

the applicant satisfies the court that there is probable cause to believe that a specific criminal act has been committed and the return information constitutes evidence of a criminal offense, the return information is sought exclusively for use in a criminal investigation or proceeding, and the information cannot reasonably be obtained from another source.

Senate Bill No. 2006 provides an adjustment in use of aircraft excise tax revenue deposited in the Aeronautics Commission special fund to allow the Aeronautics Commission to increase its share from providing matching funds to provide up to 90 percent of the project costs for airport projects.

FUELS TAXES

Senate Bill No. 2388 provides for deposit of up to \$1.6 million per biennium in the highway-rail grade crossing safety projects fund from special fuels taxes paid by railroads on diesel fuels. The bill provides an appropriation for grants by the Department of Transportation for highway-rail grade crossing safety projects.

Senate Bill No. 2375 allows use of dyed special fuel by a city that has computerized fuel dispensing equipment that allows tracking of fuel usage by the city's vehicles and requires the city to pay taxes appropriate for that usage.

Senate Bill No. 2224 allows a special fuels tax refund for fuel used in a truck or trailer refrigeration unit that has a separate supply tank.

House Bill No. 1082 makes technical corrections in motor vehicle excise and special fuels tax laws.

OIL AND GAS TAXES

House Bill No. 1235 provides a contingent rate reduction in the oil extraction tax, which reduces the oil extraction tax rate for horizontal wells from 6.5 percent to 2 percent during the time the rate reduction is in effect. Existing law provides a complete oil extraction tax exemption that triggers into effect if the price of oil for five consecutive months remains below the trigger price. April 2009 would have been the fifth consecutive month below the trigger price but the average price for April rose to an amount exceeding the trigger price, which meant that the exemptions under existing law did not trigger into effect. Because the exemptions did not trigger into effect, the rate reduction provided by House Bill No. 1235 became effective May 1, 2009, and will remain in effect until the first day of the month following a month in which the average price of a barrel of crude oil exceeds \$70. The rate reduction applies to oil produced during the first 18 months after completion for a horizontal well and is limited to the first 75,000 barrels or the first \$4.5 million of gross value at the well of oil produced from the well. If the rate reduction is effective on the date of completion of a well, the rate reduction applies to production from that well for up to 18 months after completion, even if the price of oil rises to more than \$70. If the rate reduction is ineffective on the date of completion of a well, the rate reduction does not apply to production from that well at any time.

Senate Bill No. 2034 provides an oil extraction tax exemption for incremental production from a tertiary recovery project that uses carbon dioxide to enhance oil recovery.

House Bill No. 1304, as amended by House Bill No. 1324, significantly increases allocation of oil and gas gross production taxes to political subdivisions and the oil and gas impact grant fund. From the tax equal to the first 1 percent of gross value at the well of oil production, a direct allocation of \$500,000 is created for a city in an oil-producing county which has a population of 7,500 or more and more than 2 percent of its employment engaged in the mining industry. The allocation is increased to \$1 million if the city's employment in the mining industry exceeds 7.5 percent of its employment. Also from the tax equal to the first 1 percent of value of oil produced, the biennial allocation to the oil and gas impact grant fund is increased from \$6 million to \$8 million per biennium. The bill makes several changes in allocations of oil and gas gross production tax revenue to political subdivisions. The bill increases from \$1 million to \$2 million the initial amount of tax revenue allocated 100 percent to the producing county. The bill removes the caps on tax revenue allocations to counties but provides that the amount exceeding \$18 million of annual revenue to a county is allocated 10 percent to the county and 90 percent to the state general fund. The bill requires a county to levy at least 10 mills for county road and bridge, farm-to-market and federal-aid road, and county road purposes to receive any allocation of oil and gas gross production tax revenues. The bill restructures allocation of revenues within counties to hold school district allocations at approximately the level provided under existing law and establishes a county infrastructure fund for deposit of funds exceeding \$5,350,000 allocated to the county. Revenues allocated to a county infrastructure fund are allocated to the county and to cities in the same proportion as existing law, but the 35 percent share allocated to school districts under existing law is instead allocated to the board of county commissioners to provide grants to or for the benefit of townships or school districts. Grants are available 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. For unorganized townships within the county, the board of county commissioners

