

81-01-01-01. Definitions For the purposes of title 81, the terms "North Dakota tax department" and "tax department" shall mean the office of the tax commissioner or the tax commissioner of North Dakota as provided in North Dakota Century Code chapter 57-01 and section 42 2 of article V of the Constitution of North Dakota.

History:

General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-01; NDCon V §42 2

81-01-01-02. Organization and functions of the North Dakota tax department.

1. **History.** During the period from 1890 to 1912 the functions currently performed by the tax commissioner were performed by the state auditor. From January 1912 to August 1, 1919, a nonpartisan tax commission composed of three commissioners appointed by the governor, by and with the advice and consent of the senate, administered the tax laws on the state level. Beginning August 1, 1919, these duties were assumed by a governor-appointed tax commissioner who served a six-year term. The appointment was subject to approval by the senate. The present office of tax commissioner was created by an amendment of section 12 of article V of the Constitution of North Dakota which was approved by the voters at a statewide election held on June 25, 1940. These provisions are now found in Section 2 of article V of the Constitution of North Dakota. This amendment Section 4 of article V of the Constitution of North Dakota provides that the tax commissioner must be at least twenty-five years old and must have the qualifications of a state elector. Under this amendment section 5 of article V of the Constitution of North Dakota, the tax commissioner is elected for a four-year term. The first tax commissioner was elected at the fall election of 1940 and took office in January 1941.

2. **Divisions.** The tax department consists of the following six divisions:
 - a. Commissioner's division. The commissioner's division bears ~~ultimate responsibility~~ is responsible for the general administration of the tax department. This division also ~~coordinates the department's data processing needs and~~ serves as the tax department's primary research, communication, and public information center. ~~Included under the direct control of the commissioner's division is management~~ Management planning, and personnel which administers the department's management by objectives program, as well as the personnel function human resource administration are under direct control of the commissioner's division. The tax commissioner is assisted by the deputy commissioner, research and ~~data processing sections~~

communications section staff, internal audit, an administrative officer executive assistant, a secretary human resource officer, and a receptionist other staff.

- b. Controller's Fiscal management division. The controller's fiscal management division of the tax department functions in three areas consists of two sections: accounting, staff services, and accounts receivable procurement. The accounting section maintains records of tax revenue and tax department expenditures, maintains inventory records of fixed assets and bonds, processes accounts receivable payments, prepares the tax department executive budget, and maintains an internal budget. The staff services procurement section is responsible for the initial processing of all tax returns and the operation of the mailroom, stenographic pool, and central records. The accounts receivable section is responsible for collecting delinquent taxes for all divisions of the tax department purchase of office supplies and equipment, secures contracts for services and maintenance of equipment, procures tax department printing goods and services, and secures leases for office space and equipment.
- c. Legal division. The legal division of the tax department is comprised of attorneys who research and prepare opinions answering tax-related questions posed by the commissioner, legislators, tax department staff, other officials, and citizens; who draft proposals for changes in tax laws; who conduct all litigation for the tax department and the state board of equalization; and who help draft rules and regulations for the administration of the various state taxes. Generally speaking, the The legal division works serves in an advisory capacity to the commissioner so that the creation of new and changes in policy, procedures, and administration, and formulation of new ideas are in keeping comply with the state laws that govern state taxes.
- d. Sales and special taxes Tax administration division. The sales and special taxes tax administration division consists of a sales and use tax section, an estate tax section, and a motor fuel and miscellaneous tax section eight sections: individual income and withholding taxes; corporate income taxes; sales and special taxes compliance; sales and special taxes audit; motor fuels, oil and gas, and estate taxes; registration; taxpayer services; and collections.

The individual income and withholding tax section is responsible for the administration of chapters 57-38, 57-38.1, 57-38.3, 57-38.5, and 57-38.6, pertaining to individual income taxes and passthrough entities, the uniform division of income tax act, setoff of income tax

refunds, seed capital investment tax credit, and agricultural business investment tax credit.

The corporate income tax section is responsible for the administration of chapters 57-38, 57-38.1, 57-38.4, 57-38.5, and 57-38.6, pertaining to corporate income taxes, the uniform division of income tax act, water's edge election method, seed capital investment tax credit, and agricultural business investment tax credit. This section is also responsible for administration of chapter 57-59, pertaining to the multistate tax compact.

Both the individual and corporate income tax sections review tax returns, perform audits and other compliance projects, and provide taxpayer assistance.

The sales and use tax section is special taxes compliance and audit sections are responsible for the administration of the following chapters of the North Dakota Century Code, which are primarily related to retail sales: chapter 57-34, gross receipts tax on telecommunications carriers; chapter 57-39.2, the retail sales tax chapter 57-39.2, ; chapter 57-39.4, streamlined sales and use tax agreement; chapter 57-39.5, farm machinery gross receipts tax; chapter 57-39.6, alcoholic beverage gross receipts tax; chapter 57-40.2, use tax chapter 57-40.2, ; chapter 57-40.3, motor vehicle excise tax chapter 57-40.3, ; chapter 57-40.4, motor vehicle excise tax refund chapter 57-40.4, ; and chapter 57-40.5, and aircraft excise tax chapter 57-40.5. In addition, these sections administer wholesale taxes on alcoholic beverages imposed under chapter 57-03, wholesale taxes on tobacco products imposed under chapter 57-36, and taxes levied under section 47-21-08 on selling and licensing performing rights of music or dramatico-musical composition. This section issues sales and use tax permits, provides Both sales and special taxes sections provide taxpayer assistance, conducts review refund requests, and conduct programs to ensure compliance with the law, and processes and audits sales and use tax returns. There is also a sales tax field audit staff which audits permitholders' records ; however, the audit section's major focus is on the audit of sales and use tax accounts.

The estate tax section is responsible for the administration of North Dakota Century Code chapter 57-37.1. This section receives and reviews all state estate tax returns and assesses and collects estate taxes due.

The motor fuel, oil and gas, and miscellaneous estate taxes section is responsible for the administration of the following chapters and sections of the North Dakota Century Code: chapter 57-37.1, estate

taxes; chapter 57-43.1, motor vehicle fuels and importer for use taxes chapter 57-43.1, ; chapter 57-43.2, special fuels and importer for use taxes chapter 57-43.2, ; chapter 57.43.3, aviation fuel tax chapter 57-43.3, tobacco products tax law chapter 57-36, and section 47-21-08 which deals with the tax levied on selling and licensing performing rights of music or dramatico-musical compositions. ; chapter 57-51, oil and gas gross production taxes; and chapter 57-51.1, oil extraction taxes. These taxes are collected, administered, and audited by the motor fuel, oil and gas, and miscellaneous estate taxes section which. This section also issues the motor fuel tax refund to those consumers using motor fuel for agricultural or industrial purposes.

- e. ~~Income and oil taxes division. This division is divided into three sections: corporate income taxes, individual income taxes, and oil and gas taxes.~~

~~The corporate income tax section is responsible for the administration of chapters 57-38 and 57-38.1 pertaining to corporate income taxes and the Uniform Division of Income Tax Act, and the administration of chapter 57-59 pertaining to multistate tax compact. This section is also responsible for the administration of chapter 57-35.3 pertaining to the taxation of financial institutions.~~

~~The individual income tax section is responsible for the administration of chapters 57-38, 57-38.1, 57-38.2, and 57-38.3 pertaining to individual income taxes, the Uniform Division of Income Tax Act, income averaging, and setoff of income tax refund. This section is also responsible for administration of chapter 57-59 pertaining to multistate tax compact.~~

~~The oil and gas division is responsible for the administration of chapters 57-51 and 57-51.1 pertaining to oil and gas gross production tax and oil extraction tax.~~

~~All sections review tax returns, perform audits, and provide taxpayer assistance.~~

The registration, taxpayer services, and collection sections are all function-based and involved with all taxes administered by the tax administration division. The registration section processes registration information for businesses new to North Dakota or that require an annual license renewal. The taxpayer services staff review returns during processing, and assist taxpayers with tax filing requirements and processes. The collections section is

responsible for collecting delinquent taxes for all tax types administered by the tax commissioner's office.

- fe. Property and utility tax division. The property tax is a source of revenue for the financing of county, city, township, school district, and other local governments. While local government has the responsibility of assessing and taxing all classes of real property, this division provides assistance and helps to establish uniformity of procedures. It also develops rules and regulations for the taxation of mobile homes under North Dakota Century Code chapter 57-55, which tax is administered by the county directors of tax equalization and collected by the county treasurers of the various counties. This division also provides administrative services to the state board of equalization relating to new industry and expanding business property tax incentive and primary sector business and tourism exemption applications made pursuant to under the provisions of North Dakota Century Code chapter 40-57.1, and to assessment and sales ratio statistical analyses.

The utility property tax section division also makes annual tentative valuations of railroad and utility properties for use by the tax commissioner to make tentative assessments to submit to. The tentative assessments are submitted to the state board of equalization which makes the final assessments. The utility property tax section division also administers the following North Dakota Century Code chapters: 57-33, for 57-33.2, taxation of rural electric cooperatives generation, distribution, and transmission companies; 57-33.1, for taxation of cooperative-owned transmission lines of two hundred thirty kilovolts or larger; 57-34, for taxation of mutual and cooperative telephone companies telecommunications carriers; 57-60, for privilege tax on coal conversion facilities; and 57-61, for coal severance tax.

- f. Information management & technology division. This division has two functional areas; information technology and processing. The information technology section implements and supports both hardware and software components relating to the tax department's information technology infrastructure. The processing section manages all mail, imaging, printing, data entry, and records management processes for the tax department. This division also manages contracts entered into by the tax department with software vendors who support the integrated tax system, electronic filing of tax returns, disaster recovery tools, and other applications.

