2-15.3. Liability of a general partner in a limited liability limited partnership.**

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

**SECTION 36.** Section 57-43.1-17.5 of the North Dakota Century Code is created and enacted as follows:

**57-43.1-17.5. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated motor fuel tax liability of the limited liability limited partnership.

**SECTION 37.** Section 57-43.2-16.4 of the North Dakota Century Code is created and enacted as follows:

**57-43.2-16.4. Liability of a general partner in a limited liability limited partnership.**

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

**SECTION 38. AMENDMENT.** Section 57-43.3-20 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.3-20. Corporate officer liability.**

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual aviation fuel tax liability of the corporation.

**SECTION 39. AMENDMENT.** Section 57-43.3-21 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.3-21. Governor and manager liability.**

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

interest may be assessed and collected pursuant to the provisions of this chapter.

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

**SECTION 40.** Section 57-43.3-21.1 of the North Dakota Century Code is created and enacted as follows:

**57-43.3-21.1. Liability of a general partner in a limited liability limited partnership.**

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

**SECTION 41. REPEAL.** Section 57-23-02 of the North Dakota Century Code is repealed.

**SECTION 42. EFFECTIVE DATE.** Sections 1, 13, 18, 21, and 27 are effective for tax years beginning after December 31, 2012. Sections 10, 14, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 are effective for tax periods beginning after June 30, 2013. Sections 2, 3, 4, 5, 6, and 7 are effective for tax years beginning after December 31, 2013.

Approved April 18, 2013  
Filed April 18, 2013

## CHAPTER 444

### HOUSE BILL NO. 1306

(Representatives Thoreson, Brandenburg, Dockter, Karls, Guggisberg)  
(Senator Carlisle)

AN ACT to amend and reenact section 57-02-08.8 of the North Dakota Century Code, relating to disabled veteran's eligibility for a homestead tax credit; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-02-08.8 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-02-08.8. Property tax credit for disabled veterans - Certification - Distribution.**

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater or a disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, who was discharged under honorable conditions or who has been retired from the armed forces of the United States, or the unremarried surviving spouse if the disabled veteran is deceased, is eligible for a credit applied against the first ~~five~~six thousand ~~four~~seven hundred ~~fifty~~ dollars of taxable valuation of the fixtures, buildings, and improvements of the homestead owned and occupied by the disabled veteran or unremarried surviving spouse equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by the department of veterans' affairs for the purpose of applying for a property tax exemption. An unremarried surviving spouse who is receiving department of veterans' affairs dependency and indemnity compensation receives a one hundred percent exemption as described in this subsection.
2. If two disabled veterans are married to each other and living together, their combined credits may not exceed one hundred percent of ~~five~~six thousand ~~four~~seven hundred ~~fifty~~ dollars of taxable valuation of the fixtures, buildings, and improvements of the homestead. If a disabled veteran co-owns the homestead property with someone other than the disabled veteran's spouse, the credit is limited to that disabled veteran's interest in the fixtures, buildings, and improvements of the homestead, to a maximum amount calculated by multiplying ~~five~~six thousand ~~four~~seven hundred ~~fifty~~ dollars of taxable valuation by the disabled veteran's percentage of interest in the homestead property and multiplying the result by the applicant's certified disability percentage.
3. A disabled veteran or unremarried surviving spouse claiming a credit under this section for the first time shall file with the county auditor an affidavit showing the facts herein required, a description of the property, and a certificate from the United States department of veterans' affairs, or its

successor, certifying to the amount of the disability. The affidavit and certificate must be open for public inspection. A person shall thereafter furnish to the assessor or other assessment officials, when requested to do so, any information which is believed will support the claim for credit for any subsequent year.

4. For purposes of this section, and except as otherwise provided in this section, "homestead" has the meaning provided in section 47-18-01 except that it also applies to a person who otherwise qualifies under the provisions of this section whether the person is the head of the family.
5. This section does not reduce the liability of a person for special assessments levied upon property.
6. The board of county commissioners may cancel the portion of unpaid taxes that represents the credit calculated in accordance with this section for any year in which the qualifying owner has held title to the homestead property. Cancellation of taxes for any year before enactment of this section must be based on the law that was in effect for that tax year.
7. Before the first of March of each year, the county auditor of each county shall certify to the tax commissioner on forms prescribed by the tax commissioner the name and address of each person for whom the property tax credit for homesteads of disabled veterans was allowed for the preceding year, the amount of credit allowed, the total of the tax mill rates of all taxing districts, exclusive of any state mill rates, that was applied to other real estate in the taxing districts for the preceding year, and such other information as may be prescribed by the tax commissioner.
8. On or before the first of June of each year, the tax commissioner shall audit the certifications, make the required corrections, and certify to the state treasurer for payment to each county the sum of the amounts computed by multiplying the credit allowed for each homestead of a disabled veteran in the county by the total of the tax mill rates, exclusive of any state mill rates that were applied to other real estate in the taxing districts for the preceding year.
9. The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute the payment without delay to the county and to the local taxing districts of the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.
10. On or before the first day of June of each year, the tax commissioner shall certify to the state treasurer the amount computed by multiplying the property tax credit allowed under this section for homesteads of disabled veterans in the state for the preceding year by one mill for deposit in the state medical center fund.
11. Supplemental certifications by the county auditor and by the tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed in this section to make such corrections as may be necessary because of errors or because of approval of an application for abatement filed by a person because the credit provided for the homestead of a disabled veteran was not allowed in whole or in part.

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**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2012, for ad valorem property taxes and for taxable years beginning after December 31, 2013, for mobile home taxes.

Approved April 30, 2013

Filed April 30, 2013

## CHAPTER 445

### HOUSE BILL NO. 1107

(Finance and Taxation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact subsection 10 of section 57-02-27.2 of the North Dakota Century Code, relating to county implementation of soil survey data in agricultural property tax assessments; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 10 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys by February first of any taxable year after 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each quarter from the state aid distribution fund under section 57-39.2-26.1 beginning with the first quarter of 2013, and continuing until the tax commissioner certifies to the state treasurer that that county has fully implemented use of soil type or soil classification data. The amount withheld from the allocation must be deposited into the agricultural land valuation fund. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

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

Approved March 26, 2013  
Filed March 27, 2013

## CHAPTER 446

### HOUSE BILL NO. 1178

(Representatives Drovdal, Froseth)  
(Senators Cook, Lyson, Warner)

AN ACT to create and enact a new section to chapter 57-06 of the North Dakota Century Code, relating to a penalty for continued failure of a public utility company to submit reports; to amend and reenact sections 57-06-09 and 57-06-21 of the North Dakota Century Code, relating to extensions of time for utility company reporting and applicable penalties and due dates for filing reports with the county auditor and tax commissioner; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

**Penalty for continued failure to furnish report.**

If any company fails to make the report required under this chapter for three consecutive years, the state board of equalization shall add a penalty of five thousand dollars for each failure to make the required report, which must be collected as a part of the tax.

**SECTION 2. AMENDMENT.** Section 57-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-09. Penalty for failure to furnish statementreport.**

If any company refuses or neglects to make the ~~reports~~report required by this chapter or refuses or neglects to furnish any information requested, the tax commissioner shall obtain the best information available on the facts necessary to be known in order to discharge the tax commissioner's duties with respect to the valuation and assessment of the property of ~~such~~the company. If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add ten percent to the assessed value of the property of the company for that year, but the tax commissioner, upon written application received on or before the first day of May, may grant extensionsan extension of time within which such returns must be filed~~through the first day of June to file the required report.~~ If any company fails to make the report required under this chapter on or before the first day of July of any year, the state board of equalization shall add an additional ten percent to the assessed value of the property of the company for that year. On or before the fifteenth day of July, for good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

**SECTION 3. AMENDMENT.** Section 57-06-21 of the North Dakota Century Code is amended and reenacted as follows:



**57-06-21. Reports to county auditors.**

On or before the ~~first~~fifteenth day of ~~May~~March of each year, each company required to be assessed under this chapter shall file with the county auditor of each county within which any part of its operative property is located a report giving a general description of all its property located within the county, with operative and nonoperative property listed separately. ~~Such~~The report must give the length of the line or lines within the county and the length in each taxing district of each line constituting part of a single and continuous line or property. The company also shall file with the county auditor and the tax commissioner a map of all of its lines within the county showing clearly the length of its lines within each taxing district as of January first of that year ~~and shall file revised maps in subsequent years if changes have been made in its operative property.~~ To facilitate the making of ~~such~~the maps, the county auditor ~~annually,~~ on or before the first day of ~~April~~February of each year, shall ~~mail~~provide to ~~the~~each company ~~an accurate~~a current map of the county showing the boundaries of each ~~assessment~~taxing district ~~and school district~~in the county.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2013.

Approved April 2, 2013  
Filed April 2, 2013

## CHAPTER 447

### SENATE BILL NO. 2036

(Legislative Management)  
(Taxation Committee)

AN ACT to create and enact section 57-20-07.2 of the North Dakota Century Code, relating to taxing district budgets and state-paid property tax relief credits; to amend and reenact sections 57-12-09, 57-15-02.1, 57-20-07.1, 57-20-09, and 57-20-21.1 of the North Dakota Century Code, relating to notices of property assessment increases, hearings on proposed property tax increases, contents of property tax statements, discounts for early payment of property taxes, and application of relief to current taxes; to provide an appropriation; to provide for legislative management studies; to provide an effective date; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-12-09. Notice of increased assessment to real estate owner.**

1. When any assessor has increased the true and full valuation of any lot or tract of land including any improvements thereon by three thousand dollars or more and to ten percent or more than the amount of the last assessment, written notice of the amount of increase and the amount of the last assessment must be delivered in writing by the assessor to the property owner, mailed in writing to the property owner at the property owner's last-known address, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. Delivery of notice to a property owner under this section must be completed not fewer than fifteen days before the meeting of the local equalization board. The tax commissioner shall prescribe suitable forms for this notice and the notice must show the true and full value as defined by law of the property, including 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. The notice must be mailed or delivered at the expense of the assessment district for which the assessor is employed.
2. The form of notice prescribed by the tax commissioner must require a statement to inform the taxpayer that an assessment increase does not mean property taxes on the parcel will increase. The notice must state that each taxing district must base its tax rate on the number of dollars raised from property taxes in the previous taxable year by the taxing district and that notice of public hearing will be mailed to the property owner if a greater property tax levy is being proposed by the taxing district. The notice may not contain an estimate of a tax increase resulting from the assessment increase.

3. The assessor shall provide an electronic or printed list including the name and address of the addressee of each assessment increase notice required under this section to each city, county, school district, or city park district in which the subject property is located, but a copy does not have to be provided to any such taxing district that levied a property tax levy of less than one hundred thousand dollars for the prior year.

**SECTION 2. AMENDMENT.** Section 57-15-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-02.1. Property tax levy increase notice and public hearing.**

Notwithstanding any other provision of law, a taxing district may not impose a property tax levy in a greater number of mills than the zero increase number of mills, unless the taxing district is in substantial compliance with this section.

1. The governing body shall cause publication of notice in its official newspaper at least seven days before a public hearing on its property tax levy. A public hearing under this section may not be scheduled to begin earlier than six p.m. The notice must have at least one-half inch [1.27 centimeters] white space margin on all four sides and must be at least two columns wide by five inches [12.7 centimeters] high. The heading must be capitalized in boldface type of at least eighteen point stating "IMPORTANT NOTICE TO (name of taxing district) TAXPAYERS". The proposed percentage increase must be printed in a boldface type size no less than two points less than the heading, while the remaining portion of the advertisement must be printed in a type face size no less than four points less than the heading. The text of the notice must contain:
  - a. The date, time, and place of the public hearing.
  - b. A statement that the public hearing will be held to consider increasing the property tax levy by a stated percentage, expressed as a percentage increase exceeding the zero increase number of mills.
  - c. A statement that there will be an opportunity for citizens to present oral or written comments regarding the property tax levy.
  - d. Any other information the taxing district wishes to provide to inform taxpayers.
2. At least seven days before a public hearing on its property tax levy under this section, the governing body shall cause notice of the information required under subsection 1 to be mailed to each property owner who received notice of an assessment increase for the taxable year under section 57-12-09.
3. If the governing body of the taxing district does not make a final decision on imposing a property tax levy exceeding the zero increase number of mills at the public hearing required by this section, the governing body shall announce at that public hearing the scheduled time and place of the next public meeting at which the governing body will consider final adoption of a property tax levy exceeding the tax district's zero increase number of mills.

3-4. For purposes of this section:

- a. "New growth" means the taxable valuation of any property that was not taxable in the prior year.
- b. "Property tax levy" means the tax rate, expressed in mills, for all property taxes levied by the taxing district.
- c. "Taxing district" means a city, county, school district, or city park district but does not include any such taxing district that levied a property tax levy of less than one hundred thousand dollars for the prior year and sets a budget for the current year calling for a property tax levy of less than one hundred thousand dollars.
- d. "Zero increase number of mills" means the number of mills against the taxing district's current year taxable valuation, excluding consideration of new growth, which will provide the same amount of property tax revenue as the property tax levy in the prior year.

5. For the taxable year 2013 only, for purposes of determining the zero increase number of mills for a school district, the amount of property tax revenue from the property tax levy in the 2012 taxable year must be recalculated by reducing the 2012 mill rate of the school district by the lesser of:

- a. Fifty mills; or
- b. The 2012 general fund mill rate of the school district minus sixty mills.

**SECTION 3. AMENDMENT.** Section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-07.1. County treasurer to mail real estate tax statement - Contents of statement.**

1. On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at the owner's last-known address. The form of the real estate tax statement to be used in every county must be prescribed and approved for use by the tax commissioner. The statement must be provided in a manner that allows the taxpayer to retain a printed record of the obligation for payment of taxes and special assessments as provided in the statement. If a parcel of real property is owned by more than one individual, the county treasurer shall send only one statement to one of the owners of that property. Additional copies of the tax statement will be sent to the other owners upon their request and the furnishing of their names and addresses to the county treasurer. The tax statement must include:
  - a. Include a dollar valuation of the true and full value as defined by law of the property and the total mill levy applicable. The tax statement must include
  - b. Include, or be accompanied by a separate sheet, with three columns showing, for the taxable year to which the tax statement applies and the two immediately preceding taxable years, the property tax levy in dollars against the parcel by the county and school district and any city or township that levied taxes against the parcel.

c. Provide information identifying the property tax savings provided by the state of North Dakota. The tax statement must include a line item that is entitled "legislative tax relief" and identifies the dollar amount of property tax savings realized by the taxpayer under chapter 15.1-27 and under section 57-20-07.2. For purposes of this subdivision, legislative tax relief is determined by multiplying the taxable value for the taxable year for each parcel shown on the tax statement by the number of mills of mill levy reduction grant under chapter 57-64 for the 2012 taxable year plus the number of mills determined by subtracting from the 2012 taxable year mill rate of the school district in which the parcel is located the lesser of:

(1) Fifty mills; or

(2) The 2012 taxable year mill rate of the school district minus sixty mills.

2. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

**SECTION 4.** Section 57-20-07.2 of the North Dakota Century Code is created and enacted as follows:

**57-20-07.2. State-paid property tax relief credit.**

1. The owner of taxable property is entitled to a credit against property taxes levied against the total amount of property or mobile home taxes in dollars levied against the taxable value of the property. The credit is equal to twelve percent of property or mobile home taxes levied in dollars against that property.
2. The owner, operator, or lessee of railroad property assessed by the state board of equalization under chapter 57-05 or public utility operative property assessed by the state board of equalization under chapter 57-06 is entitled to a credit against property taxes levied within each county against that property in the amount provided in subsection 1 against property taxes levied in dollars against that property in that county.
3. The owner, operator, or lessee of operative property of an air carrier transportation company assessed and taxed under chapter 57-32 is entitled to a credit in the amount provided in subsection 1 against property taxes in dollars levied against that property. The tax commissioner shall determine the total amount of credits under this subsection and certify the amount to the state treasurer for transfer from the general fund to the air transportation fund. The credit for each air transportation company must be allocated to each city or municipal airport authority where that company makes regularly scheduled landings, in the same manner as the tax collected from that company is allocated.
4. The tax commissioner shall estimate the amount necessary to provide each county advance payment of seventy-five percent of the amount the county and the taxing districts in the county will ultimately receive for a taxable year under this section and certify the estimated amounts to the state treasurer by March fifteenth for transfer by April first to the county treasurer and distribution to the county and taxing districts in the county as provided in subsection 5.

