



TESTIMONY BEFORE THE
 ADMINISTRATIVE RULES COMMITTEE

June 14, 2016

Chairman Devlin, members of the Committee, my name is Myles Vosberg and I am Director of Tax Administration for the North Dakota Office of State Tax Commissioner. The following testimony is in response to the Legislative Council’s May 19, 2016, email regarding the rules promulgated by the Office of State Tax Commissioner.

I. **STATE STATUTORY CHANGES.** The following rules were promulgated by the Tax Commissioner as a result of statutory changes made by the 2015 Legislative Assembly.

PROPERTY TAX

- 81-02.1-02 Certification of assessment officials

INCOME TAX

- 81-03-01.1-06 Income tax exemption for new and expanding business
- 81-03-05.1-05 Subchapter S corporation tax credits
- 81-03-09.2 Apportionment of income of corporations

SALES AND USE TAX

- 81-04.1.01-02 Confidential information
- 81-04.1-03-01.1 State-Tribal tax agreements
- 81-04.1-03-03 Prepared food
- 81-04.1-04-17 Bank purchase for lease
- 81-04.1-04-40 Lease and Rental

OIL & GAS GROSS PRODUCTION AND EXTRACTION TAX

- 81-09-03-02 Definitions
- 81-09-03-05.1 Secondary recovery projects
- 81-09-03-05.2 Tertiary recovery projects
- 81-09-03-06 New well exemption for vertical and horizontal wells
- 81-09-03-08 Work-over exemption
- 81-09-03-09 Trigger provision applicable to oil extraction tax rate
- 81-09-03-10 Horizontal reentry well exemption
- 81-09-03-11 Two year inactive well exemption

II. **FEDERAL STATUTE OR REGULATION.** The change in Rule 81-03-05.1-06 is related to a terminology change in the federal research and experimental expenditures tax credit. N.D.C.C. section 57-38-30.5 was also updated to reflect this federal terminology change.

- III. RULEMAKING PROCEDURE. A full notice of the hearing on the proposed rule changes and a copy of the proposed rules were filed with the Legislative Council as required by N.D.C.C. section 28-32-10. In addition, the rules and the full notice were sent to individuals on the Tax Commissioner's permanent rules mailing list and to those who subsequently requested copies of the rules. Notice of intent to adopt and amend the administrative rules was published in each county newspaper in this state, at least two weeks prior to the rules hearing as required by N.D.C.C. section 28-32-10(1).

The rules hearing was held Tuesday, November 24, 2015, in the conference room at the Office of State Tax Commissioner in the State Capitol Building, with Daniel Rouse, Special Assistant Attorney General, presiding as hearing officer. The only testimony provided was by Tax Department staff, with all oral comments being recorded.

Written comments on the proposed rule changes were accepted until 5:00 p.m., Central Time, on December 4, 2015. No written comments from the public were received either before or after the public hearing.

Under N.D.C.C. section 28-32-11, full consideration was given to the oral and written submissions concerning the proposed Administrative Rule changes and no further changes to the rules, as noticed, were made.

On December 30, 2015, the Tax Commissioner forwarded the rules to the Attorney General for his approval. On January 26, 2016, in a letter opinion, the Attorney General determined the rules were in substantial compliance with N.D.C.C. chapter 28-32 and were approved as to their legality.

The rules were forwarded to Legislative Council for publication on February 10, 2016.

- IV. PUBLIC COMMENT. As previously stated, no written or oral comments were received regarding the proposed rules.
- V. COSTS. The cost of publishing notice of the rules in the official county newspapers was \$2,239.44. The cost for the professional court reporter and transcript of hearing was \$155.00. The cost for developing and adopting the rules (not including staff time) was negligible.
- VI. RULE DESCRIPTION. The rule changes that follow are in part a result of statutory changes made by the Legislative Assembly, and in part to better clarify information being provided to ensure the efficient administration of taxes.

(The number in parens immediately following the section title refers to the page number on which the rule can be found.)

GENERAL (pp. 229-233)

81-01-01-01 Definitions. (p. 229) Measure 4 (1996) created a new executive branch article for the North Dakota Constitution. The existing rule is being updated to reflect the current constitutional source of the Tax Commissioner's power.