- 3. **Inquiries - Submissions - Requests.** The public may obtain information or make submissions of reports and other matters or make

requests regarding any of the tax matters described in subdivisions d, and e, and f of subsection 2 by directing ~~such~~ any inquiries, submissions, or requests to the North Dakota tax commissioner or to the division of the North Dakota tax department responsible for the administration of the tax involved. The mailing address for the North Dakota tax commissioner and for the North Dakota tax department is:

State Capitol, Department 127
Bismarck, North Dakota 58505-0599

4. **Tax department functions subject to North Dakota Century Code chapter 28-32.** For purposes of its administration of the various tax laws, the tax department is an "administrative agency" that is subject to North Dakota Century Code chapter 28-32. ~~See the 1981 amendment of subsection 1 of North Dakota Century Code section 28-32-01.~~

History: Amended effective December 31, 1981; June 1, 1984; January 1, 1998;

General Authority: NDCC ~~28-32-02.1~~ 28-32-02

Law Implemented: NDCC ~~28-32-02.1~~ 28-32-02

CHAPTER 81-02.1-02 CERTIFICATION OF ASSESSMENT OFFICIALS

Section

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81-02.1-02-01. Definitions. ~~As used in this chapter and for the administration of North Dakota Century Code chapter 11-10.1, unless the context otherwise requires:~~

1. ~~"Assessment official" means a person responsible for initially determining the assessments of real property in a township, assessment district, or a city. The term also includes a county director of tax equalization who is responsible for supervising and instructing the township assessors and class II city assessors.~~

2. ~~"Class I city assessor" means an assessor for a city with a population of five thousand or more.~~
3. ~~"Class II city assessor" means an assessor for a city with a population of less than five thousand.~~
4. ~~"County director of tax equalization" means a person appointed pursuant to North Dakota Century Code chapter 11-10.1.~~
5. ~~"Township assessor" means a person appointed or elected as assessor pursuant to North Dakota Century Code chapter 58-05. The term also includes a person appointed as a district assessor as defined in North Dakota Century Code section 57-02-33.~~

History: Effective March 1, 1988. Repealed effective _____.

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-01(1), 11-10.1-05(1)(2)~~

81-02.1-02-02. Responsibility of state supervisor of assessments.

~~The state supervisor of assessments is responsible for establishing certification requirements for all assessment officials in North Dakota, certifying the assessment officials, and monitoring the certification process.~~

History: Effective March 1, 1988. Repealed effective _____.

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-01(1), 11-10.1-05(2)~~

81-02.1-02-03. Certification requirements - Township assessor.

1. ~~To be certified as a township assessor after February 29, 1988, a person shall:

 - a. ~~Successfully complete a minimum of twenty-four hours of instruction taught by a certified county director of tax equalization. Instruction includes, but is not limited to:

 - (1) ~~Principles and theory of value.~~
 - (2) ~~Market comparison, cost and income approaches to value.~~
 - (3) ~~Valuation of agricultural land, residential, and commercial property.~~
 - (4) ~~Laws and forms affecting assessors.~~~~~~

~~(5) — Assessment statistics.~~

~~(6) — Case study appraisal.~~

~~b. — Successfully complete a statewide standard test for township assessors. The twenty-four hours of instruction may be waived upon successful completion of the statewide standard test without having first attended the instruction.~~

~~2. — A township assessor must become certified within twelve months of appointment or election. Any person who does not become certified within twelve months is not eligible for reappointment.~~

History: Effective March 1, 1988. Repealed effective _____.

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-05(2)~~

81-02.1-02-04. Certification requirements - Class II city assessor.

~~1. — To be certified as a class II city assessor, a person shall:~~

~~a. — Successfully complete a minimum of twenty-four hours of instruction taught by a certified county director of tax equalization. Instruction includes, but is not limited to:~~

~~(1) — Principles and theory of value.~~

~~(2) — Market comparison, cost and income approaches to value.~~

~~(3) — Laws and forms affecting assessors.~~

~~(4) — Statistics of residential and commercial property.~~

~~(5) — Valuation of residential and commercial property.~~

~~(6) — Case study appraisal of residential or commercial property.~~

~~b. — Successfully complete a statewide standard test for class II city assessors. The twenty-four hours of instruction may be waived upon successful completion of the statewide standard test without having first attended the instruction.~~

~~2. — A class II city assessor who is also a township assessor must have a current township assessor certificate.~~

3. ~~A class II city assessor must become certified within twelve months of appointment. Any person who does not become certified within twelve months is not eligible for reappointment.~~

History: Effective March 1, 1988. Repealed effective _____.

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-05(2)~~

81-02.1-02-05. Certification requirements - Class I city assessor.

1. ~~To be certified as a class I city assessor, a person shall:
 - a. ~~Have a high school diploma or its equivalent.~~
 - b. ~~Successfully complete one hundred fifty hours of assessment and appraisal instruction approved by the state supervisor of assessments. Thirty hours of instruction are required in each of the following courses:
 - (1) ~~Tax administration.~~
 - (2) ~~Principles and theory of value.~~
 - (3) ~~Residential property appraisal.~~
 - (4) ~~Commercial property appraisal.~~
 - (5) ~~Other appraisal-related courses.~~~~~~
2. ~~Any of the courses may be challenged by successfully completing the required problems, reports, and test.~~
3. ~~A class I city assessor shall successfully complete the instruction within three years of appointment. A person who does not fulfill the requirements within three years is not eligible for reappointment.~~

History: Effective March 1, 1988. Repealed effective _____.

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-01(1)(2)~~

81-02.1-02-06. Certification requirements - County director of tax equalization.

1. ~~To become certified, a county director of tax equalization shall:
 - a. ~~Have a high school diploma or its equivalent.~~~~

b. ~~Successfully complete one hundred ninety hours of assessment and appraisal instruction approved by the state supervisor of assessments. Instruction is required in the following courses:~~

~~(1) Thirty hours of tax administration.~~

~~(2) Thirty hours of principles and theory of value.~~

~~(3) Thirty hours of residential property appraisal.~~

~~(4) Thirty hours of commercial property appraisal.~~

~~(5) Thirty hours of agricultural land valuation.~~

~~(6) Forty hours of teaching appraisal techniques.~~

~~2. Any of the courses may be challenged by successfully completing the required problems, reports, presentations, and test.~~

~~3. A county director of tax equalization shall successfully complete the instruction within three years of appointment. A person who does not fulfill the requirements within three years is not eligible for reappointment.~~

History: Effective March 1, 1988. Repealed effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1)(2)

81-02.1-02-07. Certificates. Upon successful completion of the necessary requirements within the specified time, the state supervisor of assessments shall issue the proper certificate to the following assessment officials:

~~1. Township assessor.~~

~~2. Class II city assessor.~~

~~3. Class I city assessor.~~

~~4. County director of tax equalization.~~

History: Effective March 1, 1988. Repealed effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 11-10.1-01(1), 11-10.1-05(1)

81-02.1-02-08. Maintaining certification. ~~An assessment official is required to attend educational sessions in order to maintain certification. All educational sessions must be approved by the state supervisor of assessments.~~

~~A county director of tax equalization and a class I city assessor are certified for a term of four years by the state supervisor of assessments. In order to maintain certification, each of these assessment officials shall successfully complete forty hours of approved classroom instruction or forty hours of approved seminars during each four-year certification period.~~

~~Certification as a township assessor or a class II city assessor is valid for one year. The certification is renewable by attendance at an approved annual seminar which is conducted by a certified county director of tax equalization.~~

History: ~~Effective March 1, 1988; amended effective November 1, 1992. Repealed effective _____.~~

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-01(1), 11-10.1-05(1)~~

81-02.1-02-09. Failure to maintain certification. ~~The certificate of any person who does not fulfill the requirements of section 81-02.1-02-08 will be considered void by the state supervisor of assessments.~~

~~The state supervisor of assessments will notify the assessment official and the governing body of the assessment official's jurisdiction of the nonrenewal of certification.~~

History: ~~Effective March 1, 1988. Repealed effective _____.~~

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-01(1), 11-10.1-05(1)~~

81-02.1-02-10. Valuation of nonagricultural property. ~~An assessment made by a township assessor or class II city assessor of a nonagricultural property, upon which there are buildings and structures with a true and full value of more than five hundred thousand dollars, must be submitted by March first annually to a certified county director of tax equalization or a certified class I city assessor for review and approval prior to the township or city board of equalization annual meeting.~~

History: ~~Effective November 1, 1992; amended effective August 1, 1994. Repealed effective _____.~~

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 11-10.1-05(2)~~

81-03-01.1-06. Income tax exemption for new and expanding business.

1. When a taxpayer is granted an exemption from income tax pursuant to North Dakota Century Code chapter 40-57.1, the exemption must be prorated, when necessary, in the first and last years in order to exempt income for a period not to exceed sixty months.
2. The amount of the yearly income tax exemption for new and expanding business is limited to income earned from the new business or expansion in each tax year ~~reduced by the amount of federal tax assignable to the North Dakota exempt income which~~ that was included in federal taxable income.
3. When the project operator is a ~~partnership, S corporation, or limited liability company~~ passthrough entity, the income tax exemption flows through to the partners, shareholders, and members.
4. The conditions for reapplication set forth in North Dakota Century Code chapter 40-57.1 apply to the income tax exemption. A project operator must reapply for the income tax exemption if these conditions are met.
5. The office of the state tax commissioner ~~must~~ shall be notified of any changes in ownership of a new industry which has been granted an income tax exemption. A change of ownership includes transfer of a partnership interest, a stock interest in a subchapter S corporation, or a membership in a limited liability company.
6. ~~The income tax exemption may not be claimed by an individual taxpayer on individual income tax form ND-1 or form 37-S.~~
7. A taxpayer with both exempt and nonexempt activities shall prorate its income pursuant to the provisions of North Dakota Century Code chapter 57-38.1.
 - a. If the taxpayer has only North Dakota activity, exempt income must be determined by multiplying income from all activities, exempt and nonexempt, by a fraction, the numerator of which is the sum of its exempt property, sales, and payroll factors and the denominator of which is three.

EXAMPLE:

Facts:	Exempt Plant	Other North Dakota Activity	Total North Dakota Activity
Property	\$5,000,000	\$10,000,000	\$15,000,000
Payroll	\$750,000	\$1,000,000	\$1,750,000

Sales	\$20,000,000	\$35,000,000	\$55,000,000
Apportionable income	\$50,000,000		
Federal tax Liability	\$17,500,000		

Determine North Dakota exempt income:

- (1) Compute apportionment factor of exempt activities.

Property factor=	\$5,000,000/\$15,000,000=	.333333
Payroll factor=	\$750,000/\$1,750,000=	.428571
Sales factor=	\$20,000,000/\$55,000,000=	.363636
	1.125540/3=	.375180

- (2) Compute exempt income.

Apportionable income	\$50,000,000
Federal tax liability	\$17,500,000
North Dakota income after federal tax deduction	\$32,500,000
Apportionment factor of exempt activities	.375180
Exempt income	\$12,193,350 <u>18,759,000</u>

- b. If the taxpayer has multistate business activity, North Dakota income must first be determined by including all exempt and nonexempt activity in apportionable income and in the apportionment factor. North Dakota exempt income is then determined as in subdivision a.

EXAMPLE:

Multistate corporation

Facts: Utilize the same facts in the prior example, and add:
Total activity within and without North Dakota

Property	\$100,000,000
Payroll	\$5,000,000
Sales	\$200,000,000

Determine North Dakota exempt income:

- (1) Compute the North Dakota apportionment factor, including tax-exempt activity.