5. The tax commissioner shall determine the total amount of credits under this section for each county from the abstract of the tax list filed by the county auditor under section 57-20-04, as audited and corrected by the tax commissioner. The tax commissioner shall certify to the state treasurer for payment, by June first following receipt of the abstract of the tax list, the amount determined for each county under this subsection. No penalty or interest applies to any state payment under this section, regardless of when the payment is made. The tax commissioner shall reduce the June certification of payments to reflect the April estimated payments previously made to counties under subsection 4.
6. Upon receipt of the payment from the state treasurer under subsections 4 and 5, the county treasurer shall apportion and distribute it to the county and the taxing districts in the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.
7. After payments to counties under subsection 5 have been made, the tax commissioner shall certify to the state treasurer as necessary any supplemental amounts payable to counties or the air transportation fund or any amounts that must be returned by counties or returned from the air transportation fund for deposit in the state general fund to correct any errors in payments or reflect any abatement or compromise of taxes, court-ordered tax reduction or increase, or levy of taxes against omitted property. The county auditor shall provide any supplemental information requested by the tax commissioner after submission of the abstract of the tax list. The county treasurer shall apply to the tax commissioner for any supplemental payments to which the county treasurer believes the county is entitled.
8. Notwithstanding any other provision of law, for any property other than mobile homes, the property tax credit under this section does not apply to any property subject to payments or taxes that are stated by law to be in lieu of personal or real property taxes.

**SECTION 5. AMENDMENT.** Section 57-20-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-09. Discount for early payment of tax.**

Except as provided in section 57-20-21.1, the county treasurer shall allow a five percent discount to all taxpayers who shall pay all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. Such discount applies, after deduction of any credit allowed under section 57-20-07.2, to the net remaining amount of all general real estate taxes levied for state, county, city, township, school district, fire district, park district, and any other taxing districts but does not apply to personal property taxes or special assessment installments. Whenever the board of county commissioners, by resolution, determines that an emergency exists in the county by virtue of weather or other catastrophe, it may extend the discount period for an additional thirty days.

**SECTION 6. AMENDMENT.** Section 57-20-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-21.1. Priority for delinquent taxes.**

When payment is made for any real or personal property taxes or special assessments, payments must be applied first to the oldest unpaid delinquent taxes or special assessments due, if any, shown to exist upon the property for which the tax payments are made, including any penalty and interest, except payments of state-paid property tax relief credit made by the state must be applied to taxes for the year for which the state-paid property tax relief credit is granted. The discounts applicable to payment of taxes set out in section 57-20-09 do not apply to payment of taxes made on property upon which tax payments are delinquent.

**SECTION 7. TAX COMMISSIONER REPORT ON ASSESSOR COMPLIANCE RULES.** Before January 1, 2014, the tax commissioner shall report to the legislative management on the development of rules for detailed and efficient administration of section 57-01-05 regarding supervision of assessment officials.

**SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of state-paid property tax relief credits under section 57-20-07.2, for the biennium beginning July 1, 2013, and ending June 30, 2015.

**SECTION 9. LEGISLATIVE MANAGEMENT STUDY.** The legislative management shall consider studying development of standard procedures and classification of accounts to provide a means of accumulating financial information that will be uniform for all counties, regardless of their size or various approaches to budgeting and accounting that may be in use, with the objective of achieving uniformity of financial information to guide preparation of financial reports required by law and preparation of management reports on county government performance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

**SECTION 10. LEGISLATIVE MANAGEMENT STUDY - CONTROLLING GROWTH OF PROPERTY TAX LEVIES.** During the 2013-14 interim, the legislative management shall consider studying controlling the growth of property tax levies, with emphasis on consideration of the following:

1. In recent years, the legislative assembly has diverted an enormous amount of state funds to benefit political subdivisions and provide property tax relief to taxpayers and an analysis should be made of whether the level of property tax relief received by taxpayers has been commensurate with the amount of state funds distributed.
2. The legislative assembly has provided for state assumption of funding for some social service functions previously funded by counties. Analysis is needed to determine the additional cost to the state of these functions in each county and compare that amount to the actual reduction in property taxes passed through to taxpayers in each county.
3. Consideration is needed of whether voter approval through referral or levy and budget restrictions should play a greater role in local taxing decisions.
4. Consideration is needed of the feasibility of establishing more restrictive statutory property tax limits to manage the growth of property taxes.

The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

**SECTION 11. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable years beginning after December 31, 2012. Sections 4, 5, and 6 are ineffective after the first two taxable years beginning after December 31, 2012.

Approved May 6, 2013

Filed May 7, 2013



## CHAPTER 448

### SENATE BILL NO. 2162

(Senators Grindberg, Krebsbach, Robinson)  
(Representatives Kreidt, J. Nelson, Trottier)

AN ACT to amend and reenact subsection 5 of section 57-15-56 and section 57-39.2-26.2 of the North Dakota Century Code, relating to a matching grant from the senior citizen services and programs fund to counties; 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 state treasurer shall provide matching funds as provided in this subsection for counties for senior citizen services and programs funded as required by this section. The grants must be made on or before March first of each year 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 that has not filed with the state treasurer a 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 state treasurer on or before February first of each year following a year in which the reporting county 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 ~~three-fourths of~~ eighty-five percent 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.

**SECTION 2. AMENDMENT.** Section 57-39.2-26.2 of the North Dakota Century Code is amended and reenacted 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 ~~three-fourths of~~ eighty-five percent 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

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at the end of any biennium must be transferred by the state treasurer to the state general fund.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act is effective for taxable years beginning after December 31, 2012. Section 2 of this Act is effective for taxable events occurring after June 30, 2013.

Approved April 24, 2013

Filed April 24, 2013

## CHAPTER 449

### SENATE BILL NO. 2325

(Senators Burckhard, Cook, Dotzenrod)  
(Representatives Belter, S. Kelsh)

AN ACT to create and enact a new section to chapter 57-38, two new subsections to section 57-38-34, a new subsection to section 57-38-38, and a new subsection to section 57-38-40 of the North Dakota Century Code, relating to corporate and individual income tax credits and transition of financial institutions to corporate income tax treatment; to amend and reenact subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07, subsection 3 of section 57-33.2-01, section 57-33.2-03, subsection 3 of section 57-38-01.3, subsections 1 and 3 of section 57-38-01.26, subsections 5 and 7 of section 57-38-01.32, subdivisions c, d, and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity, individual and corporation income tax rates, and credits and increased allocations from the state aid distribution fund; to repeal chapter 57-35.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections ~~57-35.3-03~~, 57-38-30, and 57-38-30.3.

**SECTION 2. AMENDMENT.** Subsection 8 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Taxpayer" means an individual, corporation, ~~financial institution~~, or trust subject to the taxes imposed by chapter ~~57-35.3~~ or 57-38 and includes a partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity.

<sup>195</sup> **SECTION 3. AMENDMENT.** Subsection 5 of section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

5. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter ~~57-35.3~~ or 57-38.

**SECTION 4. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>195</sup> Section 40-63-04 was also amended by section 1 of House Bill No. 1166, chapter 317.

#### **40-63-06. Historic preservation and renovation tax credit.**

A credit against state tax liability as determined under sections ~~57-35.3-03, 57-38-30, and 57-38-30.3~~ is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

**SECTION 5. AMENDMENT.** Subsections 3 and 4 of section 40-63-07 of the North Dakota Century Code are amended and reenacted as follows:

3. A renaissance fund organization is exempt from any tax imposed by chapter ~~57-35.3 or 57-38~~. An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes. A corporation ~~or financial institution~~ entitled to the exemption provided by this subsection shall file required returns and report income to the tax commissioner as required by the provisions of ~~those chapters~~ chapter 57-38 as if the exemption did not exist. If an employer, this subsection does not exempt a renaissance fund organization from complying with the income tax withholding laws.
4. A credit against state tax liability as determined under section ~~57-35.3-03, 57-38-30, or 57-38-30.3~~ is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.

**SECTION 6. AMENDMENT.** Subsection 3 of section 57-33.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Company" means an individual, partnership, corporation, limited liability company, limited liability partnership, cooperative, or any other organization or association engaged in generation, distribution, or transmission of electricity. A company subject to taxation under chapter 57-06, is not a "company" for purposes of this chapter unless it files an irrevocable election with the commissioner to be treated as a company under this chapter by October 1, ~~2009~~2013, for taxable periods after December 31, ~~2009~~2013; by October 1, ~~2010~~2014, for taxable periods after December 31, ~~2010~~2014; by October 1, ~~2011~~2015, for taxable periods after December 31, ~~2011~~2015; or by October 1, ~~2012~~2016, for taxable periods after December 31, ~~2012~~2016. Property subject to taxation under this chapter which is owned by a company that is otherwise taxable under chapter 57-06 which files an election under this chapter is exempt from taxation under chapter 57-06.

**SECTION 7. AMENDMENT.** Section 57-33.2-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-33.2-03. Distribution taxes.**

A distribution company is subject to a tax at the rate of ~~one dollar~~ eighty cents per megawatt-hour for retail sale of electricity delivered to a consumer in this state during the calendar year. Distribution taxes under this section do not apply to the sale of

electricity to any coal conversion facility that became operational before January 1, 2009, and which is subject to taxation under chapter 57-60.

**SECTION 8. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources, including a net operating loss calculated under chapter 57-35.3 for tax years beginning before January 1, 2013. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

<sup>196</sup> **SECTION 9. AMENDMENT.** Subsections 1 and 3 of section 57-38-01.26 of the North Dakota Century Code are amended and reenacted as follows:

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is ~~one~~five hundred ~~thirty~~ thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. ~~Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.~~

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<sup>196</sup> Section 57-38-01.26 was also amended by section 21 of House Bill No. 1106, chapter 443, and section 1 of Senate Bill No. 2156, chapter 451.

- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
- d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
- e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
- f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
- g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
- h. Be in compliance with the securities laws of this state.
- i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
  - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
  - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
  - (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.

<sup>197</sup> **SECTION 10. AMENDMENT.** Subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code are amended and reenacted as follows:

- 5. The aggregate amount of tax credits allowed to all eligible contributors is limited to fifteen million dollars per biennium. ~~This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.~~
- 7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income ~~or financial institutions~~ tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

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<sup>197</sup> Section 57-38-01.32 was also amended by section 5 of House Bill No. 1029, chapter 406, section 24 of House Bill No. 1106, chapter 443, and section 28 of Senate Bill No. 2014, chapter 45.

**SECTION 11.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Financial institutions - Net operating losses - Credit carryovers.**

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:
  - a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under subsection 8 of section 57-38-34; and
  - b. Is binding until the earlier of:
    - (1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or
    - (2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.
2. If an election is made under this section, the following apply:
  - a. A subchapter S corporation may not file a consolidated return.
  - b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.
  - c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

<sup>198</sup> **SECTION 12. AMENDMENT.** Subdivisions c, d, and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

- 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~~section 11 of this Act.
- d. Reduced by ~~thirty~~forty percent of:
  - (1) 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.

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<sup>198</sup> Section 57-38-30.3 was also amended by section 4 of Senate Bill No. 2156, chapter 451.

(2) ~~The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008. Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.~~

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~~ section 11 of this Act.

**SECTION 13.** Two new subsections to section 57-38-34 of the North Dakota Century Code are created and enacted as follows:

For a person that was subject to the tax under chapter 57-35.3 for the calendar year ending December 31, 2012, payment of the tax under this chapter is due six months after the due date of the return as required under this section. The provisions of subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under this subsection. This subsection applies to the first tax year beginning after December 31, 2012.

A person that previously reported under chapter 57-35.3 on a calendar year basis and files its federal income tax return on a fiscal year basis must file a short period return for the period beginning January 1, 2013, and ending on the last day of the tax year in calendar year 2013.

**SECTION 14.** A new subsection to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

This section applies if additional tax would be due under the provisions of chapter 57-35.3 in effect for taxable years beginning before January 1, 2013.

**SECTION 15.** A new subsection to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

A person that would have been entitled to a credit or refund under chapter 57-35.3 for a taxable year beginning before January 1, 2013, may file a claim for refund or credit of an overpayment of tax.

**SECTION 16. 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~~ forty-three and one-half 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.
  - 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 based upon the proportion each city's population bears to the total population of all 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.

**SECTION 17. REPEAL.** Chapter 57-35.3 of the North Dakota Century Code is repealed.

**SECTION 18. EFFECTIVE DATE.** Section 16 of this Act is effective for taxable events occurring after June 30, 2014, and the remainder of this Act is effective for taxable years beginning after December 31, 2012.

Approved May 6, 2013  
Filed May 7, 2013

## CHAPTER 450

### SENATE BILL NO. 2106

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

AN ACT to create and enact sections 57-36-05.3, 57-36-05.4, and 57-36-06.1 of the North Dakota Century Code, relating to the operation of roll-your-own cigarette-making machines; to amend and reenact sections 57-36-01 and 57-36-33 of the North Dakota Century Code, relating to the definitions of cigarette and roll-your-own cigarette-making machine for tobacco products tax purposes; to provide a penalty; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-36-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed tobacco and encased in any material except tobacco. "Cigarette" also means any product of a cigarette-making machine.
4. "Cigarette-making machine" means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.
5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption in this state.
- ~~5-6.~~ "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or any product of a cigarette-making machine.
- ~~6-7.~~ "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
- ~~7-8.~~ "Licensed dealer" means a dealer licensed under the provisions of this chapter.

- 8-9. "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 9-10. "Other tobacco products" means snuff and chewing tobacco.
- 10-11. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
- 11-12. "Pipe tobacco" means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
- 12-13. "Sale" or "sell" applies to gifts, exchanges, and barter.
- 13-14. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.
- 14-15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other tobacco products for use or consumption in this state.
- 15-16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, or other tobacco products.

**SECTION 2.** Section 57-36-05.3 of the North Dakota Century Code is created and enacted as follows:

**57-36-05.3. Use of cigarette-making machines - When allowed.**

A person may not maintain or operate in this state a cigarette-making machine unless that person:

1. Has a valid federal permit as a tobacco product manufacturer issued under 26 U.S.C. 5713; or
2. Uses the machine exclusively for personal purposes. A cigarette-making machine may be considered used exclusively for personal purposes only if the product resulting from the operation of the machine is consumed by the individual who owns the machine or by other persons whose consumption of the product is incidental to the owner's personal use of the machine.

**SECTION 3.** Section 57-36-05.4 of the North Dakota Century Code is created and enacted as follows:

**57-36-05.4. Certain cigarette-making machines - Registration requirements.**

The following requirements apply to any cigarette-making machine:

1. A person may not maintain or operate a cigarette-making machine in this state unless the machine has been registered with the attorney general in the form and manner as prescribed by the attorney general. The person registering a machine under this section shall certify under penalties of perjury that all statements in the registration and in any attachments to the registration are true, accurate, and complete.

2. The registration expires three years from the date the machine is registered with the attorney general and must be renewed as provided under subsection 1.
3. The person registering the machine shall attach to the registration a copy of a valid federal permit issued to the person under 26 U.S.C. 5713 or an affidavit indicating that the machine will be used exclusively for personal purposes as described in section 57-36-05.3.
4. The registration required under this section immediately terminates if the federal permit is declared invalid, surrendered, or revoked, or any statement in the affidavit ceases to be true, correct, or complete.