81-01-01-02 Organization and functions of the North Dakota tax department. (pp. 229-232). Constitutional references to titles and functions of the six divisions that make up the tax department are being updated as required by N.D.C.C. section 28-32-02.

PROPERTY TAX (p. 233)

81-02.1-02 Certification of assessment officials. (p. 233) The rules in this chapter are no longer necessary and are being repealed because H.B. 1059 (2015) created a new, comprehensive statutory assessor certification process.

INCOME TAX (pp. 234-251)

81-03-01.1-06 Income tax exemption for new and expanding business. (pp. 234-237) A new rule is being added to instruct taxpayers that expansion exemption factors should be computed using the same factor weighting that was used to apportion income for that same year. This rule is required as a result of the sales factor weighting election passed during the 2015 legislative session.

The rule is also being amended to strike out obsolete references to the deduction for federal income taxes and the individual income tax forms.

81-03-01.1-07 Venture capital corporation. (p. 237) This income tax rule is being repealed because it is obsolete.

81-03-02.1-05 Reporting – Income earned by husband and wife. (pp. 238-239) This rule is being repealed because it is obsolete.

81-03-02.2-03 Computation of North Dakota income tax liability by a nonresident individual, estate, or trust electing to file under North Dakota Century Code section 57-38-30.3. (p. 240) This rule is being repealed because North Dakota individual income tax is no longer tied to the federal income tax liability making this rule obsolete.

81-03-05.1-05 Subchapter S corporation tax credits. (p. 241) The existing rule contained an incomplete listing of tax credits that may not be claimed by a subchapter S corporation. Few credits may be claimed by a subchapter S corporation. The rule is being simplified by listing the few credits that may be claimed instead of expanding the list of credits that may not be claimed. This rule does not impact the credit pass-through provisions contained in various income tax credit statutes.

81-03-05.1-06 Tax credit for research and experimental expenditures. (p. 241) The rule is being amended to make the terminology used in the rule consistent with the statute.

81-03-05.1-07 Net operating losses. (pp. 241-242) The obsolete reference in this rule to net operating loss carrybacks, which are no longer available, is being stricken.

81-03-05.1-08 Consolidated returns. (pp. 242-244) This rule was amended to strike out obsolete references to the deduction for federal income taxes.

81-03-05.3-03 Elements of worldwide combined report. (pp. 245-246) This rule was amended to strike out obsolete references to the deduction for federal income taxes.

81-03-09.2 Sales Factor Weighting Election. (pp. 247-249) A new chapter is being proposed to provide guidance to taxpayers regarding the applicability of the sales factor weighting election created by S.B. 2292 (2015), such as how the election is made, to whom it applies, and how it may be rescinded. These rules are consistent with the rules for taxpayers electing to use the Water's Edge Method of reporting income.

81-03-10-01 through 81-03-10-04 Designation of overpayment amount and Available overpayment. (p. 250) These rules are amended to reflect the name change made by North Dakota Game and Fish from the "nongame wildlife fund" to the "watchable wildlife fund" for purposes of applying refunds or donating to this fund on income tax returns.

Rule 81-03-10-02 also replaces "child support" with "N.D.C.C. chapter 57-38.3", because, in addition to child support, there are other claimant agencies identified in the statute for which an overpayment may be offset.

SALES AND USE TAX (pp. 252-268)

81-04.1-01-02 Confidential information. (pp. 252-253) This rule is no longer needed because, after passage of H.B. 1060 (2015), all of the specific exemptions pertaining to confidentiality are specifically enumerated elsewhere in the North Dakota Century Code.

81-04.1-01-08 and 81-04.1-01-08.1 Deduction for administrative expense and Monthly sales tax returns. (pp. 253-254) Retailer compensation is currently provided to all sales tax permit holders. In addition, current law requires retailers with \$333,333 or more in sales to submit returns electronically. This rule is created to reflect these requirements and update the level of compensation provided under current law. The overstruck paragraph in Rule 81-04.1-01-08 is moved to Rule 81-04.1-01-08.1.