Property factor=	\$15,000,000/ \$100,000,000=	.150000
Payroll factor=	\$1,750,000/ \$5,000,000=	.350000
Sales factor=	\$55,000,000/ \$200,000,000=	

$$\begin{aligned}
 \$200,000,000 &= \underline{.275000} \\
 .775000/3 &= \underline{.258333} \\
 &= \underline{\hspace{1cm}}
 \end{aligned}$$

(2) Compute the apportionment factor of the North Dakota exempt activities. For this example, the computation would be the same as that in paragraph 1 of subdivision a and would yield a factor of .375180.

(3) Compute exempt income.

Apportionable income	\$50,000,000
North Dakota apportionment factor	<u>.258333</u>
Income apportioned to North Dakota before federal tax deduction	\$12,916,650
Federal tax liability	\$17,500,000
North Dakota apportionment factor	<u>.258333</u>
Federal tax deduction	\$4,520,827
North Dakota income after federal tax deduction	\$8,395,823

Apportionment factor of exempt activities	<u>.375180</u>
Exempt income	\$3,149,945 <u>4,846,069</u>

- c. When a partial exemption on a project or plant has been granted, the percentage of the project's nonexempt property, payroll, and sales would be added to the other North Dakota taxable activity's factors. For instance, a twenty percent exemption would mean eighty percent of the project's property, payroll, and sales would be added to the other North Dakota factors creating a taxable activity.
- d. When a company has only one operating facility which has been granted a partial exemption, North Dakota taxable income shall be computed based on total income of the operation, and a percentage of the income which is equal to the percentage of the exemption shall be deducted from the total.
- e. For determining the apportionment factor of exempt activities in subdivision b, the weighting of the three factors must be the same weighting as used to determine the apportionment factor for the taxable year.

History: Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; April 1, 1995; July 1, 1998; June 1, 2002; _____.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 40-57.1, NDCC 57-38.1

81-03-01.1-07. Venture capital corporation. An individual, estate, trust, or corporation that has purchased stock in a venture capital corporation may not sell any or all of the stock back to the venture capital corporation and then purchase new stock in the same venture capital corporation to qualify for the income tax deduction and the tax credits provided for in North Dakota Century Code chapter 10-30.1.

History: Effective March 1, 1990 Repealed effective _____.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 10-30.1

81-03-02.1-05. Reporting - Income earned by husband and wife. Requirements for a husband and wife who file a joint federal income tax return and who are required to file separate North Dakota income tax returns include:

1. Income from nonbusiness property owned by one spouse cannot be divided between husband and wife, but must be reported only by the spouse with the ownership interest.
2. Nonbusiness income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other nonbusiness income must be reported by each spouse on the separate tax return as if their federal adjusted gross income was determined separately. Reporting of this income depends on the nature of the ownership interest and is subject to the following:
 - a. A husband and wife owning property as joint tenants with a right of survivorship must each report one-half of the income from the property on their separate North Dakota income tax returns.
 - b. Income from property held by husband and wife as tenants in common must be reported in proportion to their legally enforceable interests in the property.
3. Salary and wages earned by each spouse must be reported by each spouse as if their federal adjusted gross income was determined separately. Reporting of wages and salary by each spouse depends upon the nature of the employment relationship and is subject to the following:
 - a. Wages or compensation for services or labor performed by one spouse with respect to a business or property owned by the other spouse may be reported on a separate North Dakota income tax return if the payment is reasonable for the labor or services actually

~~performed. It is presumed that compensation or wages paid by one spouse to the other are unreasonable and disallowed for separate reporting unless a bona fide employer-employee relationship exists. Evidence of the relationship includes actual services performed, adherence to regular working hours and standards, and compliance with workers' compensation and unemployment compensation laws.~~

~~b. Wages or compensation for services or labor performed pursuant to an employment agreement with a nonspousal employer is income which may be reported only by the spouse earning the wages.~~

~~4. Business income derived from property owned by both spouses, as evidenced by recognized methods of establishing legal ownership, may be allocated between spouses and reported on separate North Dakota income tax returns. The interest of each spouse must be allocated according to the capital interest, the management and control exercised, and the services performed by each spouse according to the following rules:~~

~~a. Allocation of partnership income between spouses is valid only if current partnership information returns have been filed with this state and the federal government and there has been compliance with federal self-employment laws.~~

~~b. When a business is owned by a husband and wife but one spouse claims all of the income for federal self-employment tax purposes, it is assumed that the claim was made with the full consent of the other spouse. Therefore, all of the income must be claimed for North Dakota income tax purposes by the spouse claiming such income on the federal return. The presumption of consent may be overcome by presentation of evidence sufficient to negate the presumption.~~

~~c. In order to determine the amount of capital contribution by each spouse, only invested capital which is legally traceable to each spouse is considered. Capital existing under the right, domain, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions that do not effect any real change in ownership of capital between spouses are disregarded in determining capital contribution of the recipient spouse.~~

~~d. Contribution to management and control of the business must be substantial to be given weight in allocating income. Substantial participation involves legitimate consultation with respect to major~~

~~business decisions, familiarity with the operations, problems, and policies of the business, and sufficient background and maturity to understand the various demands of the business. General statements as to family discussions are insufficient to demonstrate consultation.~~

- ~~e. Services which make a direct contribution to the business are given weight in determining the proper allocation of income between spouses. Services performed for the family are not considered rendered for the benefit of the business.~~

History: ~~Effective July 1, 1985; amended effective June 1, 2002~~ Repealed effective

~~**General Authority:** NDCC 57-38-56~~

~~**Law Implemented:** NDCC 57-38-34.2~~

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.

- ~~1. Subsection 10 of North Dakota Century Code section 57-38-30.3 provides for the recomputation of the federal income tax liability by nonresident individuals, estates, or trusts to prevent any income from becoming exempt from taxation because of the provisions of North Dakota Century Code section 57-38-30.3 if that income would otherwise have been subject to taxation under the provisions of North Dakota Century Code chapter 57-38. Therefore, a nonresident individual, estate, or trust that files under North Dakota Century Code section 57-38-30.3 and that has out-of-state losses that exceed out-of-state income must make a separate computation to determine a recomputed federal income tax liability.~~

~~This computation consists of adding out-of-state losses that exceed out-of-state income to federal adjusted gross income and then using this figure to determine a recomputed federal income tax liability. A schedule prescribed by the tax commissioner must be used to determine the recomputed federal income tax liability. The recomputed income tax liability is the amount that must be used to compute the North Dakota income tax liability.~~

- ~~2. This rule is effective for taxable years beginning before January 1, 2001.~~

History: ~~Effective July 1, 1985; amended effective June 1, 2002.~~ Repealed effective

~~**General Authority:** NDCC 57-38-56~~

~~**Law Implemented:** NDCC 57-38-30.3~~

81-03-05.1-05. Subchapter S corporation tax credits.

1. ~~The following tax credits may not be claimed by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:~~
 - a. ~~Credit for contributions to nonprofit private colleges.~~
 - b. ~~Credit for contributions to nonprofit private high schools.~~
 - c. ~~Geothermal, solar, or wind energy device credit.~~
 - d. ~~Venture capital corporation credit.~~
 - e. ~~Myron G. Nelson Fund, Incorporated credit.~~
 - f. ~~Credit for employment of the developmentally disabled or chronically mentally ill.~~
 - g. ~~Credit for purchase of memberships, payment of dues, or contributions to certified nonprofit development corporations.~~
2. ~~These tax credits may only be claimed by an individual shareholder on its individual income tax form ND-2 or form 37, or a fiduciary shareholder on fiduciary income tax return form 38.~~
3. ~~The tax credit claimed by each shareholder must be computed by using the shareholder's distributive share ratio. The computed credit is subject to the limitations imposed by North Dakota Century Code chapters 10-30.1, 10-30.2, and 57-38.~~
4. The following tax credits may be claimed only by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:
 - a. Corporate tax credit for new industry.
 - b. Corporate tax credit for research and experimental expenditures.
52. The shareholders may not claim tax credits claimed by the subchapter S corporation.

History: Effective March 1, 1988; amended effective March 1, 1990; June 1, 2002;

General Authority: NDCC 57-38-56

Law Implemented: NDCC ~~40-30.1-05, 40-30.2-11, 40-30.2-12, 57-38-01.4, 57-38-01.7, 57-38-01.8, 57-38-01.16, 57-38-01.17~~

81-03-05.1-06. Tax credit for research and experimental expenditures.

When calculating the tax credit provided for in North Dakota Century Code section 57-38-30.5, the ~~corporation~~ taxpayer may include only those in the base period amount ~~only those amounts~~ research expenses which that were incurred in or are attributable to North Dakota.

History: Effective June 1, 1992; amended _____.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-30.5

81-03-05.1-07. Net operating losses.

1. A North Dakota net operating loss must be computed after the allocation and apportionment of a taxpayer's income or loss to North Dakota.
2. A North Dakota net operating loss may be ~~carried back or~~ carried forward for the same number of years as a federal loss of like character, e.g., regular net operating loss, product liability loss, or foreign expropriation loss.
3. ~~Irrespective of a corporation's treatment of a federal net operating loss, to carry forward a North Dakota net operating loss a corporation must make an election to do so on an original return that is timely filed for the year in which the loss was incurred. If an election is not made, the loss must be carried back.~~
4. If a corporation does not file a consolidated corporation income tax return pursuant to section 81-03-05.1-08, the corporation's North Dakota net operating loss may be ~~carried back or~~ carried forward even if:
 - a. The ownership of the corporation in the loss year is not the same as the ownership in each of the years to which the loss is carried, e.g., the corporation is acquired by another corporation.
 - b. The filing method used by the corporation in the loss year is not the same as the filing method used in each of the years to which the loss is carried, e.g., separate entity filing versus combined reporting.
54. If a corporation files a consolidated corporation income tax return pursuant to section 81-03-05.1-08, a North Dakota net operating loss must be computed for each corporation included in the consolidated return for the

year in which the loss was incurred. This net operating loss may be carried back or carried forward subject to the following conditions:

- a. ~~If an election is made by the corporation filing the consolidated return to carry forward North Dakota net operating losses, each corporation included in the consolidated return must carry forward its North Dakota net operating loss.~~
- b. Each corporation included in the consolidated return ~~may carry back or~~ must carry forward its net operating loss to the extent that ~~the corporation~~ it had North Dakota taxable income in the year to which the loss is carried.

- ~~65.~~ The commissioner may audit a North Dakota net operating loss and the taxable income of the year to which the loss is carried.
- ~~76.~~ A corporation may not carry forward its North Dakota net operating loss if the corporation has been dissolved as a separate corporate entity.
- ~~8.~~ This section is effective for all tax years beginning after December 31, ~~1992-2002.~~

History: Effective December 1, 1993; amended effective _____.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01.3(2)(3)

81-03-05.1-08. Consolidated returns.