**SECTION 4.** Section 57-36-06.1 of the North Dakota Century Code is created and enacted as follows:

**57-36-06.1. Cigarette-making machines - Requirements.**

A person operating or maintaining a cigarette-making machine who is a tobacco product manufacturer under Public Law 112-141 [126 Stat. 914; 26 U.S.C. 5702 et seq.] shall:

1. Maintain on the machine, in good working order, a tamper-proof counting device that records the number of all rolls or tubes processed on the machine.
2. Provide the tax commissioner access to the machine and its counting device at all reasonable times for verification and other tax administration purposes.
3. Pay any taxes required under chapter 57-36.
4. Comply with the provisions of chapter 51-25 pertaining to all cigarettes produced by the machine.
5. Comply with the ignition propensity requirements under chapter 18-13 with respect to all cigarettes produced by the machine.
6. Use only federal tax-paid roll-your-own tobacco or tobacco exempt from federal tax under 26 U.S.C. 5704(b).

**SECTION 5. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-33. Penalties for violation of chapter.**

Except as otherwise provided in this chapter, any:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, must may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the

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tax commissioner and forfeited to the state in accordance with chapter 29-31.1.

**SECTION 6. EFFECTIVE DATE.** This Act becomes effective July 1, 2013.

Approved April 1, 2013

Filed April 1, 2013

## CHAPTER 451

### SENATE BILL NO. 2156

(Senators Cook, Campbell, Oehlke)  
(Representatives Belter, Drovdal, Headland)

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a corporate income tax credit for contributions to rural leadership North Dakota; to amend and reenact subsection 3 of section 57-38-01.26, section 57-38-30, and subsection 1 of section 57-38-30.3 of the North Dakota Century Code, relating to authorized investments of an angel fund for income tax credit purposes and a reduction in income tax rates for corporations, individuals, estates, and trusts; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>199</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. ~~Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.~~
  - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.

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<sup>199</sup> Section 57-38-01.26 was also amended by section 21 of House Bill No. 1106, chapter 443, and section 9 of Senate Bill No. 2325, chapter 449.

- f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
- g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
- h. Be in compliance with the securities laws of this state.
- i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
  - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
  - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
  - (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.

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

**Corporate credit for contributions to rural leadership North Dakota.**

There is allowed a credit against the tax imposed by section 57-38-30 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.

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

**57-38-30. Imposition and rate of tax on corporations.**

A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. For the first twenty-five thousand dollars of taxable income, at the rate of one and ~~sixty-eight~~forty-eight hundredths percent.
2. On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty thousand dollars, at the rate of ~~four~~three and ~~twenty-three~~seventy-three hundredths percent.



3. On all taxable income exceeding fifty thousand dollars, at the rate of fivefour and fifteenfifty-three hundredths percent.

<sup>200</sup> **SECTION 4. 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.

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

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$34,500</del> <u>\$36,250</u>	<del>4.51%</del> <u>1.22%</u>
Over <del>\$34,500</del> <u>\$36,250</u>	<del>\$520.95</del> <u>\$442.25</u> plus <del>2.82%</del> <u>2.27%</u> but not over <del>\$83,600</del> <u>\$87,850</u>
of amount over <del>\$34,500</del> <u>\$36,250</u>	<del>\$1,905.57</del> <u>\$1,613.57</u> plus
Over <del>\$83,600</del> <u>\$87,850</u>	but not over <del>\$174,400</del> <u>\$183,250</u> of amount over <del>\$83,600</del> <u>\$87,850</u> <del>\$4,747.61</del> <u>\$4,017.65</u> plus
<del>3.13%</del> <u>2.52%</u>	but not over <del>\$379,150</del> <u>\$398,350</u> of amount over <del>\$174,400</del> <u>\$183,250</u> <del>\$12,180.04</del> <u>\$10,320.08</u> plus
Over <del>\$174,400</del> <u>\$183,250</u>	of amount over
<del>3.63%</del> <u>2.93%</u>	
Over <del>\$379,150</del> <u>\$398,350</u>	
<del>3.99%</del> <u>3.22%</u>	
<del>\$379,150</del> <u>\$398,350</u>	

- b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$57,700</del> <u>\$60,650</u>	<del>4.51%</del> <u>1.22%</u>
Over <del>\$57,700</del> <u>\$60,650</u>	<del>\$871.27</del> <u>\$739.93</u> plus <del>2.82%</del> <u>2.27%</u> but not over <del>\$139,350</del> <u>\$146,400</u> of amount over <del>\$57,700</del> <u>\$60,650</u> <del>\$3,173.80</del> <u>\$2,686.46</u> plus
Over <del>\$139,350</del> <u>\$146,400</u>	but not over <del>\$212,300</del> <u>\$223,050</u> of amount over <del>\$139,350</del> <u>\$146,400</u>
<del>3.13%</del> <u>2.52%</u>	

<sup>200</sup> Section 57-38-30.3 was also amended by section 12 of Senate Bill No. 2325, chapter 449.

Over ~~\$212,300~~\$223,050  
3.63%2.93%

~~\$5,457.14~~\$4,618.04 plus

but not over ~~\$379,150~~\$398,350  
of amount over ~~\$212,300~~\$223,050  
~~\$11,513.79~~\$9,754.33 plus

Over ~~\$379,150~~\$398,350  
3.99%3.22%

of amount over

~~\$379,150~~\$398,350

c. Married filing separately.

If North Dakota taxable income is:

Not over ~~\$28,850~~\$30,325

Over ~~\$28,850~~\$30,325

of amount over ~~\$28,850~~\$30,325

Over ~~\$69,675~~\$73,200

3.13%2.52%

Over ~~\$106,150~~\$111,525

3.63%2.93%

Over ~~\$189,575~~\$199,175

3.99%3.22%

~~\$189,575~~\$199,175

The tax is equal to:

1.51%1.22%

~~\$435.64~~\$369.97 plus 2.82%2.27%

but not over ~~\$69,675~~\$73,200

~~\$1,586.90~~\$1,343.23 plus

but not over ~~\$106,150~~\$111,525

of amount over ~~\$69,675~~\$73,200

~~\$2,728.57~~\$2,309.02 plus

but not over ~~\$189,575~~\$199,175

of amount over ~~\$106,150~~\$111,525

~~\$5,756.90~~\$4,877.17 plus

of amount over

d. Head of household.

If North Dakota taxable income is:

Not over ~~\$46,250~~\$48,600

Over ~~\$46,250~~\$48,600

Over ~~\$119,400~~\$125,450

3.13%2.52%

Over ~~\$193,350~~\$203,150

3.63%2.93%

Over ~~\$379,150~~\$398,350

3.99%3.22%

~~\$379,150~~\$398,350

The tax is equal to:

1.51%1.22%

~~\$698.38~~\$592.92 plus 2.82%2.27%

but not over ~~\$119,400~~\$125,450

of amount over ~~\$46,250~~\$48,600

~~\$2,761.21~~\$2,337.42 plus

but not over ~~\$193,350~~\$203,150

of amount over ~~\$119,400~~\$125,450

~~\$5,075.84~~\$4,295.46 plus

but not over ~~\$379,150~~\$398,350

of amount over ~~\$193,350~~\$203,150

~~\$11,820.38~~\$10,014.82 plus

of amount over

e. Estates and trusts.

If North Dakota taxable income is:

Not over ~~\$2,300~~\$2,450

Over ~~\$2,300~~\$2,450

of amount over ~~\$2,300~~\$2,450

The tax is equal to:

1.51%1.22%

~~\$34.73~~\$29.89 plus 2.82%2.27%

but not over ~~\$5,450~~\$5,700

Over <del>\$5,450</del> <u>\$5,700</u>	<del>\$123.56</del> <u>\$103.67</u> plus <del>3.13%</del> <u>2.52%</u> but not over <del>\$8,300</del> <u>\$8,750</u>
of amount over <del>\$5,450</del> <u>\$5,700</u>	
Over <del>\$8,300</del> <u>\$8,750</u>	<del>\$212.77</del> <u>\$180.53</u> plus <del>3.63%</del> <u>2.93%</u> but not over <del>\$11,350</del> <u>\$11,950</u>
of amount over <del>\$8,300</del> <u>\$8,750</u>	
Over <del>\$11,350</del> <u>\$11,950</u>	<del>\$323.48</del> <u>\$274.29</u> plus <del>3.99%</del> <u>3.22%</u> of amount over
<del>\$11,350</del> <u>\$11,950</u>	

f. 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 federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 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. 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.
- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2012.

Approved May 3, 2013  
Filed May 7, 2013

## CHAPTER 452

### SENATE BILL NO. 2207

(Senators Grindberg, Holmberg, Robinson)  
(Representatives Dockter, Kreun, Thoreson)

AN ACT to create and enact a new subsection to section 57-38-30.5 of the North Dakota Century Code, relating to the effect of the expiration of the federal research tax credit on the state income tax credit for research and experimental expenditures; to provide for retroactive application; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>201</sup> **SECTION 1.** A new subsection to section 57-38-30.5 of the North Dakota Century Code is created and enacted as follows:

For any taxable year in which the federal research tax credit provisions of section 41 of the Internal Revenue Code are ineffective, the provisions of section 41 of the Internal Revenue Code referenced in this section have the same meaning and application as provided in section 41 of the Internal Revenue Code [26 U.S.C. 41], as amended through the most recent taxable year in which the provisions were in effect.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to taxable years beginning after December 31, 2011.

**SECTION 3. EXPIRATION DATE.** This Act is effective through December 31, 2014, and after that date is ineffective.

Approved April 19, 2013  
Filed April 19, 2013

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<sup>201</sup> Section 57-38-30.5 was also amended by section 26 of House Bill No. 1106, chapter 443.

## CHAPTER 453

### SENATE BILL NO. 2104

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

AN ACT to amend and reenact section 57-38-31.1 of the North Dakota Century Code, relating to composite withholding returns for nonresident members of 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.**

1. For purposes of this section, unless the context otherwise requires:
  - a. "Member" means an individual ~~who or passthrough entity that~~ 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; ~~settlor of a grantor trust~~, 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, ~~or a passthrough entity that does not have its commercial domicile 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~~ a corporation that for the applicable tax year is treated as an S corporation under the Internal Revenue Code, a limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes, ~~or a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, grantor trust, or similar entity recognized by the laws of this state that is not taxed for federal income tax purposes at the entity level.~~
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~~ the 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; ~~or~~
  - (5) The member is a lower-tier passthrough entity that elects to be exempted from the withholding requirement under this subsection. The election must be made on a form and in a manner prescribed by the tax commissioner. The form must include a statement that the member

certifies that the member will file any return and pay any tax required by this chapter on its distributive share of income from the source passthrough entity and that the member is subject to this state's jurisdiction for the collection of that tax and any applicable penalty and interest. The tax commissioner may revoke the exemption under this paragraph if the source passthrough entity or member fails to comply with the requirements of this paragraph. If the exemption is revoked, the source passthrough entity shall begin withholding from the member within sixty days of receiving notification of the revocation from the tax commissioner. The tax commissioner may prescribe any procedures and guidelines necessary to administer this paragraph.

- d. A passthrough entity failing to file a return, or failing to withhold or remit the tax withheld, as required by this section, is subject to the provisions of section 57-38-45.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2013.

Approved March 19, 2013  
Filed March 19, 2013

## CHAPTER 454

### SENATE BILL NO. 2058

(Political Subdivisions Committee)

(At the request of the Board of University and School Lands)

AN ACT to create and enact a new subsection to section 57-39.2-23 of the North Dakota Century Code, relating to the disclosure of confidential tax information to the unclaimed property division; and to amend and reenact subsection 2 of section 47-30.1-30 and subsection 6 of section 57-38-57 of the North Dakota Century Code, relating to contracting for in-state unclaimed property examinations and the disclosure of confidential tax information to the unclaimed property division.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 47-30.1-30 of the North Dakota Century Code is amended and reenacted as follows:

2. The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this chapter. The administrator may not require a person to provide records for a period exceeding the current year and seven preceding fiscal years. The administrator may conduct the examination even if the person believes that person is not in possession of any property reportable or deliverable under this chapter. The administrator may not contract for an examination done within this state without reasonable cause to believe that a person has failed to comply with this chapter.

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

6. ~~The~~Upon request, the tax commissioner may furnish to the unclaimed property division of the board of university and school lands, ~~upon its request,~~ a taxpayer's name, address, and federal identification number for ~~the sole purpose of identifying the taxpayer as the owner of an unclaimed voucher authorized by the tax commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1.~~

**SECTION 3.** A new subsection to section 57-39.2-23 of the North Dakota Century Code is created and enacted as follows:

Upon request, the commissioner may furnish to the unclaimed property division of the board of university and school lands, a taxpayer's name, address, and federal identification number for identifying the owner of an unclaimed voucher authorized by the commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1.

Approved March 14, 2013  
Filed March 15, 2013

<sup>202</sup> Section 57-38-57 was also amended by section 2 of House Bill No. 1098, chapter 455.



## CHAPTER 455

### HOUSE BILL NO. 1098

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

AN ACT to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to disclosure of tax return information; and to amend and reenact subsection 18 of section 26.1-26-42 of the North Dakota Century Code, relating to insurance producer license suspension, revocation, or refusal.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 18 of section 26.1-26-42 of the North Dakota Century Code is amended and reenacted as follows:

18. The applicant or licensee knowingly fails to file the required returns or pay state income tax the taxes due under chapter 57-38 or comply with a court order directing payment of state any income tax or employer income tax withholding imposed by chapter 57-38.

<sup>203</sup> **SECTION 2.** A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may disclose confidential tax information to the insurance commissioner to be used for the sole purpose of suspending, revoking, placing on probation, refusing to continue or refusing to issue an insurance producer license, assessing a civil penalty, or investigating fraudulent insurance acts under the insurance laws of this state. The tax information may be disclosed only upon written request that provides the taxpayer's name, federal identification number, and address. The insurance commissioner may make a written request only if the insurance commissioner has started an investigation of an applicant or licensee on grounds other than failure to comply with chapter 57-38 or has started an investigation of a suspected or actual fraudulent insurance act. Upon receipt of the request, the tax commissioner may disclose whether the taxpayer has complied with the requirements of this chapter. If the taxpayer has not complied with these requirements, the tax commissioner may provide the tax type, the tax period for which a return has not been filed, and if the taxpayer has failed to pay any tax, the amount of tax, penalty, and interest owed. The information obtained under this subsection is confidential and may be used only for the purposes identified in this subsection. For the purposes of this subsection, a taxpayer is deemed in compliance with this chapter if the taxpayer has entered an agreement with the tax commissioner to cure the taxpayer's noncompliance and the taxpayer is current with those obligations under the agreement.

Approved March 26, 2013  
Filed March 27, 2013

<sup>203</sup> Section 57-38-57 was also amended by section 2 of Senate Bill No. 2058, chapter 454.

## CHAPTER 456

### SENATE BILL NO. 2330

(Senators Mathern, Cook, Robinson)  
(Representatives Carlson, Holman)

AN ACT to amend and reenact section 57-38-62 of the North Dakota Century Code, relating to underpayment of estimated taxes; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-38-62 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-38-62. Payment of estimated income tax.**

1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue Code relating to a failure to pay federal estimated income tax shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year. Notwithstanding any other provision of this section, an individual, estate, or trust whose net tax liability for the preceding taxable year was less than five hundredone thousand dollars is not required to pay estimated tax for the current taxable year. Married individuals who file a joint federal income tax return and are subject to section 6654 of the Internal Revenue Code must each be deemed to be subject to the federal provision. If payment of estimated tax is required, the individual, estate, or trust shall, at the time prescribed in this chapter, pay the lesser of the following:
  - a. An amount which, when added to the taxpayer's withholding, equals ninety percent of the taxpayer's current taxable year's net tax liability.
  - b. An amount which, when added to the taxpayer's withholding, equals one hundred percent of the taxpayer's net tax liability for the immediately preceding taxable year.
    - (1) This subdivision does not apply to any taxpayer who was not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a if this part applies.
    - (2) In order to satisfy the requirements of this subdivision, married individuals who are required to file separate state returns for the current taxable year but who were required to file a joint state return for the immediately preceding taxable year must each be required to pay estimated tax in an amount which, when added to the individual's withholding, equals the net tax liability which would have been computed for the immediately preceding taxable year if separate state returns had been required to be filed.