81-04.1-01-19 Sale of traded-in property. (p. 254) This rule was amended to replace the term "mobile home" with "manufactured home". The change is being made because the term "mobile home" is no longer used in the sales and use tax laws.

81-04.1-01-23.2 Agricultural commodity processing facility. (pp. 254-255) The proposed additional language in the rule clarifies the ability of the processing facility to authorize a construction contractor to utilize a sales tax exemption for project purchases when pre-approved by the Commissioner.

81-04.1-01-24 Manufacturer’s and retailer’s federal excise tax. (p. 255) This rule is no longer necessary because the definition of gross receipts in the law identifies when federal excise taxes are included or excluded from the sales tax base.

81-04.1-03-01.1 State-tribal tax administration agreement – Effect on other rules. (p. 256) This rule clarifies that the provisions of a sales and use tax agreement between the state and a tribal government apply to retail sales made on an Indian reservation to American Indians. If there is no agreement, then Rule 81-04.1-03-01 applies to these sales. H.B. 1406 (2015) created the need for this new rule to distinguish reservations where the tribe has imposed a tribal sales tax that is administered by the Department.

81-04.1-03-03 Food and food products for human consumption. (pp. 256-257) Sections 1 and 6 of H.B. 1406 (2015) amended the definition of prepared food in the sales and use tax laws. The proposed change reflects the revised definition.

81-04.1-03-04 Sales in interstate commerce. (p. 257) The proposed language reflects sourcing rules in current law, which source sales to the final delivery point when a shipping company takes possession of the goods from the seller’s location.

81-04.1-03-13 Sales to residents of Montana. (pp. 257-258) The amendment to this rule clarifies that current law provides an exemption on sales to all “persons” from Montana including Montana corporations and other business entities when the owners, partners, or members are natural persons and Montana residents.

81-04.1-04-01 Agriculture – Commercial chemicals and seeds for planting. (p. 260) This rule clarifies that exempt agricultural chemicals include agrichemical tank cleaners and foam markers.

81-04.1-04-02 Agriculture – Farm machinery and equipment – Farm machinery repair parts. (pp. 260-261) The proposed changes update the rule by clarifying irrigation repair parts purchased for agricultural use are exempt from sales and use taxes.

81-04.1-04-06 Amusement - Games of chance. (p. 261) The proposed changes reflect that bingo cards are not subject to sales tax.

81-04.1-04-07.1 Educational, religious, or charitable sales activities. (pp. 261-262) This rule is no longer needed because the current law provides specific guidelines as to when sales made by educational, religious, or charitable entities are exempt.

81-04.1-04-10.1 Amusement - Coin-operated amusement devices. (p. 262) This rule is being repealed because coin-operated amusement is not subject to sales tax.

81-04.1-04-17 Banks – Purchases and sales by national banks, state banks, trust companies, and savings and loan associations. (pp. 262-263) H.B. 1110 (2015) requires retailers that lease or rent tangible personal property to its customers, and elect to pay sales or use tax at the time the property is purchased provide notice to their customers by indicating tax has been paid on the invoice, contract, lease agreement or other supporting sale document. This rule is being amended to reflect this notice requirement when financial institutions rent or lease tangible personal property to its customers.

81-04.1-04-29 Minerals - Coal. (p. 263) The proposed changes reflect that coal used for heating is not subject to sales tax.

81-04.1-04-30 Minerals – Coke and natural gas sold to industrial users. (p. 263) The proposed changes reflect that natural gas is not subject to sales tax.

81-04.1-04-31 Mobile homes. (p. 263) The proposed change updates the language to reflect the term “manufactured home” and reflects language in the sales tax law that treats the sale of a manufactured home with installation as a construction contract rather than a retail sale.

81-04.1-04-32 Mobile homes – Sales and rentals. (p. 263) This rule was amended to replace the term “mobile home” with “manufactured home”. The change is being made because the term “mobile home” is no longer used in the sales and use tax laws.