- 1. As used in this section:
 - a. "Combined report" means a tax return on which the tax liability is computed using the method described in chapters 81-03-05.2 and 81-03-05.3.
 - b. "Consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota.
 - c. "Taxpayer" means a corporation liable to report income or loss to North Dakota.
- 2. Only taxpayers who compute their liability using the combined report method may file a consolidated return. The consolidated return must contain the following information:

- a. Identifies the name and federal identification number of the corporation that will file the consolidated return.
 - b. Reports the tax liabilities of all taxpayers in the combined report.
3. All taxpayers in the combined group must continue to file a consolidated return until the commissioner is notified in writing of the combined group's intent to file individual returns.
 4. This section is effective for all tax years beginning after December 31, 1992.

Example:	Corporation A	Corporation B	Corporation C	Combined Amounts
Facts:				
Federal taxable income	\$500,000	\$(80,000)	\$40,000	\$460,000
Federal tax accrued	444,815	0	11,585	456,400
<u>State adjustments</u>	<u>10,000</u>	<u>1,000</u>	<u>5,000</u>	<u>16,000</u>
North Dakota property	150,000	0	10,000	
Total property	150,000	100,000	10,000	260,000
North Dakota payroll	60,000	0	40,000	
Total payroll	60,000	100,000	40,000	200,000
North Dakota sales	1,000,000	0	200,000	
Total sales	1,500,000	300,000	200,000	2,000,000
Computation of Apportionment Factor	Corporation <u>apportionment factor</u>	A	Corporation C	
North Dakota property	\$150,000		\$10,000	
Combined property	260,000		260,000	
Property factor		.576923		.038462
North Dakota payroll	60,000		40,000	

Combined payroll	200,000	200,000	
Payroll factor		.300000	.200000
North Dakota sales	1,000,000	200,000	
Combined sales	2,000,000	2,000,000	
Sales factor		.500000	.100000
Sum of factors		1.376923	.338462
Apportionment factor		.458974	.112821

Computation of Tax Liability	Corporation A	Corporation C	Total Tax Due
Federal taxable income	\$460,000	\$460,000	
Federal tax deduction	156,400	156,400	
<u>State adjustments</u>	<u>16,000</u>	<u>16,000</u>	
North Dakota apportionable income	303,600 <u>476,000</u>	303,600 <u>476,000</u>	
Apportionment factor	.458974	.112821	
North Dakota taxable income	139,345 <u>218,472</u>	34,252 <u>53,703</u>	
North Dakota tax due (1990 <u>2015</u> rates)	42,966 <u>8,501</u>	2,168 <u>1,400</u>	\$15,134 <u>9,901</u>

History: Effective December 1, 1993; amended effective September 1, 1997;

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-14

81-03-05.3-03. Elements of worldwide combined report.

1. A taxpayer that is required to file using the worldwide method of reporting shall include the income and apportionment factors of the following unitary corporations in its combined report:
 - a. A parent corporation.
 - b. Any corporation incorporated in the United States.

- c. Any corporation incorporated in a possession of the United States as described in Internal Revenue Code sections 931 through 936.
 - d. Any domestic international sales corporation as described in Internal Revenue Code sections 991 through 994.
 - e. Any foreign sales corporation as described in Internal Revenue Code sections 921 through 927.
 - f. Any export trade corporation as described in Internal Revenue Code sections 970 through 972.
 - g. Any foreign corporation which derived gain or loss from disposing of a United States real property interest but only to the extent the gain or loss was recognized under Internal Revenue Code section 897.
 - h. Any foreign corporation.
2. The factors used to apportion the income of the worldwide group must be determined pursuant to chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59, and the following subdivisions:
- a. Transactions between members of the worldwide group must be eliminated.
 - b. Transactions between any member of the worldwide group and a corporation that has been excluded from the group must be included.
 - c. The property, payroll, and sales of a corporation that has been excluded from the worldwide combined report must not be included in the apportionment factors of the group.
 - d. When apportionable income includes income from a corporation's ownership interest in a general partnership, the corporate partner's share of the partnership's property, payroll, and sales must be included in the group's apportionment factors.
3. Income for the worldwide group must be computed using one of the following methods:
- a. Method one.

- (1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.
- (2) Add book income adjusted to conform to the provisions of the Internal Revenue Code of the corporations included in the combined report which are not required to file a federal income tax return.
- (3) Eliminate transactions between members of the worldwide group.
- (4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3. ~~However, the deduction provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3 should not be made if the taxpayer elects to compute its federal income tax deduction pursuant to chapter 81-03-05.4.~~
- (5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.

b. Method two.

- (1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.
- (2) Add book income of those corporations included in the combined report which are not required to file a federal income tax return.
- (3) Eliminate transactions between members of the worldwide group.
- (4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3. ~~However, the deduction provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3 should not be made if the taxpayer elects to compute its federal income tax deduction pursuant to chapter 81-03-05.4.~~
- (5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.

History: Effective March 1, 1990; amended effective _____.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38, 57-38.1, 57-59

CHAPTER 81-03-09.2
SALES FACTOR WEIGHTING ELECTION

Section

<u>81-03-09.2-01.</u>	<u>Definitions</u>
<u>81-03-09.2-02.</u>	<u>Sales factor weighting election</u>
<u>81-03-09.2-03.</u>	<u>Sales factor weighting election applicability</u>
<u>81-03-09.2-04.</u>	<u>Rescission of election</u>
<u>81-03-09.2-05.</u>	<u>Provisions of income tax laws applicable</u>
<u>81-03-09.2-06.</u>	<u>Taxable years</u>

81-03-09.2-01. Definitions.

1. “Affiliated corporation” means a corporation whose voting stock is over fifty percent owned, directly or indirectly, by another corporation.
2. “Apportionment factor” means the resulting computation of the percentage of a taxpayer’s business income that is assignable to this state.
3. “Consolidated return” means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota.
4. “Passthrough entity” has the same meaning as in North Dakota Century Code section 57-38-01.
5. “Sales factor” has the same meaning as in North Dakota Century Code section 57-38.1-15.
6. “Sales factor weighting election” means the election provided in North Dakota Century Code section 57-38.1-09 allowing a taxpayer to weight its sales factor fifty percent for tax years 2016 and 2017, seventy-five percent for tax year 2018, and one hundred percent for tax years 2019 and thereafter.
7. “Taxpayer” means a person other than a passthrough entity that is required to file a North Dakota income tax return.”
8. “Unitary business” means a group of corporations engaged in a unitary business described in chapter 81-03-05.3.

History: Effective _____.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

81-03-09.2-02. Sales factor weighting election.

1. A taxpayer that is a corporation makes a sales factor weighting election by checking the sales factor weighting election box on its original North Dakota income tax return for the first year to which the election applies.
2. A taxpayer that is a sole proprietor apportioning income under subsection 5 of North Dakota Century Code section 57-38-04 makes a sales factor weighting election by attaching a statement to the taxpayer's individual income tax return for the first year to which the election applies.
3. A taxpayer's return making a sales factor weighting election for the first year is considered timely if filed by the prescribed due date, including extensions.
4. A sales factor weighting election is binding for five consecutive tax years. An election made on a tax return for a sixth consecutive year constitutes a new five year election.
5. For any tax year which is not included under a sales factor weighting five year election period, income is apportioned using equal weighting of the three factors under subsection 1 of North Dakota Century Code section 57-38.1-09.

History: Effective
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

81-03-09.2-03. Sales factor weighting election applicability.

1. If a taxpayer is a member of a unitary business, the sales factor weighting election applies to each taxpayer in the unitary business.
2. If a taxpayer files a consolidated return, the election made on that return applies to all corporations included in that return.
3. An affiliated corporation is considered to have consented to the sales factor weighting election if the corporation becomes a member of the unitary group after the group elects to use the sales factor weighting election.
4. If a taxpayer's apportionment factor includes its share of a passthrough entity's apportionment factors, the taxpayer's sales factor weighting election includes its share of factors from a passthrough entity.

History: Effective
General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.1-09

81-03-09.2-04. Rescission of a sales factor weighting election.

1. A sales factor weighting election of a taxpayer that has had more than fifty percent of its voting stock acquired by a non-affiliated entity is rescinded.
2. A sales factor weighting election of a taxpayer formed due to reorganization or spinoff from an existing taxpayer is rescinded if, after the reorganization or spinoff, it is no longer an affiliated member of the unitary group.
3. The sales factor weighting election of a taxpayer that is completely liquidated is rescinded. The election does not carry over to the entity receiving the liquidated assets. This provision does not affect the sales factor weighting election made by any taxpayer that receives liquidated assets.
4. If a taxpayer's sales factor weighting election is rescinded under this section, it is not precluded from making a new sales factor weighting election in the first tax year following the rescission.

History: Effective _____.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.1-09

81-03-09.2-05. Provisions of income tax laws applicable. Administration of the sales factor weighting election is governed by the provisions in North Dakota Century Code chapters 57-38 and 57-38.1 not in conflict with this chapter.

History: Effective _____.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.1-09

81-03-09.2-06. Taxable years. This chapter applies to tax years beginning after December 31, 2015.

History: Effective _____.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.1-09

81-03-10-01. Designation of overpayment amount. An individual income taxpayer with an available overpayment of tax of at least five dollars may designate a portion of the overpayment, as a voluntary contribution, a minimum of one dollar to either or both of the following:

1. The ~~nongame~~ watchable wildlife fund.
2. The trees for North Dakota program trust fund.

History: Effective July 1, 1989; amended effective November 1, 1991; June 1, 2002;_____.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-03-10-02. Available overpayment. The procedure by which the taxpayer's return is originally processed by the tax department may result in adjustments to the available overpayment amount computed by the taxpayer for errors on the return; reduction for taxes, including interest and penalty, owed for prior years; or reduction for amounts owed as ~~child support~~ pursuant to North Dakota Century Code chapter 57-38.3.

When the overpayment amount computed by the taxpayer is reduced by the tax department, taxpayer designations will be reduced in the following order, each designated item to be reduced to zero before proceeding to reduce the next item:

1. The amount of the overpayment that the taxpayer has designated as voluntary contributions to the ~~nongame~~ watchable wildlife fund and the trees for North Dakota program trust fund. If the tax department does not reduce the overpayment computed by the taxpayer by the total amount of the voluntary contributions, any remaining overpayment will be allocated between the funds in the same ratio as the designations bear to one another on the taxpayer's return.
2. The amount of the overpayment that the taxpayer has designated as a refund.
3. The amount of the overpayment that the taxpayer has designated as an estimated tax payment for a succeeding year.