- (3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year must be required to pay estimated tax in an amount which, when added to their withholding, equals the sum of their separate net tax liabilities for the immediately preceding taxable year.
2. A corporation shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year if the corporation's estimated tax can reasonably be expected to exceed five thousand dollars and if the corporation's net tax liability for the immediately preceding taxable year exceeded five thousand dollars. If payment of estimated tax is required, the corporation shall, at the time prescribed in this chapter, pay the lesser of the following:
  - a. Ninety percent of the corporation's current taxable year's net tax liability.
  - b. One hundred percent of the corporation's net tax liability for the immediately preceding taxable year.
3. The provisions of section 57-38-45, except those provisions relating to the imposition of a penalty, apply in case of nonpayment, late payment, or underpayment of estimated tax. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions of this section, no interest is due if the estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code. Notwithstanding the other provisions of this section, no interest is due if the estimated tax of an individual, estate, or trust is less than five hundred one thousand dollars per income tax return filed.
4. For purposes of this section, "estimated tax" means the amount that a taxpayer estimates to be income tax under this chapter for the current taxable year less the amount of any credits allowable, including tax withheld.
5. For purposes of this section, "net tax liability" means the amount of income tax computed for the taxable year as shown on the return less the amount of any credits allowable except tax withheld and estimated tax paid.
6. An individual or corporation may apply a tax overpayment from a preceding taxable year as an estimated tax payment on the individual's or corporation's behalf for the taxable year succeeding the overpayment. The individual or corporation may elect to apply the overpayment to specific estimated tax installments. If the individual or corporation does not specify the installment period toward which the overpayment is to be applied, the individual or corporation must be considered to have elected to apply the overpayment toward the first required estimated tax installment for the succeeding taxable year.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2012.

Approved April 24, 2013  
Filed April 24, 2013

## CHAPTER 457

### SENATE BILL NO. 2142

(Senators Cook, Oehlke, O'Connell)  
(Representatives Drovdal, Nathe, Thoreson)

AN ACT to create and enact two new subsections to section 57-39.2-01 and a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the definition of telecommunications company and telecommunications services and a sales and use tax exemption for equipment used in telecommunications infrastructure development; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax exemption for telecommunications infrastructure purchased or installed by contractors; to provide for a retroactive effective date; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Two new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. The term does not include:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
- b. Installation or maintenance of wiring or equipment on a customer's premises;
- c. Tangible personal property;
- d. Advertising, including directory advertising;
- e. Billing and collection services provided to third parties;
- f. Internet access service;
- g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and

television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

- h. Ancillary services; or
- i. Digital products delivered electronically, including software, music, video, reading materials, and ringtones.

**SECTION 2.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

**Sales tax exemption for equipment used in telecommunications infrastructure development.**

1. Gross receipts from sales of tangible personal property used to construct or expand telecommunications service infrastructure that is capable of providing telecommunications service in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications infrastructure owned by a telecommunications company.
2. To receive the exemption at the time of purchase, the purchaser must receive from the tax commissioner a certificate stating that the tangible personal property qualifies for the exemption. If a certificate is not received before the purchase, then the telecommunications company shall pay the applicable tax imposed and apply to the tax commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the telecommunications company may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

<sup>204</sup> **SECTION 3. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-03.3. Use tax on contractors.**

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.

<sup>204</sup> Section 57-40.2-03.3 was also amended by section 3 of House Bill No. 1410, chapter 459, and section 2 of House Bill No. 1413, chapter 461.

2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.
4. The tax imposed by this section does not apply to:
  - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
  - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; ~~or~~
  - d. Tangible personal property used to construct ~~to~~ expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6; ~~or~~
  - e. Telecommunications infrastructure that is capable of providing telecommunications service as authorized or approved for exemption by the commissioner under chapter 57-39.2.

**SECTION 4. EFFECTIVE DATE.** This Act is retroactively effective, to include purchases made after December 31, 2012.

**SECTION 5. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that date is ineffective.

Approved April 1, 2013

Filed April 1, 2013

## CHAPTER 458

### SENATE BILL NO. 2090

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

AN ACT to amend and reenact section 57-39.2-02.1, subsections 22 and 35 of section 57-39.2-04, sections 57-39.2-08.2 and 57-40.2-02.1, and subsections 10 and 18 of section 57-40.2-04 of the North Dakota Century Code, relating to sales and use tax on manufactured homes; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-39.2-02.1. Sales tax imposed.**

1. ~~Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:~~
  - a. ~~Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.~~
  - b. ~~The furnishing or service of communication services including one-way and two-way telecommunications services or steam other than steam used for processing agricultural products.~~
  - c. ~~Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity.~~
  - d. ~~Magazines and other periodicals.~~
  - e. ~~The leasing or renting of a hotel or motel room or tourist court accommodations.~~
  - f. ~~The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.~~
  - g. ~~Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:~~

- (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
  - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".
- h. A mandatory computer software maintenance contract for prewritten computer software.
  - i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.
2. ThereFor purposes of manufactured homes, as defined in section 41-09-02, there is imposed a tax of three percent upon the:
- a. gross~~Gross~~ receipts of retailers from all sales at retail of mobile~~manufactured~~ homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04; or



- b. Dealer's cost to purchase the manufactured home if the manufactured home is sold in conjunction with installation in this state, and tax has not previously been paid under subdivision a.

Installation of a manufactured home includes any method established under section 54-21.3-08.

<sup>205</sup> **SECTION 2. AMENDMENT.** Subsections 22 and 35 of section 57-39.2-04 of the North Dakota Century Code are amended and reenacted as follows:

22. Gross receipts from the leasing or renting of ~~factory~~ manufactured homes, ~~including mobile homes~~, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or tourist court accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.
35. Gross receipts from the sale of a ~~mobile~~ manufactured home ~~which~~ that 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 sales tax has previously been imposed.

**SECTION 3. AMENDMENT.** Section 57-39.2-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

A retailer shall determine the amount of tax charged to and received from each purchaser by use of a formula that applies the applicable tax rate to each taxable item or total purchase and the product must be carried to the third decimal place. Amounts of tax less than one-half of one cent must be disregarded and amounts of tax of one-half of one cent or more must be considered an additional cent of tax. When a local sales tax applies, the determination of tax charged to and received from each customer will be applied to the aggregated state and local taxes.

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

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<sup>205</sup> Section 57-39.2-04 was also amended by section 1 of House Bill No. 1410, chapter 459.

**SECTION 4. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-02.1. Use tax imposed.**

1. Except as otherwise expressly provided in ~~subsection 2 for purchases of mobile homes used for residential or business purposes~~this chapter, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as ~~limited by~~provided in section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. ~~An~~For purposes of manufactured homes, as defined in section 41-09-02, an excise tax is imposed on the storage, use, or consumption in this state of ~~mobile~~manufactured homes used for residential or business purposes, except as provided in subsection ~~19~~18 of section 57-40.2-04 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~~provided in 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 a ~~mobile~~manufactured home used for residential or business purposes at the rate of three percent of the fair market value of a ~~mobile~~manufactured home used for residential or business purposes at the time it was brought into this state. A manufactured home removed from North Dakota for installation in another state is not stored, used, or consumed in this state. Installation of a manufactured home includes any method established under section 54-21.3-08.
3. Repealed by S.L. 2007, ch. 529, § 7.
4. ~~In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.~~
5. An excise tax is imposed on the fair market value of sand or gravel severed when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel.

<sup>206</sup> **SECTION 5. AMENDMENT.** Subsections 10 and 18 of section 57-40.2-04 of the North Dakota Century Code are amended and reenacted as follows:

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<sup>206</sup> Section 57-40.2-04 was also amended by section 4 of House Bill No. 1410, chapter 459.

10. Gross receipts from the leasing, or renting, for residential housing, for periods of more than thirty consecutive days, of ~~factory~~ manufactured homes, ~~including mobile homes~~, modular living units, or sectional homes, whether or not placed on a permanent foundation.
  
18. Gross receipts from the sale of a ~~mobile~~ manufactured home ~~which~~ that 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.

**SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2013.

Approved March 14, 2013

Filed March 15, 2013

## CHAPTER 459

### HOUSE BILL NO. 1410

(Representatives Thoreson, Belter, Haak, Headland, Owens)  
(Senators Cook, O'Connell, Oehlke)

AN ACT to create and enact a new section to chapter 57-39.2, 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 sales and use tax exemptions for materials used to construct a processing facility to produce liquefied natural gas and for liquefied natural gas used for agricultural, industrial, or railroad purposes; to amend and reenact subsection 4 of section 57-40.2-03.3 and section 57-43.2-02.3 of the North Dakota Century Code, relating to exemption from special fuels taxes for liquefied natural gas used for agricultural, industrial, or railroad purposes and materials used to liquefy natural gas; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>207</sup> **SECTION 1.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of liquefied natural gas used for agricultural, industrial, or railroad purposes as defined in section 57-43.2-01.

**SECTION 2.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

#### **Sales tax exemption for materials used to construct a processing facility to produce liquefied natural gas.**

1. Gross receipts from sales of tangible personal property used to construct or expand a processing facility in this state to produce liquefied natural gas are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. To receive the exemption at the time of purchase, the owner of the processing facility must receive from the commissioner a certificate that the tangible personal property used to construct the processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

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<sup>207</sup> Section 57-39.2-04 was also amended by section 2 of Senate Bill No. 2090, chapter 458.

<sup>208</sup> **SECTION 3. AMENDMENT.** Subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

4. The tax imposed by this section does not apply to:
  - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
  - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; or
  - d. Tangible personal property used to construct to expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6; or
  - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 2 of this Act.

<sup>209</sup> **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 liquefied natural gas used for agricultural, industrial, or railroad purposes as defined in section 57-43.2-01.

**SECTION 5. AMENDMENT.** Section 57-43.2-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-02.3. Exemptions.**

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.

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<sup>208</sup> Section 57-40.2-03.3 was also amended by section 2 of House Bill No. 1413, chapter 461, and section 3 of Senate Bill No. 2142, chapter 457.

<sup>209</sup> Section 57-40.2-04 was also amended by section 5 of Senate Bill No. 2090, chapter 458.

2. Special fuel, other than diesel fuel, sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.
4. Liquefied natural gas sold or used for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03.

**SECTION 6. EFFECTIVE DATE.** Sections 2 and 3 of this Act are effective for taxable events occurring after June 30, 2013. Sections 1, 4, and 5 of this Act are effective upon receipt of certification by the tax commissioner from the plant owner that construction of the gas liquefaction plant eligible for the exemptions under sections 2 and 3 of this Act is complete.

Approved April 29, 2013  
Filed April 29, 2013

## CHAPTER 460

### HOUSE BILL NO. 1382

(Representatives Owens, Brandenburg, Kreun, Sanford)  
(Senators Erbele, Laffen)

AN ACT to amend and reenact section 57-39.2-04.2 of the North Dakota Century Code, relating to sales tax exemption for a wind-powered electrical generating facility; to provide an effective date; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

**57-39.2-04.2. (Effective through June 30, 20152017) Sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. (1) "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.
  - (2) "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.
- c. "Power plant" means:
  - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
  - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 20152017, 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.
  - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a

capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.

- 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. "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.
  - f. "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 coal in its natural form or beneficiated coal into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units 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 expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
  4. To receive the 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 exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax 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 exemption imposed or allowed by this section.

**(Effective after June 30, 2015) Sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. (1) "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.
  - (2) "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.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, 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 fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2015~~2017~~, 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.
    - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - 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. "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.
  - f. "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 coal from its natural form into electrical power.
- 2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units 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 expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
  - 4. To receive the 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 exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax 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 exemption imposed or allowed by this section.

Approved April 18, 2013

Filed April 18, 2013

## CHAPTER 461

### HOUSE BILL NO. 1413

(Representatives Headland, Heller, Kreidt, Laning)  
(Senators Cook, Unruh)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts; 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:

**Sales tax exemption for materials used to construct a facility for coal gasification byproducts.**

1. Gross receipts from sales of tangible personal property used to construct or expand a facility in this state to extract or process byproducts associated with coal gasification are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. To receive the exemption at the time of purchase, the owner of the facility must receive from the commissioner a certificate that the tangible personal property used to construct the processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.
4. For purposes of this section, "coal gasification" and "byproducts" have the same meaning as defined in chapter 57-60.

<sup>210</sup> **SECTION 2. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>210</sup> Section 57-40.2-03.3 was also amended by section 3 of House Bill No. 1410, chapter 459, and section 3 of Senate Bill No. 2142, chapter 457.

**57-40.2-03.3. Use tax on contractors.**

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.
4. The tax imposed by this section does not apply to:
  - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
  - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; or
  - d. Tangible personal property used to construct to expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6.
  - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2013.

Approved April 18, 2013  
Filed April 18, 2013

## CHAPTER 462

### HOUSE BILL NO. 1459

(Representatives Maragos, Bellew, Brabandt, Frantsvog, Klein, Ruby)  
(Senators Burckhard, Hogue, Krebsbach, Larsen)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax rebate for certain purchases of replacement property for property damaged or destroyed by 2011 flooding; to provide an effective date; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

#### **Sales tax rebate for certain purchases of replacement property for property damaged or destroyed by 2011 flooding.**

1. For purposes of this section:

- a. "Claimant" means an individual whose primary residence is in an identified flood zone and who has been approved to receive disaster assistance through the federal emergency management agency due to 2011 river flooding within a disaster or emergency area as declared by the governor in 2011, including ground water incursion resulting from an abnormally high water table in an area threatened by river flooding disaster in this state.
- b. "Major appliance" means any heating, ventilation, or cooling equipment and any water heater, dishwasher, washer, dryer, refrigerator, freezer, stove, range, oven, cooktop, microwave, vacuum, or fan that is purchased for use in the claimant's primary residence to replace an appliance that was damaged or destroyed due to a 2011 flood disaster in a disaster or emergency area as declared by the governor; provided, that the rebate under this section applies only against the tax under this chapter on the first three thousand two hundred dollars of the purchase price of a major appliance.
- c. "Residential building supplies" means any of the following items if used in the claimant's primary residence and determined by the tax commissioner to be reasonably related to purposes of restoration, repair, replacement, or rebuilding due to a 2011 flood disaster in this state; provided that the rebate under this section applies only against the tax under this chapter on the first five hundred dollars of the purchase price of a residential building supply item:
  - (1) Cleaning and disinfecting materials as determined by the tax commissioner;
  - (2) Trash bags, boxes, construction tools, and hardware, as determined by the tax commissioner; and

- (3) Roofing shingles, roofing paper, gutters, downspouts, vents, doors, windows, sheetrock, drywall, insulation, paint and paint materials, flooring, and other necessary building materials, as determined by the tax commissioner.
- d. "Residential furniture" means furniture commonly used in a residential dwelling, as determined by the tax commissioner, which is used in the claimant's primary residence to replace furniture that was damaged or destroyed due to a 2011 flood disaster in this state; provided, that the rebate under this section applies only against the tax under this chapter on the first three thousand two hundred dollars of the purchase price of the residential furniture item.
2. a. This section applies to the claimant's qualifying purchases that occur between June 10, 2011, and December 31, 2013.
- b. The total amount refunded under this section in connection with any one residence may not exceed two thousand five hundred dollars.
3. To claim a refund under this section, a claimant shall file a single application with the tax commissioner on or before December 31, 2013, in a format prescribed by the tax commissioner which must include the aggregate amount requested by the claimant in connection with all eligible purchases under this section. Only one application per residence is allowed. The tax commissioner shall make an approved refund directly to the claimant. An application for refund must include satisfactory proof of receipt of federal disaster assistance, eligible purchases, and taxes under this chapter paid on such purchases and any other information or documentation that the commissioner may require, including store receipts and copies of payment documents such as checks, credit card receipts, or a sworn statement under penalty of perjury to support any purchases made using cash. If purchases were made by a contractor, the claimant must provide with the application a copy of an invoice or receipt from the contractor which separately itemizes the price of each item, sales taxes paid on that purchase and included in the claimant's billing, and labor charges. The commissioner shall develop guidelines concerning the administration of this section which must be posted on the website of the tax department. The commissioner is granted broad discretion to administer the refund process in a manner that the commissioner determines necessary to quickly, efficiently, and accurately carry out the purposes of this section.
4. The commissioner may assess a civil penalty not to exceed twenty-five thousand dollars against any claimant that knowingly files a false or fraudulent application for refund under this section.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act becomes effective on July 1, 2013, and is effective through December 31, 2013, and is thereafter ineffective.