81-04.1-04-40 Rentals and rental agencies. (pp. 264-265) H.B. 1110 (2015) requires retailers that lease or rent tangible personal property to its customers, and also elect to pay sales or use tax at the time the property is purchased, provide notice to their customers by indicating tax has been paid on the invoice, contract, lease agreement or other supporting sale document. This rule which applies to all retailers, was also made to Rule 81-04.1-04-17, relating to leasing and renting of property by financial institutions.

81-04.1-04-41.1 Communication service. (pp. 265-268) The proposed change modifies the exclusions from taxable communication service identified in the rule and also modifies the definition of “fixed wireless service” to conform with current sales tax law.

OIL & GAS GROSS PRODUCTION AND EXTRACTION TAX (pp. 269-273)

The following rules are being repealed to reflect the repeal of the reduced rate incentive for secondary and tertiary recovery projects in H.B. 1476 (2015).

81-09-03-05.1 Tax incentives for qualifying secondary recovery projects. (p. 270)

81-09-03-05.2 Tax incentives for qualifying tertiary recovery projects. (p. 270)

The following rules are being repealed as these exemptions were repealed by H.B. 1476 (2015).

81-09-03-02 Definitions. (pp. 269-270)

81-09-03-06 New well exemption for vertical and horizontal wells. (pp. 270-271)

81-09-03-08 Work-over exemption. (p. 271)

81-09-03-09 Trigger provision applicable to oil extraction tax rate. (p. 272)

81-09-03-10 Horizontal reentry well exemption. (p. 272)

81-09-03-11 Two year inactive well exemption. (pp. 272-273)

BANKS, TRUST COMPANIES, AND SAVINGS AND LOAN ASSOCIATIONS (p. 274)

81-10 Banks, trust companies, and savings and loan associations. (p. 274) These rules are being repealed because they are obsolete.

- VII. REGULATORY ANALYSIS. A regulatory analysis was prepared for each rule and is available. Copies of the regulatory analyses are attached to this report.
- VIII. REGULATORY ANALYSIS – SMALL ENTITY ECONOMIC IMPACT. A small entity regulatory analysis and small economic impact statement were not prepared because the proposed rules and amendments are not anticipated to have an impact on small entities.
- IX. FISCAL IMPACT. The rules have no fiscal impact other than that already identified in the bills' legislative fiscal notes.
- X. CONSTITUTIONAL TAKINGS ASSESSMENT. A constitutional takings assessment was not required by N.D.C.C. section 28-32-09.
- XI. EMERGENCY RULES. The rules were not adopted as emergency rules.

This concludes my testimony. The Tax Commissioner asks for the Committee's favorable consideration of these rules.

Regulatory Analysis

TAX TYPE: General Administration

Rule 81-01-01-01: The proposed rule updates the reference to the North Dakota Constitution.

Class of persons affected: None.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-01-01-01 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: General Administration

Rule 81-01-01-02: The proposed rule updates the description of the organization and function of the North Dakota tax department and references to the North Dakota Constitution.

Class of persons affected: None.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-01-01-02 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Property Tax

Rule 81-02.1-02: The rules in the existing chapter relating to administrative duties of the State Supervisor of Assessments, county directors of tax equalization, and certification of North Dakota assessors became obsolete with passage of H.B. 1059. The change proposed is to repeal all rules in the chapter.

Class of persons affected: Assessment officials, assessors, and county directors of tax equalization.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Repeal of all rules in 81-02.1-02 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-01.1-06: The existing rule includes references to statutes that have been repealed and are obsolete. The changes proposed strike out the obsolete references from the existing rule.

Class of persons affected: Taxpayers qualifying as a new and expanding business.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-01.1-06 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-01.1-07: The existing rule relates to an income tax deduction and income tax credit that were repealed, making the rule obsolete. The change proposed is to repeal the rule.

Class of persons affected: Individuals, estates, trusts or corporations purchasing or selling an interest in a venture capital corporation.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-01.1-07 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-02.1-05: The existing rule relates to an individual income tax provision that was repealed, making the rule obsolete. The change proposed is to repeal the rule.