History: Effective July 1, 1989; amended effective June 1, 2002;_____.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-34.3, 57-38-35.1(3), 57-38-38(1), 57-38-62, 57-38.3

81-03-10-03. Designation for taxpayers owing tax. Taxpayers who have a tax balance due, including penalty and interest, of at least five dollars on their income tax

return may designate that an additional amount of at least one dollar be paid to the nongame watchable wildlife fund or to the trees for North Dakota program trust fund by paying the entire balance that is due for both tax and the designations at the same time that the return is filed. Any designations to the nongame watchable wildlife fund or to the trees for North Dakota program trust fund are not obligations enforceable by the tax department. If the amount that is paid with the return does not equal the total of the tax balance due and the amounts designated, the amount of the tax balance due must be paid first and the optional designations must be reduced to the amount paid with the return which is in excess of the tax balance due. The amount paid which is in excess of the tax balance due must be allocated between the funds in the same ratio as the taxpayer designations bear to one another on the taxpayer's return.

History: Effective July 1, 1989; amended effective June 1, 2002: _____.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-03-10-04. Taxpayers with no overpayment or balance due. A taxpayer with no overpayment of tax of at least five dollars or tax balance due of at least five dollars, may not use the state income tax return to make voluntary contributions. Taxpayers may make contributions directly to the North Dakota game and fish department for the nongame watchable wildlife fund, or to the North Dakota state forester for the trees for North Dakota program trust fund.

History: Effective July 1, 1989; amended effective June 1, 2002, _____.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-04.1-01-02. Confidential information. A return includes all the business records and information of a retailer which reflect or record sales or use tax data which are used to calculate sales or use tax obligations for purposes of North Dakota Century Code section 57-39.2-23.

The tax commissioner is authorized to release name and mailing address information on sales and use tax permitholders to any North Dakota state government agency for the limited purpose of distributing state government publications or information. Permitholder information that can be released is restricted to the business name and mailing address used to mail sales and use tax returns to permitholders. Other permitholder information, including filing schedule, starting date, payment history, ownership status, and standard industrial classification, is confidential and may not be released by the tax commissioner.

The tax commissioner may not release any information regarding a sales and use tax permitholder to any agency, entity, or representative of the federal government, of any other state government, of any local government, or of any foreign government. Information regarding a North Dakota sales and use tax permitholder may not be released to a private entity for any purpose, including fundraising or other sales

~~solicitation, except for name and mailing address information provided to a private entity to facilitate the publication and distribution of state government publications or information.~~

~~**History:** Effective June 1, 1984; amended effective November 1, 1991. Repealed effective _____.~~

~~**General Authority:** NDCC 57-39.2-19~~

~~**Law Implemented:** NDCC 57-39.2-01, 57-39.2-23~~

81-04.1-01-08. Deduction for administrative expense. Compensation for sales or use tax permitholders is applied as follows:

1. A sales and use tax permitholder having ~~taxable sales and purchases equal or exceeding three hundred thirty-three thousand three hundred thirty-three dollars for the preceding calendar year~~ registered to report and remit sales, use, or gross receipts tax 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, but this deduction may not exceed ~~eighty-five~~ one hundred ten dollars per month return.
2. A sales and use tax permitholder that is a remote seller, or a certified service provider assigned by the qualifying permitholder, is allowed to deduct and retain up to one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement approved by the streamlined sales and use tax governing board. For purposes of this subsection, "remote seller" means a retailer that does not have adequate physical presence to establish nexus in this state for sales tax purposes.

Qualified sales or use tax permitholders, including permitholders and certified service providers who pay tax due under chapter 57-39.4, who fail to file the forms on time, or fail to pay the tax due on time, forfeit the one and one-half percent compensation for expenses.

~~The returns filed by qualified permitholders under section 57-39.2-12 or 57-40.2-07 will be reviewed by the office of the tax commissioner each calendar year to determine if new sales or use tax permitholders qualify to file monthly returns and to determine if sales or use tax permitholders who have filed monthly returns must revert to quarterly filing status. Changes in filing status as a result of the calendar year reviews will occur on or after July first of the following year.~~

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; April 1, 2006; _____.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-12, 57-39.2-12.1, 57-40.2-07, 57-40.2-07.1

81-04.1-01-08.1. Monthly sales tax returns.

1. A sales and use tax permitholder having taxable sales and purchases equal to or exceeding three hundred thirty-three thousand dollars for the preceding calendar year must file sales and use tax returns and pay the tax due monthly. All returns and tax payments are due on or before the last day of the month following the reporting period.
2. Returns required to be filed monthly under section 1 must be filed by an electronic method approved by the tax commissioner.
3. All returns filed under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 will be reviewed by the tax commissioner each calendar year to determine if new sales or use tax permitholders meet the monthly filing requirement and to determine if sales or use tax permitholders who have filed monthly returns may revert to quarterly filing status. Changes in filing status as a result of the calendar year reviews are effective on or after July first of the following year.

History: Effective _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-12, 57-40.2-07

81-04.1-01-19. Sale of traded-in property. When one article is traded in on another article, the sales tax applies only on the difference in value between the two articles. The secondhand article is subject to sales tax when resold.

Whenever property not subject to sales tax or to motor vehicle excise tax is taken as part consideration of the purchase price, the purchaser is required to pay sales tax on the full purchase price.

When a used ~~mobile home~~ manufactured home is traded in for other tangible personal property, sales tax applies on the full purchase price with no deduction for the value of the trade-in.

When used farm machinery is traded in for new farm machinery or other tangible personal property, farm machinery gross receipts tax or sales tax applies on the net selling price after deduction for the value of the trade-in.

History: Effective June 1, 1984; amended effective April 1, 2006; _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.5-01.1

81-04.1-01-23.2. Agricultural commodity processing facility. An agricultural commodity processing facility is a manufacturing facility that processes agricultural commodities into marketable products. A facility, such as a grain elevator, that only stores, cleans, dries, or transports agricultural commodities, is not an agricultural commodity processing facility.

Tangible personal property consumed during the construction of an agricultural commodity processing facility or incorporated into the structure of an agricultural processing facility is exempt from sales and use tax. ~~However,~~ the A contractor consuming or installing the materials shall pay the applicable sales or use taxes and the owner of the agricultural processing facility shall apply in writing for a refund of the taxes paid by the contractor unless the tax commissioner has approved the project for exemption and the facility owner has authorized the contractor to utilize the exemption.

The purchase or rental of machinery and equipment used directly in the processing of agricultural commodities into marketable products is regarded as manufacturing machinery and equipment, as provided in section 81-04.1-01-23. Machinery and equipment not used directly in the processing of agricultural commodities are subject to sales and use tax. Machinery and equipment not used directly in the processing of agricultural commodities include repair parts and equipment used for repairing, cleaning, or maintaining facilities, machinery, or equipment; handtools; backup or standby power suppliers; computer hardware and software to maintain inventory, production, or scheduling records; waste disposal or treatment facilities; and safety and security equipment, such as fire sprinkler systems and burglar alarms. Items consumed or destroyed in the process and which do not become a part of the finished products do not represent qualifying machinery and equipment and are subject to sales and use tax.

Requests by the manufacturer to purchase or lease machinery or equipment without paying tax or for refunds of tax paid on machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the owner of the agricultural commodity processing facility may apply for a refund of the sales or use tax paid on exempt machinery or equipment. A request for refund must include documentation showing the amount of tax paid by the owner of the agricultural commodity processing facility or the contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying machinery and equipment without paying tax or prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond in writing to each exemption request stating whether or not the machinery or equipment qualifies for the exemption. The owner of the agricultural commodity processing facility may provide the approval letter to its equipment and machinery suppliers or construction contractors to avoid paying sales and use taxes on approved equipment, machinery, and qualifying construction materials. If an owner of the agricultural commodity processing facility or a contractor

purchases equipment before requesting a the tax commissioner approves the sales tax exemption, it the owner or contractor shall pay all applicable sales and use taxes at the time of purchase but . Only the facility owner may apply to the tax commissioner for a refund of the taxes paid.

To receive a refund of taxes paid by the contractor, the owner of the agricultural commodity processor must provide documentation showing that the contractor paid North Dakota sales or use taxes on the tangible personal property consumed during construction, or on the tangible personal property qualifying machinery and equipment installed into the manufacturing facility. The tax commissioner may request an onsite inspection of the manufacturing facility before approving the refund of taxes paid by the contractor.

The owner of the agricultural commodity processing facility may request that the refund amount be taken as a credit adjustment on its next sales or use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the tax credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit is applied.

History: Effective June 1, 2002; amended effective _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-04.4, 57-39.2-25, 57-40.2-03, 57-40.2-04, 57-40.2-13

81-04.1-01-24. Manufacturer’s and retailer’s federal excise tax. ~~When products subject to federal manufacturer’s excise tax are sold at retail by other than the manufacturer, the tax becomes a part of the sales tax base.~~

~~When manufacturers sell directly to consumers, and the federal manufacturer’s excise tax is billed separately, the excise tax is not included in the sales tax base.~~

History: Effective June 1, 1984. Repealed effective _____.
General Authority: ~~NDCC 57-39.2-19~~
Law Implemented: ~~NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2~~

81-04.1-03-01.1. State – Tribal tax administration agreement – Effect on other rules. If an agreement is in effect between the state and a Native American tribal government under the authority of North Dakota Century Code chapters 54-40.2 or 57-39.8, then the provisions of that agreement apply with respect to retail sales to enrolled Native Americans on an Indian reservation in lieu of section 81-04.1-03-01.

History:
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.8

81-04.1-03-03. Food and food products for human consumption. Food or food ingredients are exempt from sales tax. Food and food ingredients do not include alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, or tobacco, which remain subject to sales tax. For purposes of this section:

1. "Alcoholic beverage" for human consumption means beverages containing one-half of one percent or more of alcohol by volume.
2. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation as described herein, containing flour, or any item requiring refrigeration.
3. "Dietary supplement" means a product subject to tax if the product label contains a "supplemental facts" box. If the product label contains a "nutrition facts" box, the product is regarded as food, and is exempt from tax.
4. "Prepared food" is subject to sales tax and includes food sold in a heated state or heated by the seller, or food that is prepared by mixing or combining two or more food ingredients for sale as a single item, or food sold with eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws provided by the seller. Food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils. Food that ordinarily requires cooking, as opposed to just reheating, by the consumer prior to consumption is not prepared food. Generally businesses that sell prepared food include restaurants, convenience stores, delicatessens, concession stands, coffee shops, and caterers.
5. "Soft drinks" subject to sales tax include nonalcoholic beverages that contain natural or artificial sweeteners, and that do not contain milk or milk products, soy, rice, or similar milk substitutes, or that contain greater than fifty percent vegetable or fruit juice by volume. Soft drinks generally include pop and fruit drinks or fruit punches that are less than fifty percent juice by volume.
6. "Tobacco" means any cigarettes, cigars, chewing or pipe tobacco, or any other items that contain tobacco.