Approved April 18, 2013  
Filed April 18, 2013

## CHAPTER 463

### HOUSE BILL NO. 1097

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

AN ACT to create and enact a new subsection to section 57-39.2-12 of the North Dakota Century Code, relating to electronic filing of sales and use tax returns and electronic payment of sales and use taxes; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new subsection to section 57-39.2-12 of the North Dakota Century Code is created and enacted as follows:

A retailer required to file monthly returns under subsection 1 shall file the returns by an electronic method approved by the commissioner. A retailer that does not comply with the requirement to file reports electronically is deemed to have failed to file the sales and use tax returns as provided in section 57-39.2-15 and is subject to the penalties provided in section 57-39.2-18. The commissioner may, for good cause shown, waive the filing requirements of this subsection.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for reporting periods beginning after December 31, 2013.

Approved April 8, 2013  
Filed April 8, 2013

## CHAPTER 464

### HOUSE BILL NO. 1464

(Representatives Dosch, Kasper, Streyle, Vigesaa)  
(Senators Carlisle, Dever, Sinner)

AN ACT to amend and reenact 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 the deduction to allow retailer reimbursement for administrative expenses of collecting sales and use taxes; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. 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 registered to report and remit sales, use, or gross receipts tax imposed under chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~ninety-three~~one hundred ten dollars and ~~seventy-five cents~~ per return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.

**SECTION 2. 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 registered to report and remit sales, use, or gross receipts tax imposed under chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~ninety-three~~one hundred ten dollars and ~~seventy-five cents~~ per return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for returns for taxable periods beginning after June 30, 2013.

Approved April 18, 2013  
Filed April 18, 2013



## CHAPTER 465

### SENATE BILL NO. 2217

(Senator Cook)  
(Representative Drovdal)

AN ACT to amend and reenact sections 40-57.3-04 and 57-39.4-11.1 of the North Dakota Century Code, relating to the payment of city lodging tax, city lodging and restaurant tax, city motor vehicle tax, and the election of origin-based sourcing for retail sales of tangible personal property.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 40-57.3-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative expenses allowed - Rules.**

The taxes imposed under this chapter are due and payable at the same time the taxpayer is required to file a return under chapter 57-39.2 and must be collected and administered by the state tax commissioner in accordance with the relevant provisions of chapter 57-39.2. The taxpayer shall add the taxes imposed under this chapter to the sales, lease, or rental price and shall collect the tax from the consumer. A retailer may not advertise or hold out or state to the public, or to any consumer, directly or indirectly, that the taxes or any part of the taxes imposed under this chapter shall be assumed, absorbed, or refunded by the taxpayer. The amount the tax commissioner remits monthly to each city as taxes collected for that city's visitors' promotion fund and visitors' promotion capital construction fund must be reduced by three percent as an administrative fee necessary to defray the cost of collecting the taxes and the expenses incident to collection. The administrative fee must be deposited in the general fund in the state treasury. The tax commissioner shall adopt rules necessary for the administration of this chapter. The penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 specifically apply to the filing of returns and administration of the taxes imposed under this chapter. The taxes imposed under this chapter are not taxes subject to chapter 57-39.4.

**SECTION 2. AMENDMENT.** Section 57-39.4-11.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-39.4-11.1. (310.1) Election for origin-based sourcing.**

1. A member state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods under the provisions of this section in lieu of the provisions of subdivisions b, c, and d of subsection 1 of section 57-39.4-11 if the state complies with subsection 3 of this section and the only exception to section 57-39.4-11 is in subsection 2 of this section.
2. A member state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:

- a. The order is received in the same state by the seller where receipt of the product by the purchaser or the purchaser's designated donee occurs;
  - b. The location where receipt of the product by the purchaser occurs is determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11; and
  - c. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received.
3. A member state electing to source sales under this section shall comply with all of the following:
- a. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser or the purchaser's designated donee occurs as determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11 are in different states, the sale must be sourced under the provisions of section 57-39.4-11.
  - b. When the sale is sourced under this section to the location where the order is received by the seller, only the sales tax for the location where the order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied on that sale. The purchaser shall not be entitled to any refund if the combined state and local rate at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.
  - c. A member state may not require a seller to use a recordkeeping system that captures the location where the order is received to calculate the proper amount of sales or use tax to be imposed.
  - d. A purchaser shall not have an additional liability to the state for tax, penalty, or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if the invoice amount is calculated at either the rate applicable to the location where receipt by the purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for the sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for the sale was received by the seller, the purchaser may use the seller's business address that is available from the purchaser's business records maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.
  - e. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller, where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed, or fulfilled. An order is received when all of the information from the purchaser necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The

location from which a product is shipped must not be used in determining the location where the order is received by the seller.

- f. A member state must provide for direct pay permits under section 57-39.4-27 and the requirements of this subsection. Purchasers that remit sales and use tax under a direct pay permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A member state may establish reasonable thresholds at which the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and nontaxable purchases. The member state shall establish a process for application for a direct pay permit as provided in this chapter. The member state may require the direct pay permit applicant to demonstrate:
    - (1) An ability to comply with the sales and use tax laws of the state;
    - (2) A business purpose for seeking a direct pay permit and how the permit will benefit tax compliance; and
    - (3) Proof of good standing under the tax laws of the state. The member state shall review all permit applications in a timely manner. Notification of authorization or denial must be received by applicants within one hundred twenty days of application. The member state may not limit direct pay permit applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.
  - g. When taxable services are sold with tangible personal property or digital products under a single contract or in the same transaction, are billed on the same billing statement, and because of the application of this section, would be sourced to different jurisdictions, a member state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. The member state election is required until the governing board adopts a uniform methodology to address these sales.
  - h. A member state that elects to source the sale of tangible personal property and digital goods under the provisions of this section shall inform the governing board of the election.
4. Compliance with the provisions of this section satisfies a state's eligibility for membership in this agreement as follows:
- a. ~~If a state is in substantial compliance with the provisions of this agreement other than sourcing of sales of tangible personal property and digital goods as provided in section 57-39.4-11, and elects to source sales of tangible personal property and digital goods under this section, the state may become an associate member state in the same manner as provided for states to become full member states under article VIII of the agreement.~~
  - b. ~~A state that becomes an associate member state under this subsection shall automatically become a full member state, provided that at least five states which are not full member states on December 31, 2007, are determined to be in substantial compliance with the provisions of the~~

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~~agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11, and the state has notified the governing board of an election under subdivision h of subsection 3 to source sales under this section and has been found to be in substantial compliance with the provisions of this section.~~

Approved March 19, 2013  
Filed March 19, 2013

## CHAPTER 466

### HOUSE BILL NO. 1236

(Representatives Headland, Belter, Brandenburg, Silbernagel, Trottier)  
(Senators Campbell, Cook, Klein, Miller, Wanzek)

AN ACT to create and enact section 57-39.5-06 of the North Dakota Century Code, relating to payment of farm machinery gross receipts taxes under a lease agreement; to amend and reenact sections 57-39.5-01, 57-39.5-01.1, and 57-39.5-02 of the North Dakota Century Code, relating to farm machinery gross receipts tax application in lease or rental agreements and what qualifies as used farm machinery for farm machinery gross receipts tax purposes; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-39.5-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-39.5-01. Definitions.**

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

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

**SECTION 2. AMENDMENT.** Section 57-39.5-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.5-01.1. Trade-in deduction.**

1. When tangible personal property is taken in trade or in a series of trades as a credit or partial payment of a retail sale or lease agreement which is taxable under this chapter, if the tangible personal property traded in will be subject to gross receipts taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2, or motor vehicle excise taxes imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not gross receipts.
2. Tangible personal property owned or leased and in possession of a farmer may be used as a trade-in to reduce the taxable purchase price of farm machinery or irrigation equipment used exclusively for agricultural purposes if:
  - a. The retailer selling farm machinery or irrigation equipment to a lessor, for the purpose of leasing to a farmer, also purchases the machinery or equipment owned or leased and in possession of the farmer. The purchase price paid by the retailer for the equipment owned or leased and in the possession of a farmer is the trade-in value for purposes of this section;
  - b. The retailer's sale of farm machinery or irrigation equipment to a lessor for the purpose of leasing to a farmer and the retailer's purchase of equipment owned or leased and in the possession of a farmer are documented by an invoice or other documents prepared by the retailer to substantiate the trade-in relationship;
  - c. The lessor purchasing the farm machinery or irrigation equipment for the purpose of leasing to a farmer pays the taxes imposed under this chapter on the purchase price of the equipment less the trade-in value in subdivision a; and
  - d. The retailer and the lessor maintain records documenting compliance with the requirements in subdivisions a, b, and c.
3. For purposes of this section, "farmer" means any person that leases farm machinery as defined in this chapter or irrigation equipment to be used exclusively for agricultural purposes.

**SECTION 3. AMENDMENT.** Section 57-39.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.5-02. Imposition - Exemptions.**

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

1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous sale;
2. Tax under section 57-39.5-06 has been paid under a previous lease:
3. Originally purchased outside this state and previously owned by a farmer; or
- ~~3-4.~~ Has been under lease or rental for three years or more.

**SECTION 4.** Section 57-39.5-06 of the North Dakota Century Code is created and enacted as follows:

**57-39.5-06. Payment of tax under lease agreement.**

At the time of entering a lease agreement for new farm machinery or irrigation equipment subject to taxes under this chapter, the lessor shall:

1. Pay the taxes imposed under this chapter on the purchase price of the equipment that was purchased for the purpose of leasing:
2. On a lease with a term of three or more years, collect and remit to the commissioner the full amount of tax due under this chapter based on the cumulative value of three years of lease payments or collect the tax due on each lease payment under the agreement for three years and remit those amounts to the tax commissioner as those amounts are collected. If a lease agreement with a term of three years or more is terminated before tax on three years of lease payments has been remitted, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the three-year period; or
3. On a lease with a term of less than three years, collect and remit to the commissioner the full amount of tax calculated on the equivalent value of three years of lease payments. The equivalent value of three years of lease payments is the sum of the lease payments under the agreement divided by the term of the lease in months times thirty-six. The tax may be collected and remitted to the commissioner in equal installments with each lease payment over the term of the lease. If a lease agreement with a term of less than three years is terminated before the end of the lease, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the equivalent value of three years of lease payments.

**SECTION 5. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable events occurring after June 30, 2013. Section 3 of this Act is effective for lease agreements entered after June 30, 2013.

Approved April 11, 2013  
Filed April 11, 2013

## CHAPTER 467

### SENATE BILL NO. 2092

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

AN ACT to amend and reenact subsection 8 of section 57-40.3-04 of the North Dakota Century Code, relating to the motor vehicle excise tax exemption for certain motor vehicles in the possession of and used by permanently physically disabled persons.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 8 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

8. Any motor vehicle that does not exceed ten thousand pounds [4535.92 kilograms] gross weight and which is acquired by, or leased and in the possession of, a permanently physically disabled, licensed driver who is restricted to operating only motor vehicles equipped with special controls to compensate for the disability, or by permanently physically disabled individuals who have either surrendered or who have been denied a driver's license because of a permanent physical disability, provided the individuals obtain from the director of the department of transportation or the director's authorized representative a statement that the individual has a restricted driver's license or has either surrendered or has not been issued a driver's license because of a permanent physical disability; a copy of the statement must be attached to the application for registration of the title to the motor vehicle for which the exemption from tax under this chapter is claimed. If the applicant does not have the statement at the time of application for registration of the title, motor vehicle excise tax is due and must be paid. However, if the applicant provides the statement to the director of the department of transportation, the applicant may apply for a refund of the taxes paid in the manner provided in chapter 57-40.4. Any motor vehicle acquired subject to this exemption must be disposed of either by transfer to another permanently physically disabled person or by a trade-in on another exempt sale or by a transfer involving a sale subject to sales or use tax before another motor vehicle can be acquired subject to the benefits of this exemption clause.

Approved March 14, 2013  
Filed March 15, 2013



## CHAPTER 468

### SENATE BILL NO. 2261

(Senators Cook, Dotzenrod, Hogue)  
(Representatives Headland, Kasper, Thoreson)

AN ACT to create and enact two new sections to chapter 57-40.6 of the North Dakota Century Code, relating to the creation of a prepaid wireless emergency 911 fee; to amend and reenact section 57-40.6-01, subsection 1 of section 57-40.6-02, and sections 57-40.6-03, 57-40.6-08, and 57-40.6-13 of the North Dakota Century Code, relating to prepaid wireless services and limitation of liability for prepaid wireless service providers or sellers; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-40.6-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. ~~"Active prepaid wireless service" means a prepaid wireless service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.~~
2. "Assessed communications service" means a software service, communication connection, cable or broadband transport facilities, or a combination of these facilities, between a billed retail end user and a service provider's network that provides the end user, upon dialing 911, access to a public safety answering point through a permissible interconnection to the dedicated 911 network. The term includes telephone exchange access service, wireless service, ~~active prepaid wireless service~~, and voice over internet protocol service.
- 3-2. "Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.
3. "Commissioner" means the state tax commissioner.
4. "Communication connection" means a telephone access line, wireless access line, unique voice over internet protocol service connection, or functional equivalent uniquely identifiable by a number, internet address, or other designation.
5. "Consumer" means a person who purchases prepaid wireless service in a retail transaction.
- 5-6. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid

public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.

- ~~6-7.~~ "FCC order" means federal communications commission order 94-102 [961 Federal Register 40348] and any other FCC order that affects the provision of wireless enhanced 911 service.
- ~~8.~~ "Prepaid wireless emergency 911 fee" means the fee that is required to be collected by a seller from a consumer in the amount established under section 4 of this Act.
- ~~7-9.~~ "Prepaid wireless service" means wireless service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminates either upon use by a customer and delivery by the wireless provider of an agreed upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless the customer makes additional payments any telecommunications service that provides the right to use a mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which are paid for in advance and sold in predetermined units or dollars which decline with use in a known amount.
- ~~10.~~ "Prepaid wireless service provider" means any person that provides prepaid wireless telecommunications service pursuant to a license issued by the federal communications commission.
- ~~8-11.~~ "Public safety answering point" or "PSAP" means a communications facility or combination of facilities operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
- ~~9-12.~~ "Public safety answering point service area" means the geographic area for which a public safety answering point has dispatch and emergency communications responsibility.
- ~~40-13.~~ "Public safety telecommunicator" means an individual whose primary full-time or part-time duties are receiving, processing, and transmitting public safety information received through an emergency services communication system.
- ~~14.~~ "Retail transaction" means the purchase of prepaid wireless service from a seller for any purpose other than resale.
- ~~15.~~ "Seller" means a person who sells prepaid wireless services to a consumer.
- ~~44-16.~~ "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in section 57-34.1-02.
- ~~42-17.~~ "Telephone access line" means the principal access to the telephone company's switched network, including an outward dialed trunk or access register.