may expend an appropriate portion of county infrastructure fund revenues to offset oil and gas development impact to township roads or other infrastructure needs. The bill provides that within 60 days after the end of each fiscal year, the board of county commissioners of a county that has received oil and gas gross production tax revenue allocations must file a report with the Tax Commissioner showing the amount received by the county, the amount expended for each purpose to which the funds were devoted, the share of county property tax revenue expended for each of those purposes, and the amount of unexpended funds remaining at the end of the fiscal year. The report must also show the amount available in the county infrastructure fund, the amount allocated to each organized township or school district and the amount expended from that allocation by that township or school district, the amount expended on behalf of unorganized townships, and the amount in the county infrastructure fund which remained unexpended at the end of the fiscal year. The bill requires the Tax Commissioner to compile the information from the reports and provide a report to the Legislative Council.

Senate Bill No. 2413 provides an oil and gas gross production tax exemption for gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well.

House Bill No. 1164 provides for monthly, rather than quarterly, transfers of oil extraction tax revenues to the resources trust fund, common schools trust fund, foundation aid stabilization fund, and state general fund.

House Bill No. 1140 made technical corrections in the language relating to the share of oil and gas tax revenues deposited in the general fund and the permanent oil tax trust fund. The bill provides that interest earnings of the permanent oil tax trust fund shall be credited to the general fund as they accrue, rather than at the end of each fiscal year.

Senate Bill No. 2051 increases from \$3 million to \$4 million per biennium the share of oil and gas tax revenues deposited in the oil and gas research fund.

House Bill No. 1126 makes technical changes to provide that oil and gas research fund deposits are made before deposit of revenues in the general fund or permanent oil tax trust fund.

House Bill No. 1394 extends from 2007 to 2009 the provision providing for transfer of the first \$700,000 of the state's share of tax revenues from oil production within the Fort Berthold Reservation to the permanent oil tax trust fund. The bill also provides a statement of legislative intent that the amendment prevails over the repeal of Section 57-51.1-07.4 contained in **Senate Bill No. 2088**.

COAL TAXES

Senate Bill No. 2297 revised taxation of rural electric cooperatives and cooperative electrical generating plants. The bill provides that cooperative electrical generating plants continue to be taxed as coal conversion facilities.

Senate Bill No. 2221 provides a credit against coal conversion facilities taxes for carbon dioxide capture from the emissions of the facility. A coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions after 2009 is entitled to a 20 percent reduction in the state general fund's share of the coal conversion facilities tax. The facility is entitled to an additional reduction of 1 percent of the state general fund share of the tax for every additional two percentage points of the capture of carbon dioxide emissions, up to a maximum reduction of 50 percent of the state general fund share of the tax. The credit is available for 10 years from the date of first capture of carbon dioxide emissions.

House Bill No. 1015 provides that beginning with the 2011-13 biennium, the State Treasurer shall allocate funds provided by legislative appropriation to a coal-producing county to offset 50 percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county because of the proximity of a tippie to the border of the coal-producing county. The bill requires the State Treasurer to include in each biennial budget request the amount estimated to be necessary to fund the payment by the state.

Senate Bill No. 2036 provides that a coal conversion facility's tax exemption for repowering applies to a facility using beneficiated coal and that the exemption applies to electrical generating units, rather than the entire plant.

Senate Bill No. 2035 provides a coal severance tax exemption for coal purchased for improvement through the process of coal beneficiation for use to produce steam used in agricultural commodity processing facilities in North Dakota or adjacent states or facilities owned by the state or a political subdivision.

Senate Bill No. 2377 makes a technical correction of statutory language relating to the provision for coal severance tax allocation because of the proximity of a tippie of an active coal mining operation to the border of a county in which no coal is mined.

EMERGENCY SERVICES COMMUNICATION FEES

House Bill No. 1412 provides that political subdivisions with an intrastate multicounty public safety answering point may increase the maximum emergency services communication fee from \$1.00 to \$1.50 by resolution, subject to a vote in that political subdivision at the next general election. The change is effective through June 30, 2012.

House Bill No. 1135 adds a member appointed by the Chief Information Officer of the state to the membership of the Emergency Services Communications Coordinating Committee. The bill also adds to the duties of the committee the responsibility to serve as the governmental body to coordinate plans for implementing emergency 911 services and Internet protocol-enabled emergency applications for 911.