The exemption for food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store does not apply to food given away by restaurants or other businesses which regularly and primarily sell prepared food and beverages.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; March 1, 1990; April 1, 2006; _____.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1, 57-40.2-04.1

81-04.1-03-04. Sales in interstate commerce. When tangible personal property is sold by a North Dakota retailer for use or consumption and delivered to the purchaser in another state and the goods are not to be returned to this state, the sale is not subject to sales tax. ~~The method of transporting the goods is irrelevant.~~ However, where the seller actually delivers possession of the goods to the buyer or the buyer’s representative or agent within this state, the transaction is then terminated, and the tax applies. If a shipping company takes possession of goods on behalf of a purchaser, the purchaser has not taken possession of the goods.

Tangible personal property sold by a North Dakota retailer is not subject to sales tax if it is shipped from the source of supply in another state to the purchaser at a point outside this state or delivered to the purchaser at the source of supply outside the state. If the property is brought into this state, it is subject to use tax.

Sales of tangible personal property made within this state by salesmen, representatives, agents, persons, or firms residing outside this state and delivered in this state are subject to tax.

History: Effective June 1, 1984; amended effective _____.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-10, 57-39.4-12, 57-40.2-01, 57-40.2-03.3

81-04.1-03-13. Sales to residents of a person from Montana. Sales of tangible personal property to a person from Montana residents are exempt from sales tax if the Montana resident person is in North Dakota specifically to make a purchase ~~and not as a tourist~~ and signs a certificate of purchase or a certificate of exemption authorized by the streamlined sales tax agreement, the sale is in an amount of fifty dollars or more, and the goods are taken outside of North Dakota, for use entirely outside this state.

Sales of meals, onsale beverages, lodging accommodations, entertainment, and similar goods and services consumed in North Dakota ~~are not exempt when sold to residents of Montana~~ do not qualify for the exemption.

Sales and installation of goods into personal property owned by ~~residents of a person from~~ a person from Montana are not taxable provided the goods are removed from North Dakota for use exclusively outside this state. Use which is incidental to removing the goods from North Dakota does not subject the goods to North Dakota use tax.

For purposes of this exemption, "person" means natural persons, Montana corporations, and other business entities when the owners, partners, or members are individual Montana residents.

History: Effective March 1, 1990; amended effective April 1, 2006;_____.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-04(12)

81-04.1-04-01. Agriculture - Commercial chemicals and seeds for planting. Sales of agricultural tank cleaners and foam markers, agricultural chemicals, including adjuvants, seeds, roots, bulbs, and small plants for commercial vegetable gardens or agricultural purposes are not subject to the tax, but such sales for noncommercial purposes are taxable. A householder's garden is not a commercial vegetable garden.

The term "adjuvant" includes surfactants, phytobland oils, stickers, spreaders, spreader-stickers, thickening agents, and antifoam agents.

The term "small plants" includes potted plants, set plants, small young trees, shrubs, herbs, slips, cuttings, flower seeds, flower plants, and small saplings.

Small young trees, including fruit trees, and shrubs, when sold for the purpose of rural windbreaks, shelterbelts, soil erosion prevention, and other agricultural purposes, are exempt from sales tax.

History: Effective June 1, 1984; amended effective November 1, 1987;_____.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-02. Agriculture - Farm machinery and irrigation equipment – Farm machinery and irrigation equipment repair parts. Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to a special gross receipts tax in lieu of sales tax at a reduced rate, as provided by North Dakota Century Code chapter 57-39.5.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. Motor vehicles required to be registered with the motor vehicle department, including vehicles such as trucks, pickups, cars, snowmobiles, all-terrain vehicles, and garden tractors, do not qualify as farm machinery. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax at the full rate.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

Parts, excluding tires, used to repair qualifying farm machinery or farm irrigation equipment, are exempt from the special gross receipts tax. These same parts are subject to the general North Dakota sales and use tax rate when sold to contractors or others who do not use the machinery exclusively for agricultural purposes.

Farm repair parts include any durable goods, except tires, used to repair qualifying farm machinery or farm irrigation equipment. Durable goods do not include fluids, gases, oils, greases, lubricants, paints, and waxes. Farm machinery and farm irrigation repair parts do not include items like tools, lumber, twine, fencing material, or storage tanks.

Sales of parts not clearly identified for use in farm machinery or farm irrigation equipment are subject to the reduced rate when used by the seller to repair farm machinery or farm irrigation equipment.

When parts are sold over the counter, the seller should use discretion but should generally accept in good faith the purchaser's word as to their intended use. When the purchaser intends to use the parts on a qualifying farm machine or qualifying farm irrigation equipment, the qualifying parts are exempt from sales tax. If the parts are for nonfarm machinery use, the general sales tax rate must be charged.

History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 1987; March 1, 1988; June 1, 2002; April 1, 2006;_____.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, 57-39.5-01, 57-39.5-01.1, 57-39.5-02, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

81-04.1-04-06. Amusement - Games of chance. Receipts from games of chance operated by nonprofit organizations are exempt from sales tax. Instruments for gambling purchased by these organizations are subject to sales and use tax unless the organization is exempt from sales and use tax.

~~An organization furnishing bingo cards may choose to add tax to the selling price of the bingo cards or may include tax in the selling price of the bingo cards. If the tax is included in the selling price of the bingo cards, the organization shall post a notice advising purchasers that the selling price includes sales tax. The notice must contain the language "bingo card sales price includes applicable sales tax" and must indicate the net taxable sale, tax, and gross sales price.~~

EXAMPLE: _____ Net taxable sale _____ \$19.04

North Dakota sales tax	.96
Gross sale	\$20.00

~~When sales tax is included in the selling price of bingo cards, the tax must be deducted from the gross sales receipts to arrive at net taxable sales. Net taxable sales are calculated as follows: Gross receipts divided by 105% (1.05) equals net taxable sales.~~

~~**History:** Effective June 1, 1984; amended effective March 1, 1990; _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04, 57-39.2-20, 57-40.2-02.1~~

~~**81-04.1-04-07.1. Educational, religious, or charitable sales activities.**
Gross receipts from educational, religious, or charitable activities are subject to tax when these activities include regular retail sales made in direct competition with other retailers.~~

~~"Regular retail sales" includes all recurring, regularly scheduled, or ongoing retail sales made in the ordinary course of business other than those made on an isolated or occasional basis.~~

~~"Direct competition" means activity wholly or substantially similar to existing sales, taxable goods, or services competing for the same customer market.~~

~~A community music organization or a community theater organization may present live performances of musical or theatrical works in a publicly owned facility without charging sales tax on the admissions provided that the organization is exempt from federal income tax and provided that the net proceeds from all such activities are expended for religious, educational, or charitable purposes.~~

~~The gross receipts from all other sales or admissions made in a publicly owned facility by an organization exempt from federal income tax are subject to sales tax unless the gross receipts from the organization's educational, religious, or charitable activities are five thousand dollars or less.~~

~~**History:** Effective November 1, 1987; amended effective August 1, 1994; June 1, 2002. Repealed effective _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04~~

~~**81-04.1-04-10.1. Amusement - Coin-operated amusement devices.**
Sales tax is due on eighty percent of the gross receipts collected from coin-operated amusement devices. Sales tax is included in the gross receipts from coin-operated~~

amusement devices and must be deducted before calculating gross receipts subject to sales tax (taxable sales).

Taxable sales from coin-operated amusement machines are calculated as follows:

1. ~~5% state sales tax only~~ Taxable sales = Gross Receipts x ~~76.92%~~
~~(.7692)~~
2. ~~5% state sales tax and 1% city sales tax~~ Taxable sales = Gross Receipts x ~~76.34%~~
~~(.7634)~~
3. ~~5% state sales tax and 1 3/4% (State) local city sales tax~~ Taxable sales = Gross Receipts x ~~76.20% (.7620)~~
~~(City) Taxable sales = Gross Receipts x~~
~~53.34% (.5334)~~

~~In the absence of a written agreement stipulating division of gross receipts between the coin-operated amusement device owner and the location operator, the coin-operated amusement device owner is responsible for sales tax on eighty percent of the gross receipts.~~

~~The purchaser of a coin-operated amusement device is liable for sales tax on a coin-operated amusement device purchased in this state or for use tax on a coin-operated amusement device purchased outside of this state regardless of whether a license fee is paid to any governmental authority for operating the coin-operated amusement device.~~

History: ~~Effective November 1, 1987; amended effective March 1, 1988; March 1, 1990; April 1, 2006. Repealed effective _____.~~

General Authority: ~~NDCC 57-39.2-19~~

Law Implemented: ~~NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-40.2-02.1~~

81-04.1-04-17. Banks - Purchases and sales by national banks, state banks, trust companies, and savings and loan associations. When financial institutions are engaged in the business of purchasing tangible personal property for sale, lease, or rental at retail, they are required to collect and remit the tax from their customers on all such sales, leasing, periodic lease or rental payments unless the financial institution paid sales or use tax on the purchase price of the property at the time of purchase.

To qualify for the exemption on periodic lease or rental payments, the financial institution leasing or renting the tangible personal property must disclose on an invoice, contract, or lease agreement, or other supporting sales document provided to the

customer that the financial institution paid sales or use tax on its purchase price. Financial institutions are required to collect sales tax on a payment made to exercise a purchase option.

When financial institutions acquire tangible personal property to offer as an inducement to deposit funds, sales tax applies on the full purchase price. If the seller fails to collect the sales tax, the financial institution must report the purchase of such merchandise and pay use tax. If such merchandise is subsequently sold at a reduced price to depositors, no sales tax applies.

History: Effective June 1, 1984; amended effective _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-20, 57-40.3

81-04.1-04-29. Minerals - Coal. Coal mined and sold in this state subject to the coal severance tax is exempt from sales tax. Coal mined outside this state is not subject to sales tax when sold in this state.

~~Coal, mined and sold for heating buildings in this state, including the heating of buildings with steam created by the burning of coal, is subject to sales tax.~~

History: Effective June 1, 1984; amended effective June 1, 2002; _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-61

81-04.1-04-30. Minerals - Coke and natural gas sold to industrial users. All sales of natural gas are exempt from sales tax. Sales to industrial users of coke, natural gas, and other fuels not subject to a special tax are sales at retail and subject to sales tax if they do not become an integral, ingredient, or component part of a manufactured product sold at retail.