- ~~13-18.~~ "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
- ~~14-19.~~ "Unpublished" means information that is not published or available from directory assistance.
- ~~15-20.~~ "Voice over internet protocol service" means a service that enables real-time two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- ~~16-21.~~ "Wireless access line" means each active wireless and prepaid wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
- ~~17-22.~~ "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.
- ~~18-23.~~ "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:
- a. Services commonly referred to as wireless; and
  - b. Services provided by any wireless real-time two-way voice communication device, including radio-telephone communications used in:
    - (1) Cellular telephone service;
    - (2) Personal communications service; or
    - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.
- ~~19-24.~~ "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within this state.

**SECTION 2. AMENDMENT.** Subsection 1 of section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar and fifty cents per month per communication connection and must be applied equally upon all assessed communications services. Prepaid wireless service is not subject to the fee imposed under this section.

**SECTION 3. AMENDMENT.** Section 57-40.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-03. Payment of fee by assessed communications service subscriber or customer.**

~~The assessed communications service provider shall collect the fee from the subscriber or customer of the service.~~

- ~~1. For prepaid wireless service, the provider shall remit the monthly fee authorized by section 57-40.6-02 based either upon each active prepaid wireless telephone associated with this state for each active prepaid wireless telephone customer that has a sufficient positive balance as of the last day of each month or upon a two percent assessment on the gross revenue received from the sale of prepaid wireless services each month. The provider shall remit the fee in a manner consistent with the provider's existing operating or technological abilities, including by customer address, location associated with the wireless telephone number, or reasonable allocation method based upon other relevant data. The fee amount or an equivalent number of minutes may be reduced from the prepaid customer's account. However, collection of the fee in the manner of a reduction of value or minutes from the prepaid customer's account does not constitute a reduction in the sales price for purposes of taxes that are collected at the point of sale. The assessed communications service provider shall collect the fee authorized under section 57-40.6-02 from the subscriber or customer of the service.~~
2. For assessed communications service that involves a monthly billing, in the billing statement or invoice to the subscriber, the provider shall state the amount of the fee separately.
3. For prepaid wireless service, the fee shall be imposed, collected, and administered according to the provisions of section 4 of this Act. The fee imposed under section 4 of this Act shall be in lieu of any fees imposed on assessed communication services under section 57-40.6-02.

**SECTION 4.** A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

**Prepaid wireless emergency 911 fee.**

1. There is imposed a prepaid wireless emergency 911 fee of two percent on the gross receipts of sellers from all sales at retail of prepaid wireless services in this state.
  - a. A retail transaction that is made, in person, by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state under the provisions of chapter 57-39.4 as those provisions apply to a prepaid wireless calling service.
  - b. Prepaid wireless emergency 911 fees collected by sellers shall be remitted to the commissioner.
  - c. An entity required to collect and remit the prepaid wireless emergency 911 fee shall register with the commissioner. The registration shall be made in

- the form prescribed by the commissioner, in which the registrant shall identify the name under which the registrant transacts or intends to transact business, the location of the business, the federal identification number, and other information as the commissioner may require.
- d. Gross receipts from sales at retail of prepaid wireless services are exempt from the prepaid wireless emergency 911 fee imposed by this section when the sale is made to a person entitled to a sales and use tax exemption under subsections 6 or 12 of section 57-39.2-04.
  2. The prepaid wireless emergency 911 fee shall be collected by the seller from the consumer. The amount of the prepaid wireless emergency 911 fee shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.
  3. The prepaid wireless emergency 911 fee is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless emergency 911 fees the seller collects from the consumer, including all fees the seller is deemed to collect when the amount of the fee has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.
  4. If the amount of the prepaid wireless emergency 911 fee imposed by this section is separately stated on an invoice, receipt, or other similar document provided to the consumer, the prepaid wireless emergency 911 fee may not be included in the base for measuring any other tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.
  5. When prepaid wireless service is sold with one or more other products or services for a single, nonitemized price, then the percentage specified in subsection 1 shall apply to the entire nonitemized price unless the seller elects to apply the percentage to:
    - a. The amount of the prepaid wireless service that is disclosed to the consumer as a dollar amount, including the fee imposed by this section; or
    - b. The seller identifies the portion of the price that is attributable to the prepaid wireless service by reasonable and verifiable standards from its books and records that are kept in the regular course of business.
  6. If a minimal amount of prepaid wireless service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the percentage specified in subsection 1. For purposes of this subsection, an amount of service denominated as ten minutes or less, or five dollars or less, is minimal.
  7. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including provisions for audit, refunds, credits, or rules, not inconsistent with the provisions of this chapter, govern the administration of the prepaid wireless emergency 911 fee imposed in this chapter.
  8. a. A seller must complete a prepaid emergency 911 fee return reporting the gross receipts of the seller for prepaid wireless services sold, the amount

of the prepaid wireless emergency 911 fee for the period covered by the return, and any other information the commissioner may require to enable the seller to correctly compute and collect the prepaid wireless emergency 911 fee.

- b. If the seller is a retailer under chapter 57-39.2, the seller may file the prepaid emergency 911 fee return and pay the fees due at the same time the sales and use tax is due under section 57-39.2-11 or 57-39.2-12.
- c. The seller required to collect, report, and remit the prepaid wireless emergency 911 fee imposed under this section shall retain one hundred percent of the amount of fee due to cover the cost of collecting and transmitting the fee to the commissioner beginning with the first three months the seller begins selling prepaid wireless service, or for the first three months after the effective date of this Act if the seller is making retail sales of prepaid wireless services prior to January 1, 2014, and shall thereafter retain three percent of the fee.

**SECTION 5.** A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

**Prepaid wireless emergency 911 fee fund.**

All fees, penalties, and other charges collected under section 4 of this Act must be paid to the commissioner in the form of a remittance payable to the commissioner. The commissioner shall transmit the fees collected monthly to the state treasurer to be credited to a special fund in the state treasury, to be known as the prepaid wireless emergency 911 fee fund. The state treasurer, no less than quarterly, shall pay over the moneys accumulated in the fund to the governing joint powers entity established pursuant to chapter 54-40.3 for the specific purpose of implementing emergency communications systems for the state's political subdivisions. The proceeds from the prepaid wireless emergency 911 fee shall be used specifically for the implementation, maintenance, or operation of the emergency services communication system.

**SECTION 6. AMENDMENT.** Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

**SECTION 7. AMENDMENT.** Section 57-40.6-13 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-13. Provision of call location information by wireless service provider or prepaid wireless service provider or seller to law enforcement.**

1. Upon request of a law enforcement agency or a public safety answering point on behalf of a law enforcement agency, a wireless service provider shall provide call location information concerning the telecommunications device of a user to the requesting law enforcement agency or public safety answering point. A prepaid wireless service provider or seller shall provide such call location information if available. A law enforcement agency or public safety answering point may not request information under this section unless for the purposes of responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.
2. A wireless service provider or prepaid wireless service provider or seller may establish protocols by which the carrier voluntarily discloses call location information.
3. A claim for relief may not be brought in any court against any wireless service provider, prepaid wireless service provider or seller, or any other person for providing call location information if acting in good faith and under this section.
4. The bureau of criminal investigation shall obtain contact information from all wireless service providers authorized to do business in this state to facilitate a request from a law enforcement agency or a public safety answering point on behalf of a law enforcement agency for call location information under this section. The bureau shall disseminate the contact information to each public safety answering point in this state.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable periods beginning after December 31, 2013.

Approved March 21, 2013  
Filed March 21, 2013

## CHAPTER 469

### HOUSE BILL NO. 1049

(Legislative Management)  
(Transportation Committee)

AN ACT to amend and reenact subdivisions b, o, and r of subsection 4 of section 57-40.6-10 of the North Dakota Century Code, relating to standards and guidelines for public safety answering points.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subdivisions b, o, and r of subsection 4 of section 57-40.6-10 of the North Dakota Century Code are amended and reenacted as follows:

- b. ~~No later than July 1, 2013, be~~Be staffed continuously with at least one public safety telecommunicator who is on duty at all times of operation and who has primary responsibility for handling the communications of the public safety answering point.
- o. ~~No later than July 1, 2013,~~2015, have a written policy, appropriate agreements, and the capability to directly answer emergency calls and dispatch responders from a separate, independent location other than the main public safety answering point or another public safety answering point meeting the requirements of this section, within sixty minutes of an event that renders the main public safety answering point inoperative. This alternative location must have independent access to the public safety answering point's land line database. The capability of transferring emergency calls to this alternative location must be tested and documented annually.
- r. After July 1, ~~2013~~2015, maintain current, up-to-date mapping of its service area and have the ability to use longitude and latitude to direct responders.

Approved March 26, 2013

Filed March 27, 2013



## CHAPTER 470

### SENATE BILL NO. 2294

(Senators Dotzenrod, G. Lee, Luick)  
(Representative J. Kelsh)

AN ACT to amend and reenact section 57-43.2-41 of the North Dakota Century Code, relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed special fuel.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-43.2-41 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-41. Dyed special fuel - Administrative fees - Inspections - Penalty - Consumer advisory.**

1. Special fuel dyed for federal motor fuel tax exemption purposes is subject to the tax imposed by section 57-43.2-03 and, unless otherwise provided in this section, may not be used in the fuel supply tank of a licensed motor vehicle. The owner or operator of a licensed motor vehicle found to contain dyed special fuel in the fuel supply tank of that vehicle is subject to the tax imposed by section 57-43.2-02 to be determined based on the capacity of the fuel supply tank of the licensed vehicle involved and is subject to administrative fees as follows:
  - a. A ~~two hundred fifty~~ five hundred dollar fee for the first violation.
  - b. A ~~five hundred~~ two thousand dollar fee for a second violation occurring within three years of a previous violation.
  - c. A ~~one~~ four thousand dollar fee for a third violation occurring within three years of two previous violations.
  - d. A ~~five~~ ten thousand dollar fee for the fourth and subsequent violations occurring within three years of three or more previous violations.
2. Special fuel found in the fuel supply tank of a licensed motor vehicle shall be considered dyed if the fuel contains traces of the dye in an amount sufficient to be found in violation of federal laws and rules.
3. For purposes of enforcing the provisions of this section, the highway patrol, by agreement with the commissioner, may:
  - a. Stop, detain, and inspect a licensed motor vehicle and withdraw a sample of fuel from the fuel supply tank of the vehicle in a manner and in a quantity sufficient to determine whether the fuel is a special fuel and to determine the dye content of the fuel.

- b. Physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel for coloration, markers, and shipping papers.

An attempt by a person to prevent, stop, or delay an inspection of fuel or shipping papers by the highway patrol is subject to a civil penalty of not more than one thousand dollars per occurrence.

4. The highway patrol may issue a citation covering any violation of this section, and the person receiving a citation has the right to a hearing before the tax commissioner in the manner provided in chapter 28-32 if, within thirty days after receiving a citation, the person requests a hearing.
5. This section does not apply to:
  - a. A person who purchased dyed special fuel in another state or Canadian province and imported that fuel into the state in the supply tank of a licensed motor vehicle provided the state or Canadian province where the fuel was purchased does not prohibit its use in that vehicle.
  - b. A state or local government using dyed special fuel in licensed vehicles for purposes of construction, reconstruction, repair, or maintenance of public roads or highways.
6. All administrative fees or civil penalties under this section may be completely or partially waived by the tax commissioner for good cause shown, and any fees or penalties not waived must be collected by the tax commissioner and transferred to the state treasurer and deposited in the state highway fund.
7. The tax commissioner shall prescribe the size and contents of a sticker to be affixed to pumps dispensing dyed special fuel to advise consumers of the administrative fee imposed for a first violation of this section for use of dyed special fuel in the fuel supply tank of a licensed motor vehicle. A retailer of dyed special fuel shall affix the prescribed sticker to every pump on the retailer's premises dispensing dyed special fuel.

Approved April 12, 2013  
Filed April 12, 2013

## CHAPTER 471

### HOUSE BILL NO. 1358

(Representatives Skarphol, Brandenburg, Froseth,  
Rust, Steiner, Glassheim, J. Kelsh)  
(Senators Andrist, Wanzek, Wardner, Murphy, Triplett)

AN ACT to create and enact two new subsections to section 57-51-01 of the North Dakota Century Code, relating to definitions under the oil and gas gross production tax; to amend and reenact sections 57-51-15 and 57-62-05 of the North Dakota Century Code, relating to oil and gas gross production tax allocation and the impact aid program; to provide appropriations; to provide for reports to the budget section; to provide an effective date; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

"Hub city" means a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota.

"Hub city school district" means the school district with the highest student enrollment within the city limits of a hub city.

<sup>211</sup> **SECTION 2. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-51-15. Gross production tax allocation.**

The gross production tax must be allocated monthly 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:
  - a. Allocate to each hub city a monthly amount that will provide a total allocation of fivethree hundred seventy-five thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percentfor each full or partial percentage point of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota;

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<sup>211</sup> Section 57-51-15 was also amended by section 2 of House Bill No. 1278, chapter 408, and section 10 of House Bill No. 1333, chapter 277.

- b. Allocate to each hub city school district a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point of the hub city's private covered employment engaged in the mining industry, according to data compiled by job service North Dakota.
  - c. Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding ~~one~~two hundred ~~forty~~ million dollars per biennium; and
  - e.~~d.~~ Allocate the remaining revenues under subsection 3.
2. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated as follows:
    - a. The first ~~two~~five million dollars is allocated to the county.
    - b. ~~Of the next one~~all annual revenue ~~exceeding five~~ million dollars, ~~seventy-five~~twenty-five percent is allocated to the county.
    - e. ~~Of the next one~~ million dollars, fifty percent is allocated to the county.
    - d. ~~Of the next fourteen million dollars, twenty-five percent is allocated to the county.~~
    - e. ~~Of all annual revenue exceeding eighteen million dollars, ten percent is allocated to the county.~~
  3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.
  4. ~~The amount to which each county is entitled under subsection 2 must be allocated within the county so the first five million three hundred fifty thousand dollars is allocated under subsection 5 for each fiscal year and any amount received by a county exceeding five million three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 6.~~
  5. For a county that received less than five million dollars of allocations under subsection 2 in the most recently completed state fiscal year, revenues allocated to that county must be distributed by the state treasurer as follows:
    - a. ~~Forty-five percent of all revenues allocated to any county for allocation under this subsection must be credited by~~distributed to the county treasurer and credited to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year in a taxable year after 2012 the county does ~~not levy~~is not levying a total of at least ten mills for combined levies for

county road and bridge, farm-to-market and federal aid road, and county road purposes.