Class of persons affected: Spouses filing joint federal returns who are required to file individual state returns.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-02.1-05 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-02.2-03: The existing rule relates to an individual income tax provision that was repealed, making the rule obsolete. The change proposed is to repeal the rule.

Class of persons affected: Nonresident individuals, estates, or trusts electing to file income tax returns under North Dakota Century Code section 57-38-30.3.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-02.2-03 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-05.1-05: The proposed amendment clarifies the rule and removes obsolete and redundant language.

Class of persons affected: Subchapter S Corporations claiming tax credits.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-05.1-05 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-05.1-06: The existing rule includes a reference to a term that was being defined in the statute. The proposed change updates the rule to be consistent with statute.

Class of persons affected: Taxpayers claiming a tax credit for research and experimental expenditures.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-05.1-06 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-05.1-07: The existing rule includes references to a deduction that has been repealed and is obsolete. The changes proposed strike out the obsolete references from the existing rule.

Class of persons affected: Taxpayers calculating net operating loss.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-05.1-07 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-05.1-08: The existing rule includes references to statutes that have been repealed and are obsolete. The changes proposed strike out the obsolete references from the existing rule.

Class of persons affected: Corporations filing a consolidated return.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-05.1-08 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-05.3-03: The existing rule includes references to statutes that have been repealed and are obsolete. The changes proposed strike out the obsolete references from the existing rule.

Class of persons affected: Taxpayers filing a worldwide combined report.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-05.3-03 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-09.2: The proposed chapter is created to implement the sales factor weighting election established by S.B. 2292. It provides guidance to taxpayers for income tax regarding the applicability of the sales factor weighting election created by the bill, such as how the election is made, to whom it applies, and how it may be rescinded.

Class of persons affected: Taxpayers, except pass-through entities, conducting business activities both within and outside North Dakota.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-09.2 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-10-01: The existing rule refers to a term that was administratively changed by the North Dakota Game and Fish Department. The proposed rule change amends the rule to reflect that change.

Class of persons affected: Taxpayers designating voluntary contributions to the watchable wildlife fund.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-10-01 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-10-02: The existing rule refers to a term that was administratively changed by the North Dakota Game and Fish Department. The existing rule also refers specifically to child support as a North Dakota agency for which an income tax overpayment may be offset prior to any voluntary contribution of the overpayment to the wildlife fund when other claimant agencies are identified in N.D.C.C. chapter 57-38.3 for which an overpayment may be offset. The proposed rule change amends the rule to reflect the changed term and to refer to any claimant agency identified in N.D.C.C. chapter 57-38.3.

Class of persons affected: Taxpayers designating voluntary contributions to the watchable wildlife fund.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-10-02 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-10-03: The existing rule refers to a term that was administratively changed by the North Dakota Game and Fish Department. The proposed rule change amends the rule to reflect that change.

Class of persons affected: Taxpayers designating voluntary contributions to the watchable wildlife fund.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-10-03 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Income Tax

Rule 81-03-10-04: The existing rule refers to a term that was administratively changed by the North Dakota Game and Fish Department. The proposed rule change amends the rule to reflect that change.

Class of persons affected: Taxpayers designating voluntary contributions to the watchable wildlife fund.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-03-10-04 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-01-02: The proposed rule repeals the confidentiality rule as it is unnecessary.

Class of persons affected: Persons requesting confidential tax information.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-01-02 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-01-08: The proposed rule updates language adding farm machinery and alcohol gross receipts tax and moves the monthly filing requirement language to a new rule.

Class of persons affected: Sales or use tax permit holders.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-01-08 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-01-08.1: The new rule addresses monthly filing requirements and electronic filing by sales and use tax permitholders.

Class of persons affected: Sales and use tax permitholders.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-01-08.1 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-01-19: The proposed rule updates the terminology to conform to statutory language.

Class of persons affected: Persons trading a used manufactured home for other tangible personal property.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-01-19 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-01-23.2: The proposed rule clarifies that the exemption can be passed through to a contractor.

Class of persons affected: Agricultural processing facility owners and contractors consuming or installing materials into the structure of an agricultural processing facility.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-01-23.2 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-01-24: The rule contains unnecessary language and is being repealed.