History: Effective June 1, 1984; amended effective _____.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-31. Mobile Manufactured homes. Mobile Manufactured homes not sold in conjunction with installation, are tangible personal property subject to sales tax at a reduced rate on the gross receipts. Installation of a manufactured home includes any method established under section 54-21.3-08. A manufacturer or seller who permanently attaches such manufactured homes to a foundation or provides installation by any method established under 52-21.3-08 is subject to tax in the same manner as a construction contractor and is liable for tax based on the cost of materials to the manufacturer or seller.

Trade-ins are not to be deducted from the gross sales price prior to application of the sales tax.

A manufactured home that is sold and will be installed in another state is not subject to tax.

History: Effective June 1, 1984; amended effective July 1, 1985;_____.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-32. Mobile Manufactured homes - Sales and rentals.

Leasing or renting ~~mobile~~ manufactured homes for nonresidential purposes is subject to sales tax. A ~~mobile~~ manufactured home dealer using a ~~mobile~~ manufactured home as an office must pay sales or use tax based on the dealer's cost. Sales tax is applied on the lease or rental of a new ~~mobile~~ manufactured home at a reduced rate. The lease or rental of a used ~~mobile~~ manufactured home is not subject to sales or use tax.

History: Effective June 1, 1984; amended effective July 1, 1985;_____.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-40. Rentals and rental agencies. The lease or rental of tangible personal property is subject to sales tax based on the periodic payments as they are made unless the retailer has paid sales or use tax on its purchase of the tangible personal property. Sales tax is applied based on where the lease or rental equipment will be located in the state.

Examples of lease or rental transaction include:

1. A customer picks up lease or rental equipment for the day from a rental business. State and local sales tax will apply to the lease or rental charge based upon the location of the rental business.
2. A customer has lease or rental equipment delivered to the customer's location for the day. State and local sales tax will apply to the lease or rental charge based upon the location of the customer.
3. A customer enters into a six-month lease of equipment with lease payments due monthly. The customer picks up the equipment at the lessor's business location in the state. Because the customer first takes possession of the equipment at the lessor's business location, the first lease payment is subject to sales and local sales tax based on the lessor's business location. Sales tax on subsequent lease payments will be due based on the location where the equipment is stored or used in this state. If stored or used outside this state, the subsequent lease payments applying to this period of time will not be taxable.

North Dakota sales tax law continues to provide an exemption from sales tax on lease or rental receipts for tangible personal property purchased for lease or rental when sales or use tax had been paid to North Dakota on the purchase price. To qualify for an exemption on periodic lease or rental payments, the retailer leasing or renting the tangible personal property shall disclose on an invoice, contract, lease agreement, or other supporting sales document provided to the customer that the retailer paid sales or use tax on the retailer's purchase price. Retailers that pay tax on the purchase price of lease or rental property are required to collect sales tax on a payment made to exercise a purchase option.

In a lease-purchase arrangement, sales tax must be charged on the rentals until the option is exercised. When the option is exercised, sales tax must be charged on any additional amount the purchaser must pay to complete the purchase.

An agent acting for an undisclosed principal and leasing tangible personal property to the public is the owner, and the rentals received are subject to sales tax. Tax applies to the full rental as long as the leased item is used within this state.

Persons engaged in the business of leasing or renting tangible personal property other than motor vehicles are retailers and subject to sales tax. Purchases by rental agencies of items to be leased or rented are purchases for resale and are not subject to sales tax. A certificate of resale must be presented to the seller for these purchases.

The term "sale" does not include sales or rentals of motor vehicles licensed by the director of the North Dakota department of transportation on which the motor vehicle excise tax has been paid to North Dakota.

When the sales tax rate changes during the term of an existing lease, the rate of tax to be charged on the remaining lease or rental payments will reflect the new rate of tax.

In a sale-leaseback arrangement, when a company purchases or owns tangible personal property on which applicable sales and use taxes were paid, and enters into a sale-leaseback arrangement with a financial business for the sale and leaseback of the same property, no sales tax shall apply to the transfer of title to the business or subsequent lease to the company. The subsequent sale of the property by the financial business at the conclusion of the lease is subject to sales tax. "Leaseback" means a transaction involving the sale of property and the seller's simultaneous lease of the property from the purchaser.

History: Effective June 1, 1984; amended effective October 1, 1986; April 1, 2006;

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-04-41.1. Communication service.

1. The gross receipts from the sale of all communication services, including telecommunications services and ancillary services, provided in the state are subject to sales tax provided the communication service originates and terminates within the state's borders, regardless of where the billing for the service is made.
2. Taxable communication services include the following:
 - a. Telecommunications services;
 - b. Ancillary services; and
 - c. Access charges, including internet access charges billed to retail customers, unless otherwise prohibited by federal law.
3. Mobile telecommunications services. A mobile telecommunications company that provides communication services, as defined in North Dakota Century Code chapter 57-34.1, to retail consumers shall use the location of the customer's place of primary use for the purpose of determining whether tax is due on services charged to the customer. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.
4. Taxable communication services do not include:
 - a. ~~One-way communication service;~~
 - b. Purchase of communication service from one communication provider to another, for resale to a retail consumer, provided a certificate of resale is provided to the seller by the purchaser;
 - eb. Charges for interstate communication service;
 - ec. Communication services to exempt entities;
 - ed. Communication services to Indian retail consumers enrolled and living on an Indian reservation within this state; and
 - ef. 911 emergency telephone charges.

5. In the case of a bundled transaction that includes telecommunications service, ancillary service, or internet access:
 - a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.
 - b. The provisions of this rule shall apply unless otherwise prohibited by federal law.

6. Definitions. For the purposes of this section, the following definitions apply:
 - a. "Ancillary service" means services that are associated with or incidental to the provisions of "telecommunications services", including "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".
 - b. "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone that accepts direct deposits of money to operate.
 - c. "Conference bridging service" means an "ancillary service" that links two or more participants in an audioconference or videoconference call and may include the provision of a telephone number. Conference bridging service does not include the "telecommunications services" used to reach the conference bridge.
 - d. "Detailed telecommunications billing service" means an "ancillary service" of separately stated information pertaining to individual calls on a customer's billing statement.
 - e. "Directory assistance" means an "ancillary service" of providing telephone number information or address information, or both.
 - f. "Fixed wireless service" means a telecommunications service that ~~is transmitted, conveyed, or routed, regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider~~ provides radio communication between fixed points.

- g. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia and United States territories or possessions.
- h. "Interstate" means a telecommunications service that originates in one United States state, territory, or possession, and terminates in a different United States state, territory, or possession.
- i. "Intrastate" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or United States territory or possession.
- j. "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.
- k. "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages or sounds, or both.
- l. "Pay telephone service" means a telecommunications service provided through any pay telephone.
- m. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid in advance, and that is sold in predetermined units of dollars of which the number declines with use in a known amount.
- n. "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

- o. "Residential telecommunications service" means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

- p. "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 phrase "telecommunications service" 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 such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include:
 - (1) 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 when such purchaser's primary purpose for the underlying transaction is the processed data or information;
 - (2) Installation or maintenance of wiring or equipment on a customer's premises;
 - (3) Tangible personal property;
 - (4) Advertising, including directory advertising;
 - (5) Billing and collection services provided to third parties;
 - (6) Internet access service;
 - (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing or transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall 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;

- (8) "Ancillary services" or digital products delivered electronically, including software, music, video, reading materials, or ring tones.
- q. "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data, primarily for the purpose other than transmission, conveyance, or routing.
- r. "Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services", which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including "conference bridging services".
- s. "Voice mail service" means an "ancillary service" that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.
- t. "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.
- u. "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for collection services provided by the seller of the "telecommunications services" to the subscriber, or service or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

History: Effective April 1, 1995; amended effective June 1, 2002; April 1, 2006;

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

81-09-03-02. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-51.1, unless the context requires otherwise, the following definitions apply:

1. "Completion" or "completed" means an oil well will be considered completed when the first oil is produced through wellhead equipment after production casing has been run.
2. "Drilled" means the spudding of a well.
3. ~~"Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well. As applied to the horizontal reentry of a vertical well, a reentry means the reentering of a well that has been plugged as determined by the industrial commission under section 43-02-09-01.~~
4. "Incremental production" means the oil which has been classified as incremental by the industrial commission pursuant to under subsections 5 and 6 of North Dakota Century Code section 57-51.1-03.
54. "New well" means a well initially drilled and originally completed after April 27, 1987, to a separate and distinct reservoir as recognized by the industrial commission.
65. "Nonincremental production" means the oil which has not been classified as incremental by the industrial commission.
76. "Reservoir" means a common source of supply as defined by the industrial commission.
87. "Test oil" means oil recovered during and after drilling but before normal completion of a well.
98. "Unit" means the total area of land that results from the combining of interests in all or parts of two or more leases or fee interests in order to operate the reservoir as a single production unit subject to a single operating interest. A unit may be formed by an agreement between the mineral interest owners (voluntary unitization) or by order of an agency of the state or federal government (compulsory unitization). A unit does not include "poolings" resulting from the enforcement of spacing requirements. This definition is only effective for periods prior to April 27, 1987.

History: Effective August 1, 1986; amended effective October 1, 1987; March 1, 1990; June 1, 1992; April 1, 1996; April 1, 2006;_____.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(4)(5)(8), 57-51.1-03(3)

81-09-03-05.1. Tax incentives for qualifying secondary recovery projects.

4. The exemption for incremental production from a qualifying secondary recovery project starts with the first day of the first month in which incremental oil is produced from the project.

- ~~2. The nonincremental production from a qualifying secondary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 5 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.~~

History: Effective June 1, 1992; amended effective June 1, 2002;_____.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(5)(6)

81-09-03-05.2. Tax incentives for qualifying tertiary recovery projects.

1. The exemption for incremental production from a qualifying tertiary recovery project starts with the first day of the first month in which incremental oil is produced from the project.

- ~~2. The nonincremental production from a qualifying tertiary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 6 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.~~

3. The exemption and rate reduction may be eliminated as of the first day of the first month in which the unit ceased to be operated as a qualified project if the industrial commission determines that the unit operator is not continuing to operate the unit as a qualifying tertiary recovery project.

History: Effective June 1, 1992; amended effective June 1, 2002; _____.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(5)(6)

81-09-03-06. New well exemption for vertical and horizontal wells.