- b. ~~Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county~~state~~ treasurer no less than quarterly to school districts within the county, excluding consideration of and allocation to any hub city school district in the county, on the average daily attendance distribution basis, as certified to the county~~state~~ treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.~~

~~The countywide allocation to school districts under this subdivision is subject to the following:~~

- ~~(1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.~~
- ~~(2) The next three hundred fifty thousand dollars is apportioned seventy five percent among school districts in the county and twenty five percent to the county infrastructure fund.~~
- ~~(3) The next two hundred sixty two thousand five hundred dollars is apportioned two thirds among school districts in the county and one third to the county infrastructure fund.~~
- ~~(4) The next one hundred seventy five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.~~
- ~~(5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:~~
  - ~~(a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.~~

- (b) ~~Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.~~
- (c) ~~Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.~~
- c. ~~Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. A hub city must be omitted from apportionment under this subdivision. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.~~
5. For a county that received five million dollars or more of allocations under subsection 2 in the most recently completed state fiscal year, revenues allocated to that county must be distributed by the state treasurer as follows:
- a. Sixty percent must be distributed to the county treasurer and credited to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
- b. Five percent must be apportioned by the state treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from consideration and apportionment under this subdivision.
- c. Twenty percent must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. A hub city must be omitted from apportionment under this subdivision. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.
- d. Three percent must be apportioned no less than quarterly by the state treasurer among the organized and unorganized townships of the county. The state treasurer shall apportion the funds available under this subdivision among townships in the proportion that township road miles in

- the township bears the total township road miles in the county. The amount apportioned to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.
- e. Three percent must be allocated by the state treasurer among the organized and unorganized townships in all the counties that received five million dollars or more of allocations under subsection 2 in the most recently completed state fiscal year. The amount available under this subdivision must be allocated no less than quarterly by the state treasurer in an equal amount to each eligible organized and unorganized township. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.
- f. Nine percent must be allocated by the state treasurer among hub cities. The amount available for allocation under this subdivision must be apportioned by the state treasurer no less than quarterly among hub cities. Sixty percent of funds available under this subdivision must be distributed to the hub city receiving the greatest percentage of allocations to hub cities under subdivision a of subsection 1 for the quarterly period, thirty percent of funds available under this subdivision must be distributed to the hub city receiving the second greatest percentage of such allocations, and ten percent of funds available under this subdivision must be distributed to the hub city receiving the third greatest percentage of such allocations.
6. a. ~~Forty five percent of all revenues allocated to a county infrastructure fund under subsections 4 and 5 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.~~
- b. ~~Thirty five percent of all revenues allocated to the county infrastructure fund under subsections 4 and 5 must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the~~

county treasurer to the county road and bridge fund for use on county road and bridge projects:

- e. ~~Twenty percent of all revenues allocated to any county infrastructure fund under subsections 4 and 5 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.~~

7-6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:

- a. The county's statement of revenues and expenditures; and
- b. ~~The amount available in the county infrastructure fund for allocation~~allocated to or for the benefit of townships or school districts, the amount allocated to each organized township or school district and the amount expended from each such allocation by that township or school district, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships or school districts which remained unexpended at the end of the fiscal year.

Within fifteen days after the time when reports under this subsection were due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

**SECTION 3. AMENDMENT.** Section 57-62-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-62-05. Powers and duties of energy infrastructure and impact office director.**

The energy infrastructure and impact office director shall:

1. Develop a plan for the assistance, through financial grants for services and facilities, of counties, cities, school districts, and other political subdivisions in coal development and oil and gas development impact areas.
2. Establish procedures and provide proper forms to political subdivisions for use in making application for funds for impact assistance as provided in this chapter.
3. Make grants disbursements to counties, cities, school districts, and other taxing districts for grants awarded by the board of university and school lands pursuant to chapter 15-01, as provided in this chapter and within the appropriations made for such purposes. In determining the amount of impact grants for which political subdivisions are eligible, the consideration must be given to the amount of revenue to which such political subdivisions will be



entitled from taxes upon the real property of coal and oil and gas development plants and from other tax or fund distribution formulas provided by law must be considered.

4. Receive and review applications for impact assistance pursuant to this chapter.
5. Make recommendations, not less than once each calendar quarter, to the board of university and school lands on grants to counties, cities, school districts, and other political subdivisions in oil and gas development impact areas based on identified needs, and other sources of revenue available to the political subdivision.
6. ~~Make recommendations to the board of university and school lands providing for the distribution of thirty five percent of moneys available in the oil and gas impact fund to incorporated cities with a population of ten thousand or more, based on the most recent official decennial federal census, that are impacted by oil and gas development. The director may not recommend that an incorporated city receive more than sixty percent of the funds available under this subsection.~~
7. ~~Make recommendations to the board of university and school lands providing for the distribution of sixty five percent of moneys available in the oil and gas impact fund to cities not otherwise eligible for funding under this section, counties, school districts, and other political subdivisions impacted by oil and gas development.~~

**SECTION 4. APPROPRIATION - JOB SERVICE NORTH DAKOTA.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$120,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify all employees who should be included for statistical purposes in oil and gas-related employment, including employees of refineries and gas plants and oil and gas transportation services, for the biennium beginning July 1, 2013, and ending June 30, 2015.

**SECTION 5. APPROPRIATION - DEPARTMENT OF TRANSPORTATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$160,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of allocation as provided in this section among oil-producing counties that received \$5,000,000 or more of allocations under subsection 2 of section 57-51-15 in the state fiscal year ending June 30, 2012, for the biennium beginning July 1, 2013, and ending June 30, 2015.

1. The sum appropriated in this section must be used to rehabilitate or reconstruct county paved and unpaved roads and bridges needed to support oil and gas production and distribution in North Dakota.
  - a. Funding allocations to counties are to be made by the department of transportation based on data supplied by the upper great plains transportation institute.
  - b. Counties identified in the data supplied by the upper great plains transportation institute which received \$5,000,000 or more of allocations

under subsection 2 of section 57-51-15 for the state fiscal year ending June 30, 2012, are eligible for this funding.

2. Each county requesting funding under this section for county road and bridge projects shall submit the request in accordance with criteria developed by the department of transportation.
  - a. The request must include a proposed plan for funding projects that rehabilitate or reconstruct paved and unpaved roads and bridges within the county.
  - b. The plan must be based on data supplied by the upper great plains transportation institute, actual road and bridge conditions, and integration with state highway and other county projects.
  - c. Projects funded under this section must comply with the American association of state highway transportation officials (AASHTO) pavement design procedures and the department of transportation local government requirements. Upon completion of major reconstruction projects, the roadway segment must be posted at a legal load limit of 105,500 pounds [47853.993 kilograms].
  - d. Funds may not be used for routine maintenance.
3. The department of transportation, in consultation with the county, may approve the plan or approve the plan with amendments.
4. The funding appropriated in this section may be used for:
  - a. Ninety percent of the cost of the approved projects not to exceed the funding available for that county.
  - b. Funding may be used for construction, engineering, and plan development costs.
5. Upon approval of the plan, the department of transportation shall transfer to the county the approved funding for engineering and plan development costs.
6. Upon execution of a construction contract by the county, the department of transportation shall transfer to the county the approved funding to be distributed for county and township rehabilitation and reconstruction projects.
7. The recipient counties shall report to the department of transportation upon awarding of each contract and upon completion of each project in a manner prescribed by the department.
8. The funding under this section may be applied to engineering, design, and construction costs incurred on related projects as of January 1, 2013.
9. For purposes of this section, a "bridge" is a structure that has an opening of more than 20 feet [6.096 meters] as measured along the centerline of the roadway. It may also be the clear openings of more than 20 feet [6.096 meters] of a group of pipes as long as the pipes are spaced less than half the distance apart of the smallest diameter pipe.

10. Section 54-44.1-11 does not apply to funding under this section. Any funds not spent by June 30, 2015, must be continued into the biennium beginning July 1, 2015, and ending June 30, 2017, and may be expended only for purposes authorized by this section.

**SECTION 6. APPROPRIATION - DEPARTMENT OF TRANSPORTATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$120,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of allocation among counties that did not receive \$5,000,000 or more of allocations under subsection 2 of section 57-51-15 in the state fiscal year ending June 30, 2012, for the biennium beginning July 1, 2013, and ending June 30, 2015. The amounts available for allocation under this section must be distributed on or after February 1, 2014.

1. The sum appropriated in this section must be used to rehabilitate or reconstruct county paved and unpaved roads and bridges needed to support economic activity in North Dakota.
  - a. To be eligible to receive an allocation under this section, a county may not have received \$5,000,000 or more of allocations under subsection 2 of section 57-51-15 during the state fiscal year ending June 30, 2012.
  - b. Allocations among eligible counties under this section must be based on the miles of roads defined by the department of transportation as county major collector roadways in each county.
  - c. The department of transportation may use data supplied by the upper great plains transportation institute in determining the projects to receive funding under this section.
2. Each county requesting funding under this section shall submit the request in accordance with criteria developed by the department of transportation.
  - a. The request must include a proposed plan for funding projects that rehabilitate or reconstruct paved and unpaved roads and bridges within the county.
  - b. The plan must be based on actual road and bridge conditions and the integration of projects with state highway and other county projects.
  - c. Projects funded under this section must comply with the American association of state highway transportation officials (AASHTO) pavement design procedures and the department of transportation local government requirements. Upon completion of major reconstruction projects, the roadway segment must be posted at a legal load limit of 105,500 pounds [47853.993 kilograms].
  - d. Funds may not be used for routine maintenance.
3. The department of transportation, in consultation with the county, may approve the plan or approve the plan with amendments.
4. The funding appropriated in this section may be used for:
  - a. Ninety percent of the cost of the approved projects not to exceed the funding available for that county.

- b. Funding may be used for construction, engineering, and plan development costs.
5. Upon approval of the plan, the department of transportation shall transfer to the county the approved funding for engineering and plan development costs.
6. Upon execution of a construction contract by the county, the department of transportation shall transfer to the county the approved funding to be distributed for county and township rehabilitation and reconstruction projects.
7. The recipient counties shall report to the department of transportation upon awarding of each contract and upon completion of each project in a manner prescribed by the department.
8. The funding under this section may be applied to engineering, design, and construction costs incurred on related projects as of January 1, 2013.
9. For purposes of this section, a "bridge" is a structure that has an opening of more than 20 feet [6.096 meters] as measured along the centerline of the roadway. It may also be the clear openings of more than 20 feet [6.096 meters] of a group of pipes as long as the pipes are spaced less than half the distance apart of the smallest diameter pipe.
10. Section 54-44.1-11 does not apply to funding under this section. Any funds not spent by June 30, 2015, must be continued into the biennium beginning July 1, 2015, and ending June 30, 2017, and may be expended only for purposes authorized by this section.

**SECTION 7. APPROPRIATION - STATE TREASURER.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$8,760,000, or so much of the sum as may be necessary, to the state treasurer for allocation to counties for allocation to or for the benefit of townships in oil-producing counties, for the biennium beginning July 1, 2013, and ending June 30, 2015. The funding provided in this section must be distributed in equal amounts in July 2013 and May 2014. The state treasurer shall distribute the funds provided under this section as soon as possible to counties and the county treasurer shall allocate the funds to or for the benefit of townships in oil-producing counties through a distribution of \$15,000 each year to each organized township and a distribution of \$15,000 each year for each unorganized township to the county in which the unorganized township is located. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision for township roads or other infrastructure needs in those townships. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads. For the purposes of this section, an "oil-producing county" means a county that received an allocation of funding under section 57-51-15 of more than \$500,000 but less than \$5,000,000 in the state fiscal year ending June 30, 2012.

**SECTION 8. APPROPRIATION - DEPARTMENT OF COMMERCE - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - REPORT TO BUDGET SECTION.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of administering a grant program for nursing homes, basic care facilities, and providers that serve individuals with developmental disabilities located in oil-producing counties to address the effects of oil and gas and related

economic development activities, for the biennium beginning July 1, 2013, and ending June 30, 2015. The department of commerce shall allocate funding in January of each year of the biennium, based on the number of full-time equivalent positions of each nursing home, facility, or provider as determined by the department of human services. When setting rates for the entities receiving grants under this section, the department of human services shall exclude grant income received under this section as an offset to costs. This funding is considered one-time funding for the 2013-15 biennium. The department of commerce shall report to the budget section annually and to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding. For purposes of this section, an "oil-producing county" means a county that received an allocation of funding under section 57-51-15 for the preceding state fiscal year.

**SECTION 9. APPROPRIATION - OIL AND GAS IMPACT GRANT FUND - GRANT RECOMMENDATIONS.** There is appropriated out of any moneys in the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of \$239,299,174, or so much of the sum as may be necessary, to the board of university and school lands for the purpose of oil and gas impact grants, for the biennium beginning July 1, 2013, and ending June 30, 2015.

Grants awarded under this section are not subject to section 54-44.1-11. The funding provided in this section is considered a one-time funding item.

During the biennium beginning July 1, 2013, and ending June 30, 2015, the energy infrastructure and impact office director shall include in recommendations to the board of university and school lands on grants to eligible entities in oil and gas development impact areas:

1. \$5,000,000, or so much of the sum as may be necessary, for the purpose of providing distributions to eligible counties experiencing new oil and gas development activities. As determined by the director of the department of mineral resources, a county is eligible for a distribution under this subsection if the county produced fewer than 100,000 barrels of oil for the month of November 2012 and after November 2012 the number of active oil rigs operating in the county in any one month exceeds four rigs. Upon the determination by the director of the department of mineral resources that a county is eligible for a distribution under this section, the commissioner of university and school lands shall provide \$1,250,000 to the county for defraying expenses associated with oil and gas development impacts in the county. The county, in determining the use of the funds received, shall consider and, to the extent possible, address the needs of other political subdivisions in the county resulting from the impact of oil and gas development.
2. \$60,000,000, or so much of the sum as may be necessary, for grants to airports impacted by oil and gas development. The director of the energy infrastructure and impact office shall adopt grant procedures and requirements necessary for distribution of grants under this subsection, which must include cost-share requirements. Cost-share requirements must consider the availability of local funds to support the project. Grant funds must be distributed giving priority to projects that have been awarded or are eligible to receive federal funding.
3. \$4,000,000, or so much of the sum as may be necessary, for grants to public institutions of higher education impacted by oil and gas development. Notwithstanding the provisions of chapter 57-62, public institutions of higher

education are eligible to receive oil and gas impact grants under this subsection. The director of the energy infrastructure and impact office may develop grant procedures and requirements necessary for distribution of grants under this subsection.

4. \$3,000,000, or so much of the sum as may be necessary, for grants of \$1,000,000 each to three counties in oil-impacted areas for a pilot project for dust control. The county commission from each county awarded a grant shall file a report with the director of the energy infrastructure and impact office by January 1, 2014, regarding any product used to control dust and the success or failure of the product in controlling dust. The director of the energy infrastructure and impact office may develop grant procedures and requirements necessary for distribution of grants under this section. The director of the energy infrastructure and impact office shall consult with the state department of health and the industrial commission relating to the use of oilfield-produced saltwater and products previously tested for dust control.
5. \$7,000,000, or so much of the sum as may be necessary, to counties for the benefit of county sheriff's departments to offset oil and gas development impact causing a need for increased sheriff's department services, staff, funding, equipment, coverage, and personnel training.
6. \$7,000,000, or so much of the sum as may be necessary, for grants to emergency medical services providers for an extraordinary expenditure that would mitigate negative effects of oil development impact affecting emergency medical services providers providing service in oil-producing counties, including need for increased emergency medical services providers services, staff, funding, equipment, coverage, and personnel training. The director of the energy infrastructure and impact office may develop grant procedures and requirements necessary for distribution of grants under this subsection.
7. \$3,500,000, or so much of the sum as may be necessary, for grants to fire protection districts for an extraordinary expenditure that would mitigate negative effects of oil development impact affecting fire protection districts providing service in oil-producing counties, including need for increased fire protection districts services, staff, funding, equipment, coverage, and personnel training.
8. \$14,000,000, or so much of the sum as may be necessary, for grants to hub cities. A hub city as defined in section 57-51-01 is eligible to receive grants from the oil and gas impact grant fund only to the extent provided for under this subsection. Of the funding allocation provided for in this subsection, \$2,000,000 is available for grants to the hub city receiving the greatest percentage of allocations to hub cities under subdivision a of subsection 1 of section 57-51-15, \$7,000,000 is available for grants to the hub city receiving the second greatest percentage of allocations to hub cities under subdivision a of subsection 1 of section 57-51-15, and \$5,000,000 is available for grants to the hub city receiving the third greatest percentage of allocations to hub cities under subdivision a of subsection 1 of section 57-51-15.