MISCELLANEOUS TAX PROVISIONS

House Bill No. 1086 increases the annual salary of the Tax Commissioner from \$86,360 through June 30, 2009, to \$90,678 through June 30, 2010, and \$95,212 after June 30, 2010.

House Bill No. 1163 extends the deadline for the State Treasurer to transfer transmission line tax revenues from July 15 of each year to July 31 of each year.

Senate Bill No. 2093 extends the deadline for the State Treasurer to transfer telecommunications carriers tax fund revenues to counties from the 10th working day in March to March 31 of each year.

House Bill No. 1436 changes a reference from the Legislative Council to Legislative Management for purposes of receiving a report from the Emergency Services Communications Coordinating Committee.

TITLE 58
Townships
Summary of Bills Enacted by 2009 Legislative Assembly

There was no 2009 legislation enacted which primarily affected North Dakota Century Code Title 58. Bills primarily affecting other titles may also affect this title, but those bills are not summarized in this memorandum.

TITLE 59
Trusts, Uses, and Powers
Summary of Bills Enacted by 2009 Legislative Assembly

This memorandum summarizes 2009 legislation primarily affecting North Dakota Century Code Title 59. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1458 requires a trustee to inform a person who has been identified as a qualified beneficiary of a revocable trust of what the trust may provide that beneficiary if the qualified beneficiary is required to provide that information for a determination of benefits for medical assistance, temporary assistance for needy families, supplemental nutrition assistance, home and community-based services, or service payments for the elderly and disabled. In addition, the bill reestablishes the presumption against a trustee in a transaction between a trustee and the trust's beneficiary that the transaction is presumed to be entered into by the trust beneficiary without sufficient consideration and under undue influence.

House Bill No. 1300 provides that an irrevocable noncharitable trust that is modified upon the consent of the beneficiaries continues to be irrevocable.

Senate Bill No. 2073 amends the Uniform Principal and Income Act to bring the Act in compliance with Internal Revenue Service rulings to ensure that the trust qualifies for the marital deduction, to minimize estate taxes in accordance with the decedent's plan, and to provide a formula for calculating how much of the trust needs to be distributed and how much of it can be used to pay taxes. The bill clarifies that the trust will keep enough money to pay its taxes and distribute the balance of income to a mandatory income beneficiary.

House Bill No. 1074 adopts the Uniform Prudent Management of Institutional Funds Act, repeals the Uniform Management of Institutional Funds Act, provides more detail to nonprofits about investment of funds, moves to a prudent spending rule based on donor intent and the permanent duration of the endowment, and modifies restrictions on gifts made to nonprofits.

Senate Bill No. 2055 revises the burden of proof under the workers' compensation firefighter's and law enforcement officer's presumption, providing the presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.

Senate Bill No. 2056 revises the workers' compensation mileage reimbursement for injured employees' medical travel, replacing calculations based on travel from city limit to city limit with calculations based on miles actually and necessarily traveled.

Senate Bill No. 2057 provides a scheduled injury for workers' compensation permanent partial impairment awards for loss of vision of an eye which equals or exceeds 20/200.

Senate Bill No. 2058 clarifies that an independent medical review contemplates a file review of an injured employee's records and an independent medical examination contemplates an actual examination of an injured employee.

Senate Bill No. 2059 creates a new payment by WSI for an injured employee's attorney's fees and costs to consult with the injured employee regarding a request for rehearing of an administrative order issued by WSI.

Senate Bill No. 2071 provides the standard by which to establish whether an individual operating a licensed truck or licensed tractor for a motor carrier of property rebuts the presumption the individual is an employee for purposes of the workers' compensation law.

Senate Bill No. 2419 revises the provision that directs WSI to provide an injured employee with a rehabilitation allowance if travel or maintaining a second domicile is required to attend school or a training institution, clarifying the injured employee has the choice of whether to commute or maintain a second domicile, decreasing from 30 miles to 25 miles the travel distance required before qualifying for a second domicile, and providing travel of less than 30 miles qualifies for an increased rehabilitation allowance.

Senate Bill No. 2433 clarifies that as part of vocational rehabilitation services provided by WSI, once WSI makes a determination of the first appropriate vocational rehabilitation option, WSI shall notify the injured employee of the obligation to make a good-faith work search or good-faith work trial and to provide information regarding reinstatement of benefits if the work search or work trial is unsuccessful.