1. ~~A new vertical well and a new horizontal well exemption starts with the date the well was completed.~~
2. ~~The fifteen-month and twenty-four month exempt periods run consecutively from the date the well is completed even though all or a portion of the new well exemption may be rendered ineffective by the oil price trigger discussed below.~~
3. ~~Only one new well exemption is allowed per well bore. The well bore of a horizontal well consists of both the vertical and horizontal segments.~~
4. ~~To be eligible for the new well exemption, the commissioner must receive notification of the well's completion in a report from the industrial commission. The commissioner will verify the date the well was completed and issue an exemption letter to the operator. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The tax commissioner will accept the information subject to confirmation upon audit.~~

History: ~~Effective October 1, 1987; amended effective March 1, 1990; June 1, 1992; April 1, 1996; June 1, 2002. Repealed Effective _____.~~

General Authority: ~~NDCC 57-51-21, 57-51.1-05~~

Law Implemented: ~~NDCC 57-51.1-03(3)~~

81-09-03-08. Work-over exemption. ~~The twelve-month period runs consecutively from the first day of the third month after completion of the work-over project, even though all or a portion of the exemption may be rendered ineffective by the oil price trigger.~~

~~The commissioner must receive a work-over qualification letter signed by a representative of the industrial commission stating that the work-over project meets the requirements set forth in North Dakota Century Code section 57-51.1-03. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The letter must also provide the following information:~~

1. ~~_____~~ The name of the lease.
2. ~~_____~~ The location of the well.
3. ~~_____~~ The name of the party entitled to the tax exemption.
4. ~~_____~~ The average daily production of the well during the latest six calendar months of continuous production.
5. ~~_____~~ The cost of the work-over project.
6. ~~_____~~ The average daily production of the well during the first sixty days after completion of the work-over project, if the cost of the work-over project is sixty-five thousand dollars or less.
7. ~~_____~~ The dates on which the work-over project was performed.

The commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

History: ~~Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; June 1, 2002; April 1, 2006. Repealed effective _____.~~

General Authority: ~~_____ NDCC 57-51-21, 57-51.1-05~~

Law Implemented: ~~_____ NDCC 57-51.1-03~~

81-09-03-09. Trigger provision applicable to oil extraction tax rate. ~~The trigger becomes effective starting with the first day of the first month following the five-month period in which the average price exceeded the trigger price. The oil extraction tax percentage will revert back to the reduced or exempt rate beginning on the first day of the first month following the five-month period in which the average price of crude oil was below the trigger price provided the wells still qualify for the reduced rate or exemption. The trigger provisions do not apply to stripper wells, wells drilled on Indian land, or incremental production from an enhanced recovery project.~~

History: ~~Effective June 1, 1992; amended effective August 1, 1994; June 1, 2002; April 1, 2006. Repealed effective _____.~~

General Authority: ~~_____ NDCC 57-51-21, 57-51.1-05~~

Law Implemented: ~~_____ NDCC 57-51.1-03~~

81-09-03-10. Horizontal reentry well exemption.

1. ~~_____~~ The designation of a horizontal reentry well is given to a well initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well. This designation may also apply to the reentry and recompletion of a vertical well that is classified by the industrial commission as a dry hole.

- ~~2. The nine-month exempt period runs consecutively from the date the horizontal reentry well is recompleted even though all or a portion of the exemption may be rendered ineffective by the oil price trigger described in this section.~~
- ~~3. Test oil from a horizontal reentry well is exempt from the oil extraction tax. The well bore of a horizontal reentry well consists of both the vertical and horizontal segments.~~
- ~~4. After the nine-month exempt period expires, oil produced from a horizontal reentry well is subject to the same oil extraction tax rate that was applicable before the exempt period.~~
- ~~5. The commissioner must receive a qualification letter signed by a representative of the industrial commission stating the dates the well was initially spudded and completed as a vertical well, the dates the well was reentered and recompleted as a horizontal well, the total volume of test oil recovered prior to recompletion, and, if applicable, the date the well was initially plugged and abandoned as a dry hole. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.~~

History: ~~Effective April 1, 1996; amended effective June 1, 2002. Repealed effective _____.~~

General Authority: ~~NDCC 57-51-21, 57-51.1-05~~

Law Implemented: ~~NDCC 57-51.1-03(7)~~

81-09-03-11. Two-year inactive well exemption.

- ~~1. A two-year inactive well exemption starts with the first day of the month in which the industrial commission's certification of well status is received by the tax commissioner.~~
- ~~2. A two-year inactive well is a well that has not produced oil in more than one month in any consecutive twenty-four-month period. 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.~~
- ~~3. The inactive well exemption is applicable to all oil produced during the exemption period after the well is certified as a two-year inactive well.~~
- ~~4. The ten-year exempt period runs consecutively from the month the tax commissioner receives the industrial commission's certification even though all or a portion of the inactive well exemption may be rendered ineffective by the oil price trigger described in this section.~~

5. ~~To be eligible for the inactive well exemption, the commissioner must receive a copy of the industrial commission's certification stating that the well qualifies as a two-year inactive well. The certification must be submitted to the commissioner within eighteen months after the two-year inactive well's qualification period to receive the exemption from the first day of eligibility. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.~~

History: ~~Effective April 1, 1996; amended effective June 1, 2002; April 1, 2006. Repealed effective _____.~~

General Authority: ~~NDCC 57-51-21, 57-51.1-05~~

Law Implemented: ~~NDCC 57-51.1-03(6)~~

ARTICLE 81-10 BANKS, TRUST COMPANIES, AND SAVINGS AND LOAN ASSOCIATIONS

Chapter
81-10-01 General

CHAPTER 81-10-01 GENERAL

Section
81-10-01-01 General
81-10-01-02 Definitions
81-10-01-03 Preparation of Pro Forma Return
81-10-01-04 Computation of Pro Forma Taxable Income
81-10-01-05 Deposit Factor

81-10-01-01. General. ~~This chapter sets forth the rules which a bank must follow in filing its tax return if the bank has consolidated or merged pursuant to North Dakota Century Code chapter 6-03.~~

History: ~~Effective January 1, 1989. Repealed effective _____.~~

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 57-35-02.1, 57-35.2-02.2~~

81-10-01-02. Definitions. ~~As used in this chapter and for the administration of North Dakota Century Code sections 57-35-02.1 and 57-35.2-02.2, unless the context otherwise requires:~~

1. ~~"Allocate" means to assign the income or expense item to either the principal office or a particular branch office.~~

2. ~~"Apportion" means to divide the income or expense item between the principal office and each branch office by using the applicable deposit factor.~~
3. ~~"Bank" means the principal office and all branch offices.~~
4. ~~"Branch office" means the banking houses or offices or the paying or receiving stations of the bank other than the principal office.~~
5. ~~"Commissioner" means the tax commissioner of the state of North Dakota.~~
6. ~~"Deposits" mean:
 - a. ~~The unpaid balance of money or its equivalent received or held by the principal office or one of its branch offices in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the principal office or a branch office, or a letter of credit or a traveler's check on which the principal office or a branch office is primarily liable. Provided, that, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to the principal office or a branch office for collection.~~
 - b. ~~Trust funds received or held by the principal office or a branch office, whether held in the trust department or held or deposited in any other department of the principal office or a branch office.~~
 - c. ~~Money received or held by the principal office or a branch office, or the credit given for money or its equivalent received or held by the principal office or a branch office, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the principal office or a branch office or others (including funds held as dealer's reserves), or for securities loaned by the principal office or a branch office, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United~~~~

~~States government securities, funds held to meet its acceptance of letters of credit, and withheld taxes. Provided, that there shall not be included funds which are received by the principal office or a branch office for immediate application to the reduction of an indebtedness to the receiving entity, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.~~

- ~~d. Outstanding draft (including advice or authorization to charge the principal office or a branch office's balance in another bank), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including, without being limited to, those issued in payment for services, dividends, or purchases.~~
- ~~e. Such other obligations of the principal office or a branch office as the board of directors, after consultation with the comptroller of the currency and the board of governors of the federal reserve system, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this chapter or be included as part of the total deposits or of an insured deposit:
 - ~~(1) Any obligation of a principal office or a branch office which is payable only at a location outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.~~
 - ~~(2) Any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the board of governors of the federal reserve system in Regulation D or any successor regulation issued by the board of governors of the federal reserve system.~~~~

~~7. "Principal office" means the office where the bank's charter is located.~~

History: ~~Effective January 1, 1989. Repealed effective _____.~~

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 57-35-02.1, 57-35.2-02.2~~

81-10-01-03. Preparation of pro forma return. ~~The principal office and each branch office shall prepare a pro forma federal income tax return based on the income and expense it would have earned or incurred if the merger or consolidation had not occurred. Provided, however, that the principal office and all branch offices may~~

submit the required information in another format if the principal office receives written permission to do so from the commissioner.

History: ~~Effective January 1, 1989. Repealed effective _____.~~

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 57-35-02.1, 57-35.2-02.2~~

81-10-01-04. Computation of pro forma taxable income. The following method must be used by the principal office and each branch office to compute its pro forma federal taxable income:

1. ~~Any item of income or expense that is entirely earned or incurred by the principal office or a particular branch office must be allocated to the office which earned the income or incurred the expense. Examples of income or expense items which should be allocated include, but are not limited to, the following:~~

a. ~~Income items.~~

(1) ~~Rents.~~

(2) ~~Royalties.~~

(3) ~~Capital gains.~~

(4) ~~Interest from loans.~~

b. ~~Expense items.~~

(1) ~~Repairs.~~

(2) ~~Bad debts.~~

(3) ~~Rents.~~

(4) ~~Property taxes.~~

(5) ~~Contributions.~~

(6) ~~Depreciation.~~

(7) ~~Salaries and wages.~~

2. ~~Any item of income or expense that is earned or incurred for the benefit of the principal office and one or more branch offices must be apportioned to the principal office and the appropriate branch offices by using the~~

~~applicable deposit factor. Income and expense items which should be apportioned include, but are not limited to, the following:~~

~~a. Income items.~~

~~(1) Dividends.~~

~~(2) Interest.~~

~~(3) Capital gains.~~

~~b. Expense items.~~

~~(1) Salaries of officers and directors.~~

~~(2) Salaries and wages of employees.~~

~~(3) Taxes, except for property taxes.~~

~~(4) Payments to employee pension, profit sharing, or benefit plans.~~

~~(5) Advertising.~~

~~(6) Insurance.~~

~~(7) Interest.~~

History: Effective January 1, 1989. Repealed effective _____.

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 57-35-02.1, 57-35.2-02.2~~

81-10-01-05. Deposit factor. ~~The deposit factor must be determined in the following manner:~~

~~1. The numerator must be equivalent to either the principal office or a particular branch office's deposits during the tax period.~~

~~2. The denominator must be equivalent to the principal office and all branch offices' deposits during the tax period.~~

History: Effective January 1, 1989. Repealed effective _____.

General Authority: ~~NDCC 28-32-02~~

Law Implemented: ~~NDCC 57-35-02.1, 57-35.2-02.2~~