Class of persons affected: Sales and use tax permitholders.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-01-24 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-03-01.1: The proposed chapter is created to implement H.B. 1406. It provides guidance regarding the effect of state – tribal tax agreements on other rules.

Class of persons affected: Sales and use tax permit holders.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-03-01.1 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-03-03: The proposed change modifies the definition of prepared food. This change reflects the legislation approved by H.B. 1406.

Class of persons affected: Retailers and purchasers of food and food products.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-03-03 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-03-04: The proposed rule clarifies when possession of goods transfers to an out-of-state purchaser.

Class of persons affected: North Dakota retailers and purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-03-04 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-03-13: The proposed rule updates the terminology to conform to statutory language.

Class of persons affected: Retailers and Montana residents.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-03-13 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-01: The proposed rule updates language to conform to statutory language.

Class of persons affected: Sellers and purchasers of commercial chemicals and seeds for planting.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-01 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-02: The proposed rule updates language to conform to the statutory exemption.

Class of persons affected: Retailers and purchasers of irrigation equipment and repair parts.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-02 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-06: The proposed rule removes obsolete material from the existing rule.

Class of persons affected: Organizations furnishing bingo cards.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-06 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-07.1: The existing rule is being repealed because the requirements for exemption are set forth in statute.

Class of persons affected: Nonprofit charitable organizations.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-07.1 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-10.1: The existing rule is being repealed because the language contained in the rule has become obsolete.

Class of persons affected: Coin operated amusement device operators.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-10.1 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-17: The proposed rule implements H.B. 1110 by clarifying the application of the sales tax on the lease or rental of tangible personal property.

Class of persons affected: Lease or rental businesses.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-17 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-29: The proposed rule is being amended to remove obsolete language.

Class of persons affected: Miners or sellers of coal.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-29 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-30: The proposed rule is being amended to conform to the statutory exemption's language.

Class of persons affected: Sellers or purchasers of coke or natural gas for industrial use.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-30 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-31: The proposed rule updates terminology used in the rule to conform to statutory provisions.

Class of persons affected: Manufactured home dealers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-31 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-32: The proposed rule updates terminology used in the rule to conform to statutory provisions.

Class of persons affected: Sellers or lessors of manufactured homes.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-32 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-40: The proposed rule implements H.B. 1110 by clarifying the application of the sales tax on the lease or rental of tangible personal property.

Class of persons affected: Lease or rental businesses.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-40 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Sales & Use Tax

Rule 81-04.1-04-41.1: The proposed rule is updated to improve clarity and remove unnecessary language.

Class of persons affected: Telecommunications service providers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-04.1-04-41.1 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-02: The proposed rule removes the definition of horizontal reentry well to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-02 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-05.1: The proposed rule removes the reference to nonincremental production from a qualifying secondary recovery project to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-05.1 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-05.2: The proposed rule removes the reference to nonincremental production from a qualifying tertiary recovery project to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-05.2 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-06: The existing rule is repealed to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-06 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-08: The existing rule is repealed to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-08 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-09: The existing rule is repealed to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-09 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-10: The existing rule is repealed to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-10 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Oil Extraction Tax

Rule 81-09-03-11: The existing rule is repealed to reflect changes made by the 2015 Legislative Assembly in H.B. 1476.

Class of persons affected: Oil producers and oil purchasers.

Regulatory Analysis: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rule on small entities: Rule 81-09-03-11 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.

Regulatory Analysis

TAX TYPE: Banks, Trust Companies, and Savings and Loan Associations

Rule 81-10: The rules are obsolete as the allocation and apportionment rules for financial institutions are in chapter 81-03-09.1.

Class of persons affected: Banks, trust companies, and savings and loan associations.

Fiscal impact of these rules: The proposed rule does not have a fiscal impact.

Cost to state agency/effect on state revenues: None.

Description of alternative methods: None considered.

Impact of proposed rules on small entities: Repeal of the rules in 81-10 will have no impact on small entities relative to compliance or reporting requirements or schedules or deadlines for compliance or reporting requirements and will not result in additional costs for compliance.