**SECTION 10. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - REPORT TO BUDGET SECTION.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$9,600,000, or so much of the sum as may be necessary, to the department of human

services for the purpose of administering a grant program for critical access hospitals in oil-producing counties and in counties contiguous to an oil-producing county to address the effects of oil and gas and related economic development activities, for the biennium beginning July 1, 2013, and ending June 30, 2015. The department of human services shall develop policies and procedures for the disbursement of the grant funding and may not award more than \$4,800,000 during each year of the biennium. The department of human services shall allocate funding in January of each year of the biennium. This funding is considered one-time funding for the 2013-15 biennium. The department of human services shall report to the budget section annually and to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding. For the purposes of this section, an "oil-producing county" means a county that received an allocation of funding under section 57-51-15 of more than \$500,000 for the preceding state fiscal year.

**SECTION 11. APPROPRIATION - LAW ENFORCEMENT - ATTORNEY GENERAL'S OFFICE - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - REPORT TO BUDGET SECTION.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$9,600,000, or so much of the sum as may be necessary, to the attorney general's office for the purpose of awarding grants to law enforcement agencies, for crime-related needs of the attorney general's office, and for the development of a uniform law enforcement and custody manual, for the biennium beginning July 1, 2013, and ending June 30, 2015. The drug and violent crime policy board of the attorney general shall, with approval of the board of university and school lands, grant funds to law enforcement agencies in oil-impacted counties where crime-related activities have increased or in other counties if the crime-related activities in oil-impacted counties originated in any of those counties. The attorney general may spend up to ten percent of the funding provided under this section for defraying the expenses of additional staffing needs or other needs necessary to accomplish the role of the attorney general's office as an assisting agency in ensuring public safety in the affected areas. The funding provided in this section is considered a one-time funding item. The attorney general shall report to the budget section annually and to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding, including the impact the grant funding has had on crime-related activities.

**SECTION 12. HUB CITIES - REPORT TO BUDGET SECTION.** A representative of a hub city as defined in section 57-51-01 shall report to the budget section annually on the use of funding received from allocations under section 57-51-15.

**SECTION 13. EFFECTIVE DATE - EXPIRATION DATE.** Sections 1 and 2 of this Act are effective for taxable events occurring after June 30, 2013, and before July 1, 2015, and are thereafter ineffective.

Approved May 3, 2013

Filed May 7, 2013

## CHAPTER 472

### HOUSE BILL NO. 1134

(Representatives Porter, Carlson, Drovdal)  
(Senators Armstrong, Lyson, Wardner)

AN ACT to create and enact sections 57-51-02.6 and 57-51.1-02.1 of the North Dakota Century Code, relating to oil and gas gross production tax exemption for natural gas and an oil extraction tax exemption for liquids produced from natural gas extracted to encourage use of gas that might otherwise be flared; to amend and reenact sections 38-08-06.4 and 57-39.2-04.5 of the North Dakota Century Code, relating to flaring restrictions for natural gas and sales tax exemption for property used to process natural gas to encourage use of gas that might otherwise be flared; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 38-08-06.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority.**

1. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well. Thereafter,
2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be capped, connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well.:
  - a. Capped;
  - b. Connected to a gas gathering line;
  - c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;
  - d. Equipped with a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons; or
  - e. Equipped with other value-added processes as approved by the industrial commission which reduce the volume or intensity of the flare by more than sixty percent.



3. An electrical generator and its attachment units to produce electricity from gas and a collection system described in subdivision d of subsection 2 must be considered to be personal property for all purposes.
4. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2.
5. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final.
6. A producer may obtain an exemption from this section from the industrial commission upon application ~~and a showing that shows to the satisfaction of the industrial commission~~ that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas or employing a collection system described in subdivision d of subsection 2 is economically infeasible.

**SECTION 2. AMENDMENT.** Section 57-39.2-04.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.5. Sales and use tax exemption for materials used in compressing, processing, gathering, collecting, or refining of gas.**

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into a system used to compress, process, gather, collect, or refine gas. Tangible personal property used to replace an existing system to compress, process, gather, collect, or refine gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, processing, gathering, collecting, or refining system must receive from the tax commissioner a certificate that the tangible personal property used to construct or expand a system used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility in this state which the owner intends to purchase qualifies for exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, processing, gathering, collecting, or refining system may apply to the tax commissioner for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the

tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

4. For purposes of this section, a gas collecting system means a collection system described in subdivision d of subsection 2 of section 38-08-06.4.

**SECTION 3.** Section 57-51-02.6 of the North Dakota Century Code is created and enacted as follows:

**57-51-02.6. Temporary exemption for oil and gas wells employing a system to avoid flaring.**

Gas is exempt from the tax under section 57-51-02.2 for a period of two years and thirty days from the time of first production if the gas is:

1. Collected and used at the well site to power an electrical generator that consumes at least seventy-five percent of the gas from the well; or
2. Collected at the well site by a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons, or other value-added processes as approved by the industrial commission.

**SECTION 4.** Section 57-51.1-02.1 of the North Dakota Century Code is created and enacted as follows:

**57-51.1-02.1. Temporary exemption for oil and gas wells employing a system to avoid flaring.**

Liquids produced from a collection system described in subdivision d of subsection 2 of section 38-08-06.4 utilizing absorption, adsorption, or refrigeration are exempt from the tax under section 57-51.1-02 for a period of two years and thirty days from the time of first production.

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective July 1, 2013.

Approved April 26, 2013  
Filed April 26, 2013

## CHAPTER 473

### HOUSE BILL NO. 1198

(Representatives Headland, Brandenburg, Pollert)  
(Senator Wanzek)

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to income tax withholding for oil and gas royalties; to amend and reenact section 15-05-10, subsection 4 of section 38-08-04, sections 57-51.1-01 and 57-51.1-03, subsection 1 of section 57-51.1-03.1, and section 57-51.2-02 of the North Dakota Century Code, relating to oil extraction tax definitions and exemptions and the state-tribal oil tax agreement; to provide for a study; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-05-10. Royalties from oil leases - Rents from other leases - Rules.**

Oil leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays must be made by the board in such annual payments as are determined by the board. The board may adopt rules regarding annual payments and royalties under this section.

<sup>212</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in subsection 8 of section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells and the depth of those wells, to recertify stripper wells that are reentered and recompleted as horizontal wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations under section 57-51.1-01, and the date of qualification for the reduced rate of oil extraction tax for secondary and tertiary recovery operations.

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

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<sup>212</sup> Section 38-08-04 was also amended by section 2 of House Bill No. 1333, chapter 277.

**Withholding requirement for oil and gas royalty payments to nonresidents.**

1. For purposes of this section:
  - a. "Publicly traded partnership" means a publicly traded partnership as defined in section 7704 of the Internal Revenue Code [26 U.S.C. 7704] which is not treated as a corporation.
  - b. "Remitter" means any person who distributes royalty payments to royalty owners.
  - c. "Royalty owner" means a person or entity entitled to receive periodic royalty payments for a nonworking interest in the production of oil or gas.
2. Except as provided in subsection 3, each remitter shall deduct and withhold from the net amount of the royalty payment made to each nonresident individual or business entity that does not have its commercial domicile in this state at the highest marginal rate provided in sections 57-38-30 and 57-38-30.3. Sections 57-38-59 and 57-38-60 apply to the filing of the returns and payment of the tax under this subsection.
3. This section does not apply to royalty payments made to a royalty owner if the royalty owner is:
  - a. The United States or an agency of the federal government, this state or a political subdivision of this state, or another state or a political subdivision of another state;
  - b. A federally recognized Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered under the Indian Mineral Leasing Act of 1938 [25 U.S.C. 396a through 396g];
  - c. The United States as trustee for individual Indians;
  - d. A publicly traded partnership;
  - e. An organization that is exempt from the tax under this chapter; or
  - f. The same person or entity as the remitter.
4.
  - a. This section does not apply to a remitter that produced less than three hundred fifty thousand barrels of oil or less than five hundred million cubic feet of gas in the preceding calendar year as certified to the tax commissioner in the manner and on forms prescribed by the tax commissioner.
  - b. Each remitter that is exempt from withholding under this subsection shall make an annual return to report royalty payments that exceed the dollar amounts in subsection 6 and must be reported in the same manner as provided in section 57-38-60.
5.
  - a. Each year, a publicly traded partnership that is exempt from withholding under subsection 3 shall transmit to the tax commissioner, in an electronic format approved by the tax commissioner, each partner's United States department of the treasury schedule K-1, form 1065, or form 1065-B, as

applicable, filed electronically for the year with the United States internal revenue service.

b. A royalty owner that is a publicly traded partnership, or an organization exempt from taxation under section 57-38-09, shall report to the remitter and tax commissioner under oath, on a form prescribed by the tax commissioner, all information necessary to establish that the remitter is not required under subsection 2 to withhold royalty payments made to the partnership or organization.

6. If the royalty payment made to a royalty owner under this section is less than six hundred dollars for the current withholding period, or is less than one thousand dollars if the payment is annualized, the tax commissioner may grant a remitter's request to forego withholding the tax from the royalty payment made to that royalty owner for the current withholding period or, if applicable, the royalty payments for the annual period.

**SECTION 4. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-01. Definitions for oil extraction tax.**

~~For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section~~this chapter:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.
2. "Average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition, minus two dollars and fifty cents. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed.
3. "Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well.
4. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].
5. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
6. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject

to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

7. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.
8. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
  - a. Miscible fluid displacement.
  - b. Steam drive injection.
  - c. Microemulsion.
  - d. In situ combustion.
  - e. Polymer augmented water flooding.
  - f. Cyclic steam injection.
  - g. Alkaline flooding.
  - h. Carbonated water flooding.
    - i. Immiscible carbon dioxide displacement.
    - j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and

the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.

9. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.
10. "Stripper well" means a well drilled and completed, or reentered and recompleted as a horizontal well, after June 30, 2013, whose average daily production of oil during any preceding consecutive twelve-month period, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations, and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048 meters] in the Bakken or Three Forks formation.
11. "Stripper well property" means wells drilled and completed, or a well reentered and recompleted as a horizontal well, before July 1, 2013, on a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.
- 44-12. "Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.
- 42-13. "Two-year inactive well" means any well certified by the industrial commission that did not produce oil in more than one month in any consecutive twenty-four-month period before being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.

**SECTION 5. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-03. (~~Effective through June 30, 2013~~) Exemptions from oil extraction tax.**

The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property or individual stripper well.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
5.
  - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
  - b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.
  - c. For purposes of this subsection, incremental production is defined in the following manner:



- (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.
- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary

production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
  - (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
  - a. The well is located drilled and completed before July 1, 2013, on nontrust lands within the boundaries of an Indian reservation;
  - b. The well is drilled and completed before July 1, 2013, on lands held in trust by the United States for an Indian tribe or individual Indian; or
  - c. The well is drilled and completed before July 1, 2013, on lands held by an Indian tribe if the interest is in existence on August 1, 1997.
9. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed after April 30, 2009, and before July 1, 2015, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.
10. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a well drilled and completed outside the Bakken and Three Forks formations, and ten miles [16.10 kilometers] or more outside an established field in which the industrial commission has defined the pool to include the Bakken or Three Forks formation, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.

~~(Effective after June 30, 2013) Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:~~

1. ~~The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.~~

2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
5.
  - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
  - b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.
  - c. For purposes of this subsection, incremental production is defined in the following manner:
    - (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary

production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

- (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.
- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary

production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive

five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
  - a. The well is located within the boundaries of an Indian reservation;
  - b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
  - c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.
9. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.

**SECTION 6. AMENDMENT.** Subsection 1 of section 57-51.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property or individual stripper well under subsection 2 of section 57-51.1-03, the industrial commissioner's certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's or stripper well's qualification period.

<sup>213</sup> **SECTION 7. AMENDMENT.** Section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.2-02. Agreement requirements.**

An agreement under this chapter is subject to the following:

1. The only taxes subject to agreement are the state's oil and gas gross production and oil extraction taxes attributable to production from wells located within the exterior boundaries of the Fort Berthold Reservation.
2. The state's oil and gas gross production tax under chapter 57-51 must apply to all wells located within the Fort Berthold Reservation.
3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the Fort Berthold Reservation may not exceed six and one-half percent but may be reduced through negotiation between the governor and the Three Affiliated Tribes.

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<sup>213</sup> Section 57-51.2-02 was also amended by section 5 of House Bill No. 1005, chapter 5.

4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the Fort Berthold Reservation except as otherwise provided in the agreement.
5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:
  - a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.
  - b. All other production. The tribe must receive ~~twenty~~twenty-five percent of the total oil and gas gross production and oil extraction taxes collected from all production attributable to nontrust lands on the Fort Berthold Reservation in lieu of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.
  - c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapters 57-51 and 57-51.1.
6. An oil or gas well that is drilled and completed during the time of an agreement under this chapter must be subject to the terms of the agreement for the life of the well.
7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future exploration and production of oil and gas on the Fort Berthold Reservation during the term of the agreement.
8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to offset future distributions to the tribe.
9. The tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
10. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state regulatory provisions for the life of the well in addition to any other applicable regulatory provisions.
11. The federal district court for the western division of North Dakota is the venue for any dispute arising from a revenue-sharing agreement between the state and the Three Affiliated Tribes.
12. The agreement must require that the Three Affiliated Tribes report annually to the budget section of the legislative management and that the report:
  - a. Identifies projects totaling investment of at least ten percent of tribal oil and gas gross production and oil extraction tax receipts of the tribe for that year in essential infrastructure.



- b. At a minimum, informs the budget section of tribal investments in essential infrastructure and fees, expenses, and charges the tribe imposes on the oil industry.

**SECTION 8. LEGISLATIVE MANAGEMENT STUDY - ANALYSIS OF FUTURE OIL INDUSTRY CHANGES - CONSULTANT ASSISTANCE.** The legislative management shall study the likely changes to oil industry practices, production, impacts, and tax policy in the foreseeable future. To assist with this study, the legislative management shall obtain the services of an independent consultant with demonstrated insight into current and future production advances, including use of carbon dioxide and water or other means of enhancing production; effects of mature production areas on state and local tax policy; future infrastructure needs; and environmental considerations. The objective of the study is development of a legislative vision of appropriate long-term policy issues and revenue and expenditure expectations. The legislative management shall report its findings and recommendations, together with any legislation to implement the recommendations, to the sixty-fourth legislative assembly.

**SECTION 9. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable years beginning after December 31, 2013, and the remainder of this Act is effective for taxable events occurring after June 30, 2013.

Approved May 6, 2013  
Filed May 7, 2013

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**CHAPTER 474****SENATE BILL NO. 2048**

(Legislative Management)  
(Water-Related Topics Overview Committee)

AN ACT to amend and reenact subsection 3 of section 57-51.1-07.1 of the North Dakota Century Code, relating to the resources trust fund.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 57-51.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The state water commission shall adopt rules for governing the review and recommendation of proposed water projects for which financial assistance by legislative appropriation from the resources trust fund is being sought under this section. The rules must consider project revenues, local cost sharing, and ability to pay. The rules may provide for repayment of a portion of funds allocated from the resources trust fund.

Approved March 18, 2013

Filed March 18, 2013

## CHAPTER 475

### SENATE BILL NO. 2105

(Finance and Taxation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact paragraph 5 of subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to reimbursement of coal severance tax allocated to a non-coal-producing county; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Paragraph 5 of subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

- (5) The state treasurer shall allocate funds provided by legislative appropriation to cities, the county general fund, and school districts within a coal-producing county according to the allocation method provided in subdivision a in an amount to offset fifty percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county under this subdivision in the previous calendar year. The state treasurer shall make the allocation and distribute the funds, within the limits of legislative appropriations, under this paragraph ~~at the time and in the manner funds are distributed under this section during the first month of each calendar year~~. The state treasurer shall include in each biennial budget request the amounts estimated to be necessary for the biennium for purposes of this paragraph, based on the allocations under this subdivision in the most recent calendar years.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 2014.

Approved March 19, 2013  
Filed March 19, 2013